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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Boston Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(1) (45 FR 51541) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1985) to establish a new location, mailing address and telephone numbers for the Authority's Boston Regional Office.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson Speight, Deputy to the Assistant General Counsel (202) 382–0811.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location, mailing address and telephone numbers of the Boston Regional Office of the Authority. Accordingly, in Appendix A to Chapter XIV, Title 5, paragraph (d)(7) of the Code of Federal Regulations is revised to read as follows:

CHAPTER XIV—[AMENDED]

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) * * *

(7) *Boston Regional Office*—10 Causeway Street, Room 1017, Boston, Massachusetts 02222–1046, Telephone: FTS—835–7280, Commercial—(617) 565–7280.

* * * * *

(5 U.S.C. 7134)

Dated: September 8, 1986.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 86–20743 Filed 9–12–86; 8:45 am]

BILLING CODE 6727–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for the months of September through December 1986, the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the Nebraska-Western Iowa order. The revision is made in response to a request by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Diversion Limitation Percentage: Issued August 6, 1986; published August 11, 1986 (51 FR 28721).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (51 FR 28721) concerning a proposed increase in the amount of milk that may be moved directly from producer farms to nonpool manufacturing plants for the months of September through December 1986. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 18, 1986.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the diversion limitation percentage set forth in § 1065.13(d) should be increased from the present 40 percent to 60 percent for the months of September through December 1986. The order's diversion limits were revised temporarily from 50 to 60 percent through August 1986.

Pursuant to the provisions of § 1065.13(d), the diversion limitation percentages set forth in § 1065.13(d) (2) and (3), respectively, may be increased or decreased up to 20 percentage points during any month. Such changes may be made to encourage additional needed milk shipments to pool distributing

plants or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc. (AMPI), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of September through December 1986, the percentage of allowable diversions be increased 20 percentage points.

The basis of the cooperative's request is that for the period in question, the order provisions require more milk to move through pool plants than is necessary to meet the fluid, or bottling, requirements of the market. AMPI stated that producer milk pooled under the order during the first six months of 1986 increased more than 11 percent over the same period of 1985. AMPI believes that the percentage of production increase will decline somewhat as a result of the Dairy Termination Program, but that production will not drop below 1985 levels before the end of 1986. The cooperative therefore expects to have a larger surplus of milk to dispose of in the fall of 1986 than in the same period last year, when a temporary revision of the diversion limits was also necessary.

According to the association, the milk surplus to the fluid needs of the market must go to manufacturing facilities. For the purposes of preserving milk quality by requiring less pumping and allowing milk to be moved in the most efficient manner possible, the cooperative stated that the most desirable way of handling the additional milk is to ship it directly to nonpool plants. AMPI expressed the belief that the proposed temporary increase in diversion limits will have no effect on the ability of distributing plants to obtain needed supplies of milk for Class I use, and will prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Comments opposing the temporary revision were received from Mid-America Dairymen, Inc. (Mid-Am), a cooperative association representing a substantial number of producers on the Nebraska-Western Iowa market. Mid-Am opposed the temporary revision of diversion limits on the basis that the amount of producer milk pooled under the order during July 1986 was less than one-tenth of one percent greater than the volume pooled during July 1985. The cooperative advocated denying AMPI's request to revise the order's diversion limits temporarily because of this apparent turn-around in the trend of steadily increasing milk production. Mid-Am argued further that the milk production scheduled to be removed from the market under the Dairy Termination Program would cause a decline in milk production well below year-earlier levels. The cooperative stated that liberalized diversion limits would make Nebraska-Western Iowa producer milk unavailable to meet the fluid requirements of Nebraska-Western Iowa distributing plants.

Although milk production on the Nebraska-Western Iowa milk market in July 1986 was only barely greater than the amount pooled during July 1985, the experience of one month does not establish a trend. During the first six months of 1986, the increase in each month's production over the same month in the previous year declined from 16.6 percent in January to 5.1 percent in June. Most of the first disposal period (April 1–August 31, 1986) under the Dairy Termination Program has passed, and it is likely that its greatest impact on milk production has already occurred. The second disposal period, which ends February 28, 1987, will have much less impact on milk production. There is no reason to believe that milk production in the Nebraska-Western Iowa area will fall substantially below 1985 levels before 1987. The percentage of producer milk used in Class I in the Nebraska-Western Iowa market during the last half of 1985 averaged slightly below 40 percent. Milk production would have to decline considerably in the last part of 1986 to justify a requirement that 60 percent of all producer milk pooled under the order be delivered to pool plants.

Without the temporary revision, milk of some dairy farmers would first have to be received at a pool plant to qualify it for pooling rather than being shipped directly from the farm to nonpool manufacturing plants for surplus use. The order's present diversion limits would result in costly and inefficient movements of milk. It is concluded that the relaxation of the diversion limits by 20 percentage points for the months of September through December 1986 will prevent uneconomic movements of milk through pool plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September through December 1986;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

PART 1065—[AMENDED]

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk Marketing Orders, Milk, Dairy products.

§ 1065.13 [Amended]

It is therefore ordered, that in paragraphs (d) (2) and (3) of § 1065.13, the provision "40 percent" is revised to "60 percent" for the months of September through December 1986.

The authority citation for 7 CFR Part 1065 continues to read as follows:

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

Effective date: September 15, 1986.

Signed at Washington, DC, on September 10, 1986.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 86–20707 Filed 9–12–86; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

Loan and Purchase Programs; Extension of Maturity Dates, Wheat, etc.

7 CFR Part 1421

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Part 1421 to provide for the extension of maturity dates of wheat, corn, barley, oats, rye, sorghum and soybean price support loans under such terms and conditions as may be determined and announced by the Commodity Credit Corporation. In addition, these regulations provide, under certain circumstances, that commodities stored on the ground or in temporary storage may be considered to be eligible for price support.

EFFECTIVE DATE: This interim rule shall become effective upon September 12, 1986. Comments must be received on or before September 30, 1986, in order to be assured of 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; Phone: (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 interim rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified "not major". It has been determined that the provisions of this interim 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—Commodity Loans and Purchases Number 10.051, 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

Price support loans obtained by producers for which 1985 crops were pledged as collateral are now maturing. Additionally, because of the possibility of limited storage space, some producers who are currently harvesting their 1986 crop, or who will soon be harvesting such crop, may be unable to take full advantage of the price support loan program. Since this interim rule amends provisions applicable to the maturity dates of maturing loans and authorizes price support for the current crop with respect to commodities stored on the ground or in temporary storage, 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 September 30, 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.

This interim rule amends 7 CFR 1421.6 to provide that the final maturity date for price support loans made to producers with respect to feed grains, wheat, and soybeans may be extended under terms and conditions determined and announced by CCC. Currently, such loans mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is made. By providing that the loan maturity date may be extended, CCC will be able to provide greater marketing flexibility to producers and to provide enhanced utilization of grain storage facilities. Accordingly, all such price support loans will continue to mature on demand but no later than the last day of the ninth calendar month in which the loan application is made, unless such date is extended by CCC.

This interim rule also amends 7 CFR 1421.7 to provide that, if determined and announced by CCC, approved storage for farm-stored loans may include on-ground storage and storage in temporary structures. This action will provide greater utilization of the price support program by eligible producers by allowing such producers to obtain price support with respect to the entire quantity of the commodity which is harvested regardless of the availability of permanent storage structures.

These actions are necessary in order to take advantage of all available on-farm storage space in preparation for the projected large grain harvest this fall. It is anticipated that these actions will help make available additional commercial warehouse space at harvest. The extension of the loan maturity date will also give additional marketing flexibility to producers who have outstanding or unsettled maturing loans with respect to the 1985 crops of wheat, corn, barley, oats, rye, sorghum, and soybeans.

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); secs. 101, 101A, 105C, 107D, 201, 301, 401, 403 and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 63 Stat., 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441-1, 1444e, 1445b-3, 1446, 1447, 1421, 1423, and 1425).

2. 7 CFR 1421.6(c) is revised to read as follows:

§ 1421.6 Program availability, disbursement, and maturity of loans.

* * * * *

(c) *Availability and maturity dates.* Final availability dates applicable to loans and purchases will be specified in the individual commodity regulations which supplement this subpart. Whenever the final date of availability or maturity date falls on a nonworking day for county offices, the applicable final date shall be extended to include the next work day. Loans on commodities other than rice, farm-stored flue-cured tobacco and farm-stored peanuts mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is made. However, such maturity date may be extended under terms and conditions as may be determined and announced by the Executive Vice President, CCC. If the loan is not disbursed by the last day of the calendar month following the month in which the loan application is made or by such a date as determined and announced by the Executive Vice President, CCC, the producer must

reapply for a commodity loan as otherwise provided by this part.

* * * * *

3. 7 CFR 1421.7(a) is revised to read as follows:

§ 1421.7 Approved storage.

* * * * *

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) which is determined by a representative of the county committee to afford safe storage of the commodity. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements.

* * * * *

Signed at Washington, DC, on September 4, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-20708 Filed 9-12-86; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The final rule will: (1) Increase the minimum net worth requirements applicable to contracting warehousemen, (2) increase the maximum net worth requirement by adjusting the per bushel/hundredweight rate used to determine the requirement, (3) provide for the payment of application and inspection fees by warehousemen seeking initial approval to enter into a storage agreement with CCC and, (4) provide for the proration of the first year's contract fees if the initial contract approval date does not coincide with the annual renewal date.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5768-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5647.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulations 1512-1 and has been classified as "not major" since implementation of the provisions of 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 geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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 28115 (June 24, 1983).

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 proposed rule.

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

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the grain warehousing industry, financial institution requirements, and Federal contracting requirements during the past few years necessitate updating the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed.

Accordingly, a Notice of Proposed rulemaking was published by the Department in the **Federal Register** on March 24, 1986, 51 FR 9971, requesting comments with respect to a number of proposals regarding changes in the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The comment period was for 30 days and ended on April 23, 1986.

Amendments to the regulations were proposed which would: (1) Increase the minimum net worth requirement applicable to contracting warehousemen, (2) increase the maximum net worth requirement by increasing the per bushel/hundredweight rate used to determine the requirement, (3) provide for the payment of application and inspection fees by warehousemen seeking initial approval to enter into a storage agreement with CCC and, (4) provide for the proration of the first year's contract fee if the initial contract approval date does not coincide with the annual renewal date. CCC also requested comments regarding a proposed change in the annual renewal date for the Uniform Grain Storage Agreement (UGSA) and the Uniform Rice Storage Agreement (URSA) from July 1 to April 1 in 1987.

Two warehousemen, one national grain and feed association, and one State grain and feed association responded to the proposed changes. The State grain and feed association supported all of the proposed changes and felt the proposed change in contract renewal dates would be most beneficial to producers and warehousemen in its State.

Two respondents expressed concern over the proposed increases in the net

worth requirements. They stated that CCC's proposal to increase the minimum net worth and the formula used to calculate the maximum net worth sends a strong and discouraging signal to warehousemen that are considering investments to expand their storage facilities. They indicated that the proposal would inhibit, rather than encourage construction or renovation of additional commercial storage space. Further, they stated that this proposal would have a negative impact on country elevators that were considering expanding and enlarging their storage facilities.

After careful consideration of these comments, it has been determined that the change in net worth requirements should have little or no effect on the number of warehousemen that are planning to construct or renovate additional storage space. Warehousemen who would have problems meeting the proposed increases in net worth requirements would also have problems obtaining the necessary funds to expand their storage capacities.

Increasing the net worth requirements will help reduce the number of warehouse bankruptcies and liquidations and will reduce the amount of losses to CCC, producers, and other depositors when warehouse bankruptcies and liquidations do occur. Therefore, the provisions of the proposed rule will be adopted without change in the final rule.

Two of the respondents commented on, but did not object to, the provisions in the proposed rule to change the annual contract renewal date from July 1 to April 1. They suggested that CCC consider two contract renewal dates. The first contract renewal date would be on April 1 for warehousemen in areas where producers harvest their grain in May and June and the second renewal date on July 1 or October 1 for warehousemen storing feed grains and soybeans. After reviewing all the comments received on this issue, it has been determined to change the annual contract renewal date from July 1 to April 1, effective April 1, 1987. Such a change will enable producers who harvest their grain in May and June to know the storage and handling rates to which their grain will be subject. However, CCC will continue to review the suggestion concerning two renewal dates and will make such a change in the future if it is necessary.

Another comment supported the proposal requiring payment of application and inspection fees by warehousemen seeking initial approval to enter into a storage agreement with CCC and the proposal to prorate the first year's contract fees.

Accordingly, it has been determined that the provisions of the proposed rule should be adopted without change as a final rule.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, and Warehouses.

Final Rule

PART 1421—[AMENDED]

Accordingly, the regulations at 7 CFR Part 1421 are amended as follows:

1. The authority citation for 7 CFR 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); secs. 101, 101A, 105C, 107D, 201, 301, 401, 403 and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 63 Stat., 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441-1, 1444e, 1445b-3, 1446, 1447, 1421, 1423, and 1425).

2. In section 1421.5552, paragraph (a)(3) is revised to read as follows:

§ 1421.5552 Basic standards.

* * * * *

(a) * * *

(3) Have a net worth which is the greater of $50,000 or an amount which is computed by multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity which the warehouseman desires to store and which the warehouse can accommodate when stored in the customary manner) under the approved contract with CCC times twenty-five (25) cents per bushel in the case of grain, fifty (50) cents per hundredweight in the case of rough rice, eighty-five (85) cents per hundredweight in the case of milled rice, and sixty (60) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to an amount which is computed by multiplying the estimated number of pounds of seed to be stored times seven (7) cents per pound. If this calculated net worth requirement exceeds $50,000, the warehouseman may satisfy any deficiency in net worth between the $50,000 minimum requirement and such calculated net worth requirement by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

* * * * *

3. Section 1421.5555, paragraph (b) is revised as follows:

§ 1421.5555 Exceptions.

* * * * *

(b) A warehouseman who has a net worth of at least $50,000 but who fails or whose warehouse fails to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

4. The heading to section § 1421.5558 is revised and § 1421.5558 is amended by revising paragraph (a)(2), adding a new paragraph (a)(3) and by revising paragraph (b) to read as follows:

§ 1421.5558 Contract and application and inspection fees.

(a) * * *

(2) All grain and rice warehousemen who do not have an existing agreement with CCC for the storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral but who desire such an agreement must pay an application and inspection fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination. The annual contract fee must be paid by the warehouseman to CCC prior to the time that the agreement is entered into.

(3) The contract fee will be prorated based upon the total number of months for which the contract is to be effective.

(b) The amount of the contract and application and inspection fees shall be determined and announced annually by the Executive Vice President, CCC.

Signed at Washington, DC on September 8, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-20709 Filed 9-12-86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 60740-6140]

Nonrelocation

AGENCY: Economic Development Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule publishes in final, an amendment to EDA's nonrelocation requirements. This rule restricts the availability of EDA funded financial assistance where there has been the relocation of jobs from one area to another. Under the rule, employers who have received or benefited from EDA financial assistance programs (business development loans and guarantees, and grants for construction, renovation, etc.) are prohibited from transferring jobs from one commuting area to another.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel for Operations and Administration, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7009, Washington, DC 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION:

Background

EDA published an interim final rule regarding its nonrelocation requirements at 13 CFR 309.3 on November 13, 1985 (50 FR 46749). The interim final rule narrowed the previous nonrelocation requirements to apply only to business development projects. However, in light of comments received and review of the underlying policies, the final rule now extends beyond business development projects, to include grants for construction, renovation, etc. funded under Titles I, IV, IX and section 301(f) of Title III of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89-136; 42 U.S.C. 3121-3245).

Discussion of Comments on the Interim Final Rule

During the 60 day comment period following publication of the interim final rule published in the **Federal Register** on November 13, 1985 (50 FR 46749), EDA received five written comments, two of which were from grantees which had received financial assistance under Title I of PWEDA, one was from a planning district receiving EDA funds under Title IV of PWEDA, one was from an EDA Regional Office, and one was from the Department of Commerce's Inspector General.

The following is a summary of these comments:

The apparently perpetual nature of the nonrelocation requirements upon current grantees

Of those who submitted comments, the EDA Regional Office and the two recipients of Title I grants recommended retroactive application of the interim final rule, possibly with a cutoff date. The recommendation for a cutoff date is being followed, since the nonrelocation requirements will be in effect for 48 months from the date of approval of covered grant assistance, and from the date of EDA's authorization to a lender to submit an application for an EDA guaranteed loan, until one year after the date of final disbursement. The recommendation for retroactive application of the interim final rule is not being implemented, to avoid encouraging the relocation of jobs in projects funded by EDA.

The applicability of the interim final rule to pending projects

The recipient of funding under Title IV of PWEDA recommended that any pending action based on the previous rule be covered under the interim final rule.

Projects approved during the period of time when the interim final regulation was in effect, are covered by the interim final rule. All other projects will be subject to the revised requirements.

Going back to the previous rule and clarifying it for simplicity and effective enforcement and monitoring

The Inspector General's comments stressed the legislative history of the nonrelocation provision which emphasized funding for projects which resulted in the creation of new jobs, rather than relocation of existing jobs. Also, it was recommended that the old rule needed simplification to ensure effective implementation and monitoring.

As a result of these suggestions, the final rule is more specific as to the scope of the areas covered and those employers who will be subject to the nonrelocation rule. The rule has also been simplified and spells out the actions which EDA will take in the event that a recipient of financial assistance fails to comply with the rule.

Content of Amended Rule

The introductory text to § 309.3 and paragraph (a) thereof are being amended to summarize the nature and scope of EDA's revised nonrelocation requirements, as follows: The phrase "commuting area", which is an area defined by the distance which people in the locality of the project receiving EDA financial assistance, travel to work, is being used instead of "labor area", because changes of the location of an employer within the area that employees normally commute in that locality would not result in relocation of jobs. Nonrelocation requirements are applicable for 48 months from the date of approval of construction-related grant projects, and for guaranteed loans from the date of EDA authorization to a lender to submit an application until one year after the date of final disbursement. The definition of "financial assistance" is amended to apply to grants for construction, rehabilitation or repair of real estate under Title I, IV, IX, and section 301(f) of Title III of PWEDA. An affirmative duty to inform EDA of changes of employer location has been added.

Paragraph (b) is amended by describing employers who are prohibited from transferring jobs, and by including businesses within project boundaries.

Paragraph (c) is amended by substituting "commuting area" for "area" (see discussion above) and by clarifying and simplifying the regulatory language.

Paragraph (d) is removed; contractors and subcontractors will be subject to the same standards as other employers.

Paragraph (e) is redesignated as paragraph (d) and is simplified in part and expanded to define intentional violation of the nonrelocation rule which will result in termination of the financial assistance.

Paragraph (f) is amended to grandfather EDA's interim final rule to apply to grants approved from November 13, 1985, through September 15, 1986.

The introductory text of paragraph (g) is removed and as modified has been redesignated as paragraph (e) to state that if relocation takes place prior to project approval, with the intent to avoid EDA's nonrelocation requirements, the result will be termination and repayment of the EDA financial assistance, plus interest.

The text of new paragraphs (g) and (h) is being simplified and clarified.

Paragraph (j) is added to define the scope of application of the nonrelocation rule to the operations of borrowers whose loans are guaranteed by EDA.

Paragraph (k) is added to require certification of nonrelocation. This

provides notice of what has been longstanding EDA practice.

Paragraph (l) is added to allow waiver of nonrelocation requirements by the Assistant Secretary, in grant projects. This will provide necessary flexibility in achieving the purposes of PWEDA.

Paragraph (m) is added to ensure compliance by defining EDA's response where there is failure to comply with these nonrelocation requirements.

Rulemaking Requirements

Because this rule. relates to grants, benefits and contracts, it is exempt from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) including notice and opportunity to comment and delayed effective date.

No other law requires that notice and opportunity for comment be given for this rule. However, this final rule was appropriately revised after receiving comments on the interim rule.

Since notice and opportunity for comment are not required to be given for this rule under Section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

For the reasons set out in the preamble, Title 13, Chapter III, Part 309 is amended as set forth below.

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. The authority citation for Part 309 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1–105, Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 309.3 is amended by revising the introductory text and paragraphs (a)–(e) and (g)–(h), and by adding paragraphs (f) and (j)–(m) as follows:

§ 309.3 Nonrelocation.

EDA financial assistance will not be used directly or indirectly to assist employers who transfer one or more jobs from one commuting area to another. A commuting area is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance. This restriction will apply to financial assistance in the form of grants and loans, as defined in this provision, for a period of forty-eight (48) months from the date of approval by EDA of financial assistance. In the case of loans guaranteed by EDA, the restriction will apply from the date on which EDA authorizes a lender to apply for an EDA guarantee until one year after the date of the final disbursement by the lender of the guaranteed loan. This restriction applies to the transfer of jobs, not of personnel. Every recipient of financial assistance has an affirmative duty to comply with the requirements of this regulation and a duty to inform EDA of every instance in which an employer transfers jobs from one area to another in connection with the EDA financial assistance during the periods defined herein. In the case of loans guaranteed by EDA, the lender, as well as the borrower, must inform EDA of such instances of job transfers.

(a) As used in this section, "Financial assistance" means loans, loan guarantees, and grants funded pursuant to Titles I, IV, IX, and section 301(f) of Title III of PWEDA for construction, rehabilitation or repair of real estate, and grants under Title IX for any purpose defined in this subsection.

(b) Employers prohibited from transferring jobs will include:

(1) Grantees;

(2) Businesses within the project boundaries of grants as described in the grant agreement; in the case of grants to fund area-wide utility systems, businesses which use greater than ten percent (10%) of the total capacity of the utility system as improved by the EDA grant;

(3) Borrowers;

(4) Lessees of borrowers or grantees; or

(5) Affiliates, subsidiaries, or other entities under direct, indirect, or common control of the foregoing.

(c) Transferred jobs will include those transferred by:

(1) Closing an operation in one commuting area and opening a new operation in another commuting area, or

(2) Increasing the number of jobs of an already existing employer at a location outside of the commuting area of its existing operations and reducing the number of same or similar jobs at any location where the employer conducts operations.

(d) EDA financial assistance is not prohibited for the expansion of an employer through the creation of a new branch, affiliate, or subsidiary which will not result in a decrease in jobs in any area where such employer conducts business operations. However, EDA will not extend and will terminate previously approved financial assistance in accordance with this provision, if the Assistant Secretary has reason to believe that such branch, affiliate, or subsidiary is being created with the intention of reducing the number of same or similar jobs of the employer in any area where it conducts operations.

(e) Should an employer locate in a facility or project area to be benefited by EDA financial assistance prior to the date of EDA's approval of that financial assistance, for the purpose of avoiding the restrictions of this rule, EDA will terminate the financial assistance and the recipient will be required to repay the full amount of the EDA financial assistance, plus interest.

(f) Grants made under Titles I, IV, and IX and section 301(f) of Title III of the Act, which were approved from November 13, 1985, through September 15, 1986, are governed by EDA's interim final rule on nonrelocation published in the FR on November 13, 1985 (50 FR 46749).

(g) Retail stores which open new outlets in EDA funded facilities, are exempt from this requirement provided:

(1) The retail store is not a direct recipient of EDA financial assistance;

(2) The retail store is not engaged in a pattern of operations which would result in relocating a substantial portion of its

operations from one multi-state region to another; and

(3) The new outlet opening will not result in a significant reduction of employment in the retail store's entire operation.

(h) The Assistant Secretary may require detailed information concerning the background, plans, and activities of the applicant, or of any related employer with which the applicant or its principals has any contract or arrangement or proposes to make any contract or arrangement based on benefits expected from the proposed EDA financial assistance, or of any employer which is known as or is intended by the applicant to be a beneficiary of the financial assistance, or which is to be located within the project boundaries.

* * * * *

(j) These requirements apply to all operations of the borrower for EDA loans and guarantees.

(k) Each applicant for financial assistance will submit its certification of compliance with these nonrelocation requirements as part of its application. In the case of: (1) Grants for construction, receipt by the grantee of a properly executed certification of nonrelocation from all employers locating within the project boundaries; or (2) Loan guarantees, receipt by the lender of a properly executed certification of nonrelocation from the borrower at the time of each disbursement, will evidence compliance with these requirements, unless the Assistant Secretary has reason to believe that the grantee or lender did not act in good faith.

(l) These nonrelocation requirements can be waived for grants with the written consent of the Assistant Secretary.

(m) When EDA determines that these requirements have been violated, EDA will terminate for cause the financial assistance made available by EDA. The recipient will be obligated to repay to EDA the full amount of that financial assistance, plus interest, from the date determined by EDA upon which the violation occurred, at the New York bank prime rate as reported in the "Wall Street Journal" on the date of termination.

Dated: September 9, 1986.

Mary Ann Baron,

Acting Assistant Secretary for Economic Development.

[FR Doc. 86-20753 Filed 9-12-86; 8:45 am]

BILLING CODE 3510-24-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release Nos. 33-6653B; 34-23421B; IC-15199B]

Amendments to Tender Offer Rules: All Holders and Best Price; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule which was published July 17, 1986 (51 FR 25873).

FOR FURTHER INFORMATION CONTACT: Joseph G. Connolly, Jr. or Gregory E. Struxness, (202) 272-3097, Office of Tender Offers, Division of Corporation Finance, Securities and Exchange Commission.

The following corrections are made in FR Doc. 86-16144, the Amendments to Tender Offer Rules: All-Holders and Best Price published in the **Federal Register** on July 17, 1986 (51 FR 25873).

1. The first sentence of the second full paragraph of the second column on page 25874 which reads ". . . to require than all security holders to whom a tender offer is made must be paid the highest consideration paid, rather that offered, . . .", is revised to read as follows:

". . .to require that all security holders to whom a tender offer is made must be paid the highest consideration paid, rather than offered, . . .".

2. The last sentence in the second column on page 25875 which reads ". . . in the public interest or the protection of investors". . ." is revised to read as follows:

". . . in the public interest or for the protection of investors" . . .".

3. The last sentence of the fourth full paragraph of the second column on page 25877 which reads "[I]f an offeror fails to attempt in good faith to comply with an unconstitutional state antitakeover statute, . . .", is revised to read as follows:

"[I]f an offeror fails to attempt in good faith to comply with a constitutional state antitakeover statute, . . .".

4. On page 25879, in footnote 55, change "Rule 13d-4(f)(ii)" to "Rule 13e-4(f)(ii)".

5. On page 25882, in the second column, in § 240.13e-4(f)(9), change "(F)(8)(i)" to "(f)(8)(i)".

6. On page 25882, in the second column, in § 240.13e-4(f)(10), change "(F)(8)(ii)" to "(f)(8)(ii)".

7. On page 25882, in the third column, in § 240.14d-7(a), change "sectioin" to "section".

8. On page 25883, in the first column, § 240.14e-1(b) in the first sentence, "unless such tender remains open" is revised to read as follows: ". . . unless such tender offer remains open . . .".

9. On page 25883, in the first column, § 240.14e-1(b) in the second sentence, ". . . the acceptance for payment by the bidder of an additional amount of securities . . ." is revised to read as follows:

". . . the acceptance for payment of an additional amount of securities . . .".

Shirley E. Hollis,

Assistant Secretary.

September 4, 1986.

[FR Doc. 86-20718 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Medical Radiation Advisory Committee; Termination

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972, and the public advisory committee procedures, the Food and Drug Administration (FDA) is announcing the termination of the Medical Radiation Advisory Committee (the Committee) and amends the regulation listing FDA's standing advisory committees. The Committee was terminated on July 18, 1986, because it was no longer needed.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: The Committee's function was to advise FDA on the formulation of policy and development of a coordinated program relating to the medical application of radiation directed to obtaining the maximum diagnostic information and therapeutic benefits per unit of radiation exposure through optimum utilization of professional and technical resources and radiation related equipment.

The Commissioner of Food and Drugs has concluded that the role of this committee can be assumed by the Radiologic Devices Panel, and, accordingly, the Medical Radiation Advisory Committee is no longer

needed. On July 18, 1986, the Committee was abolished by the Secretary, Department of Health and Human Services.

Because this is a technical and conforming amendment to Part 14, the Commissioner finds that there is good cause to dispense with notice and comment rulemaking procedures and for the rule to be effective immediately upon publication in the **Federal Register**, on September 15, 1986.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner, Part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY BOARD

1. The authority citations following all sections in Part 14 are removed and the authority citation for 21 CFR Part 14 is revised to read as follows:

Authority: 5 U.S.C. 5332 note; 15 U.S.C. 1451 et seq.; 21 U.S.C. 41 et seq.; 141 et seq., 321–371, 467f(b), 679(b), 821, 1031 et seq.; 42 U.S.C. 201 et seq.; 257a; 21 CFR 5.10.

§ 14.100 [Amended]

2. Section 14.100 *List of standing advisory committees.* is amended by removing and reserving paragraph (d)(3).

Dated: September 9, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–20694 Filed 9–12–86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Monensin, Bacitracin Zinc, and Roxarsone

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 new animal drug application (NADA) filed by A.L. Laboratories, Inc., providing for safe and effective use of certain Type C broiler feeds manufactured by combining separately approved monensin, bacitracin zinc, and roxarsone Type A articles. The Type C broiler feeds are used for improved feed efficiency and as an aid in the prevention of coccidiosis caused by the six main *Eimeria* species.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 138–703 providing for combining separately approved monensin, bacitracin zinc, and roxarsone Type A articles to make Type C broiler feeds. The Type C feeds contain: monesin, 90 to 110 grams per ton; bacitracin zinc, 4 to 50 grams per ton; and roxarsone, 22.7 to 45.4 grams per ton. The feeds are used for improved feed efficiency and as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* The NADA is approved and the regulations are amended accordingly. 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 determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.355 is amended by revising paragraph (b)(11) and by adding new paragraph (f)(1)(xxiii) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(11) To 046573: paragraph (f)(1)(xviii), (xix), and (xxiii) of this section.

* * * * *

(f) * * *

(1) * * *

(xxiii) *Amount per ton.* Monensin, 90 to 110 grams, plus bacitracin zinc, 4 to 50 grams, and roxarsone, 22.7 to 45.4 grams (0.0025 percent to 0.005 percent).

(*a*) *Indications for use.* For improved feed efficiency; as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as the sole ration; withdraw 5 days before slaughter; as sole source of organic arsenic; as monensin sodium provided by No. 000986 in § 510.600(c) of this chapter; as bacitracin zinc provided by No. 046573 in § 510.600(c) of this chapter; as roxarsone provided by No. 017210 in § 510.600(c) of this chapter.

* * * * *

Dated: September 8, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–20693 Filed 9–12–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 5

Preference in Employment

September 9, 1986.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is amending its Preference in Employment Regulations by extending the application of Indian preference to persons of the Osage Tribe of Oklahoma, who are at least one-quarter degree Indian ancestry, whose rolls were closed by an act of Congress. This is in the best interest of the individuals employed and those seeking employment, who are descendants of the Osage Tribe.

This amendment extends the expired date of October 4, 1985, for two additional years to permit the tribe to

organize and to establish current membership standards. The extended period of time is necessary so as not to deny employment to persons who received preference based on the quarter-degree standard. The quarter-degree standard will remain applicable for two years or until the Osage Tribe has formally organized and established membership standards, whichever comes first.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mercedes C. Lewis, Division of Personnel Management, Bureau of Indian Affairs, Department of the Interior, Washington, DC 20245, telephone number (202) 343-9306.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Indians as defined in the Indian Reorganization Act of June 18, 1934, receive employment preference in appointments in the Bureau of Indian Affairs. The preference conferred in 25 U.S.C. 472 must be applied in the filling of every vacant position within the Bureau of Indian Affairs, *Freeman* v. *Morton*, 499 F.2d 492 (D.C. Cir. 1974). The Secretary issued a final rule for the definition of an Indian on January 17, 1978, including a variance to the statute. A fifth criterion was added to apply to the Five Civilized Tribes of Oklahoma and to the Osage Tribe whose rolls were closed by Acts of Congress and who had not as yet reorganized so as to establish current membership standards. Many such persons have received preference based on the one-quarter degree standard previously established by the Secretary. In order that they are not now deprived of that eligibility and made to meet the one-half degree standard, the tribes were allowed 3 years, until July 17, 1981, in which to organize. The Osage Tribe is the only remaining Tribe that has not organized.

The complexities of the Osage's unique history have been described in the litigation surrounding the organization of the tribe and the authority of the Tribal Council. See *Logan* v. *Andrus*, 457 F. Supp. 1318 (D. Okla., 1978), *affirmed* 640 F.2d 269 (10th Cir. 1981). It is apparent the Osages have a uniquely difficult task in organizing, since they are the only tribe which is excluded from organizing under the provisions of the Indian Reorganization Act and the Oklahoma Indian Welfare Act. Also, the Secretary's regulations under the 1906 Osage Allotment Act permit only Osage headright holders to vote for the tribal council. The Osage Tribe needs additional time to resolve these complexities.

On October 4, 1984, the Bureau of Indian Affairs published a final rule (49 FR 39157) to amend 25 CFR Part 5, Preference in Employment. Paragraph (e) of § 5.1 specifies the date of October 4, 1985, as the final date for making appointments of persons of one-quarter degree Indian ancestry. The time limit is hereby extended for two years from the date of publication of this document in the **Federal Register** to permit the Osage Tribal Council the additional time to organize and to establish current membership standards for purposes of Indian preference employment for their tribal members in the Bureau of Indian Affairs.

Osage Tribal persons, who are employed by the Bureau of Indian Affairs and who received preference in any previous appointment, will continue to be preference eligibles so long as they are continuously employed.

In accordance with 5 U.S.C. 553(a)(2), because this final rule applies to the Bureau of Indian Affairs' personnel management practices, the rulemaking requirements contained in 5 U.S.C. 553 are not applicable. This rule extends the time limit for employment with the Bureau to persons of the Osage Indian Tribe, only. Accordingly, this regulation is issued as a final rule and will become effective upon the date of the publication in the **Federal Register.**

The primary author of this document is Mercedes Lewis, Supervisory Personnel Staffing Specialist, Division of Personnel Management, Bureau of Indian Affairs, telephone number (202) 343-9306.

Because the rule relates to Agency management and personnel, prior notice and opportunity for comments are not required, and the rule may be made immediately effective (5 U.S.C. 553(a)(2)). The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rule involves potential Osage Tribal members only, who would be seeking Federal employment in the BIA. There is no other tribe affected. The Office of Management and Budget (O.M.B.) has informed us that the information collections contained in 25 CFR 5 need not be reviewed by them under the Paperwork Reduction Act, Pub. L. 96-511.

The Department of the Interior has determined that this document does not have a significant economic effect on a substantial number of small entities. This rule affects only persons of the Osage Tribe of Indians.

This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

List of Subjects in 25 CFR Part 5

Employees, Government employees, Indians.

Accordingly, 25 CFR Part 5 is amended as follows:

PART 5—PREFERENCE IN EMPLOYMENT

1. The authority citation continues to read as follows:

Authority: 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479.

2. Paragraph (e) of § 5.1 of Part 5 of Chapter I of Title 25 of the Code of Federal Regulations is revised to extend the effective date of Osage Indian preference to read as follows:

§ 5.1 Definitions.

* * * * *

(e) For two (2) years or until the Osage Tribe has formally organized, whichever comes first, effective September 15, 1986, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

3. Part 5 of 25 CFR is amended by adding a new section to read as follows:

§ 5.4 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in Part 5 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-20645 Filed 9-12-86; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8101]

Income Tax; Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the diversification requirements for variable annuity, endowment, and life insurance contracts. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules portion of this issue of the **Federal Register**. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect issuers and policyholders of variable contracts and provide them with guidance concerning the tax treatment of those contracts.

EFFECTIVE DATES: The regulations are effective generally, to variable annuity, endowment, and life insurance contracts for taxable years beginning after December 31, 1983. See § 1.817–5T(i).

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), (202)566–3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules under section 817(h) of the Internal Revenue Code of 1954, relating to diversification requirements for variable annuity, endowment, and life insurance contracts. Section 817(h) was added to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 750).

Explanation of Provisions

Section 817(h) authorizes the Secretary of the Treasury to prescribe diversification standards for the investments underlying a variable annuity, endowment, or life insurance contract and provides that a variable contract generally will not be treated as an annuity, endowment, or life insurance contract unless those standards are satisfied. A safe harbor is provided, however, for variable contracts based on a segregated asset account that satisfies the diversification requirements applicable to regulated investment companies and does not hold more than 55 percent of its assets in cash, cash items, Government securities, and securities of regulated investment companies. In addition, an exception from the diversification requirement permits variable life insurance contracts to be based on a segregated asset account that holds only Treasury securities.

The temporary regulations provide that the investments of a segregated asset account underlying a variable contract are adequately diversified if no more than 55 percent of the value of its assets is represented by any one investment, no more than 70 percent is represented by any two investments, no more than 80 percent is represented by any three investments, and no more than 90 percent is represented by any four investments. A special rule is provided for segregated asset accounts underlying variable life insurance contracts. Under this rule, a segregated asset account is adequately diversified if it satisfies the general diversification requirement or if its assets other than Treasury securities are adequately diversified. For purposes of determining whether assets other than Treasury securities are adequately diversified, the generally applicable percentage limitations are increased, with the amount of the increase depending on the value of the Treasury securities.

The temporary regulations also provide that segregated asset accounts will be considered adequately diversified during start-up and liquidation periods. An account is generally allowed one year for each purpose. In the case of a real property account, however, the start-up period is five years and the liquidation period is two years. The start-up period is reduced or is not available in certain circumstances to prevent the use of multiple start-up periods to avoid the diversification requirement. In general, this limitation applies if more than 30 percent of the amount allocated to an account as of any date was shifted from another segregated asset account and is attributable to premium income received more than one year before such date (or five years before such date in the case of a real property account). The limitation is not taken into account for purposes of determining whether a start-up period would be allowed under the principles of Rev. Rul. 81–225, 1981–2 C.B. 12. Thus, the transitional rule for cases in which an insurance company would be considered the owner of the assets of a segregated asset account under those principles is applied without regard to the limitation. Under the transitional rule that limitation will not apply until December 15, 1986.

The temporary regulations treat all Government securities as a single investment for purposes of the diversification requirements. In general, any security (including a cash item) that is issued, guaranteed, or insured by the United States or an instrumentality of the United States is treated as a Government security for this purpose. Under a transitional rule, however, debt instruments secured by a mortgage on real property or representing an interest in a pool of debt instruments secured by such mortgages will not be treated as Government securities before 1987, even if issued, guaranteed, or insured by the United States or an instrumentality of the United States.

The temporary regulations in this document do not address any issues other than the diversification standards applicable to variable annuity, endowment, and life insurance contracts. In particular, they do not provide guidance concerning the circumstances in which investor control of the investments of a segregated asset account may cause the investor, rather than the insurance company, to be treated as the owner of the assets in the account. For example, the temporary regulations provide that in appropriate cases a segregated asset account may include multiple sub-accounts, but do not specify the extent to which policyholders may direct their investments to particular sub-accounts without being treated as owners of the underlying assets. Guidance on this and other issues will be provided in regulations or revenue rulings under section 817(d), relating to the definition of variable contract.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. No general notice of proposed rulemaking is required by 5 U.S.C. 553 for temporary regulations. Accordingly, a Regulatory Flexibility Analysis is not required (5 U.S.C. Chapter 6).

Drafting Information

The principal authors of these regulations are Bruce H. Jurist and Linda M. Kroening of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue

Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.801–1 through 1.832–6

Income taxes, Insurance companies.

Amendments to the regulations.

The amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.817–5T also issued under 26 U.S.C. 817(h).

Par. 2. Section 1.817–5T is revised to read as follows:

§ 1.817–5T Diversification requirements for variable annuity, endowment, and life insurance contracts.

(a) *In general.* For purposes of subchapter L, section 72, and section 7702 (a), a variable contract (as defined in section 817(d)), other than a pension plan contract (as defined in section 818(a)), which is based on one or more segregated asset accounts shall not be treated as an annuity, endowment, or life insurance contract for any period for which the investments of any such account are not adequately diversified. In addition, a variable contract that is not treated as an annuity, endowment, or life insurance contract for any period by reason of the preceding sentence shall not be treated as an annuity, endowment, or life insurance contract for any subsequent period even if the investments are adequately diversified for such subsequent period. See sections 7702 (g) and (h) for the treatment of a variable contract which is not treated as an annuity, endowment, or life insurance contract for Federal income tax purposes but which is a life insurance or endowment contract under other applicable (*e.g.*, State or foreign) law.

(b) *Diversification of investments*—(1) *In general.* (i) Except as otherwise provided in this paragraph and paragraph (c) of this section, the investments of a segregated asset account shall be considered adequately diversified for purposes of this section and section 817(h) only if—

(A) No more than 55% of the value of the total assets of the account is represented by any one investment;

(B) No more than 70% of the value of the total assets of the account is represented by any two investments;

(C) No more than 80% of the value of the total assets of the account is represented by any three investments; and

(D) No more than 90% of the value of the total assets of the account is represented by any four investments.

(ii) For purposes of this section—

(A) All securities of the same issuer, all interests in the same real property project, and all interests in the same commodity are each treated as a single investment;

(B) All government securities are treated as securities of a single issuer; and

(C) The members of an affiliated group (within the meaning of section 1504(a), determined without regard to the exceptions in section 1504(b)) ordinarily are treated as a single issuer.

(2) *Safe harbor.* A segregated asset account will be considered adequately diversified for purposes of this section and section 817(h) if—

(i) The account meets the requirements of section 851(b)(4) and the regulations thereunder; and

(ii) No more than 55% of the value of the total assets of the account is attributable to cash, cash items (including receivables), Government securities, and securities of other regulated investment companies.

(3) *Alternative diversification requirements for variable life insurance contracts.* (i) A segregated asset account with respect to variable life insurance contracts will be considered adequately diversified for purposes of this section and section 817(h) if the requirements of paragraph (b)(1) or (b)(2) of this section are satisfied or if the assets of such account, other than Treasury securities, satisfy the percentage limitations prescribed in paragraph (b)(1) of this section increased by the product of (A) .5 and (B) the percentage of the value of the total assets of the account that is represented by Treasury securities. In determining whether the assets of an account, other than Treasury securities, satisfy the increased percentage limitations, such limitations are applied as if the Treasury securities were not included in the account (*i.e.*, the increased percentage limitations are not applied to Treasury securities and the value of the total assets of the account is reduced by the value of the Treasury securities).

(ii) See paragraphs (f) and (g) of this section for circumstances in which a segregated asset account is treated as the owner of Treasury securities held indirectly through certain pass-through entities and corporations taxed under Subchapter M, chapter 1 of the Code.

(iii) The provisions of this paragraph (b)(3) may be illustrated by the following examples:

Example (1). On the last day of a quarter of a calendar year, a segregated asset account with respect to variable life insurance contracts holds assets having a total value of $100,000. The assets of the account are represented by Treasury securities having a total value of $90,000 and securities of Corporation A having a total value of $10,000. The 55% limit described in paragraph (b)(1)(i) of this section would be increased by 45% (0.5×90%) to 100%, and would then be applied to the assets of the account other than Treasury securities. Because no more than 100% of the value of the assets other than Treasury securities is represented by securities of Corporation A, the investments of the account will be considered adequately diversified.

Example (2). On the last day of a quarter of a calendar year, a segregated asset account with respect to variable life insurance contracts holds assets having a total value of $100,000. The assets of the account are represented by Treasury securities having a total value of $60,000, securities of Corporation A having a total value of $30,000, and securities of Corporation B having a total value of $10,000. The 55% and 70% limits described in paragraph (b)(1)(i) of this section would be increased by 30% (0.5×60%) to 85% and 100%, respectively, and would then be applied to the assets of the account other than Treasury securities. Securities of Corporation A represent 75%, and securities of Corporation B represent 25%, of the value of the assets of the account other than Treasury securities. Because no more than 85% of the value of the assets other than Treasury securities is represented by securities of Corporation A or B and no more than 100% of the value of the assets other than Treasury securities is represented by securities of Corporations A and B, the investments of the account will be considered adequately diversified.

(c) *Periods for which an account is adequately diversified*—(1) *In general.* A segregated asset account that satisfies the requirements of paragraph (b) of this section on the last day of a quarter of a calendar year (*i.e.*, March 31, June 30, September 30, and December 31) or within 30 days after such last day shall be considered adequately diversified for such quarter.

(2) *Start-up period.* (i) Except as provided in paragraph (c)(2)(iv) of this section, a segregated asset account that is not a real property account on its first anniversary shall be considered adequately diversified until such first anniversary.

(ii) Except as provided in paragraph (c)(2)(iv) of this section, a segregated asset account that is a real property account on its first anniversary shall be considered adequately diversified until the earlier of its fifth anniversary or the

anniversary on which the account ceases to be a real property account.

(iii) For purposes of paragraph (c)(2)(i) and (ii) of this section, the anniversary of a segregated asset account is the anniversary of the date on which any amount received under a life insurance or annuity contract is first allocated to the account.

(iv) If more than 30 percent of the amount allocated to a segregated asset account as of any date is attributable to premium and investment income that was received more than one year before such date, paragraph (c)(2)(i) of this section shall not apply to the segregated asset account for any period after such date. Similarly, if more than 30 percent of the amount allocated to a segregated asset account as of any date is attributable to premium and investment income that was received more than 5 years before such date, paragraph (c)(2)(ii) of this section shall not apply to the segregated asset account for any period after such date. For this purpose, premium income is treated as received on the date on which such income is first received with respect to the variable contract (or with respect to any predecessor variable contract exchanged for the variable contract in a transaction to which section 1035 applied) and investment income is treated as received on the date on which such income is first credited to a segregated asset account on which such variable contract (or predecessor contract) is based. Also for this purpose, an amount allocated to a segregated asset account shall be treated as attributable to the most recently received premium and investment income.

(3) *Liquidated period.* A segregated asset account that satisfies the requirements of paragraph (b) of this section on the date a plan of liquidation is adopted shall be considered adequately diversified for—

(i) The one-year period beginning on the date the plan of liquidation is adopted if the account is not a real property account on such date; or

(ii) The two-year period beginning on the date the plan of liquidation is adopted if the account is a real property account on such date.

(d) *Aggregation of multiple accounts or funds.* Two or more accounts or funds are treated as a single segregated asset account for purposes of section 817(h) and this section only if the investment return and market value of each such account or fund must be allocated to the same variable contracts and in the identical proportions as the investment return and market value of each other such account or fund. This rule may be illustrated by the following example:

Example. Variable contracts are based on an account that consists of five sub-accounts. The contract provides that policyholders of variable contracts based on the account may specify what portion of each premium is to be invested in a particular sub-account, subject to the restriction that no more than 55% of any premium may be invested in any one sub-account, no more than 70% may be invested in any two sub-accounts, no more than 80% may be invested in any three sub-accounts, and no more than 90% may be invested in any four sub-accounts. The return on a variable contract based on this account will be computed with regard to the allocation of premiums among the sub-accounts. Thus, the investment return and market value of a sub-account may be allocated to different variable contracts or in different proportions than the investment return and market value of the other sub-accounts. Accordingly, each sub-account is treated as a separate segregated asset account for purposes of section 817(h) and this section. If any of the five sub-accounts fails to be adequately diversified, any variable contract based in part on the sub-account will not be treated as a variable annuity or life insurance contract.

(e) *Market fluctuations.* A segregated asset account that satisfies the requirements of paragraph (b) of this section at the end of any calendar quarter (or within 30 days after the end of such calendar quarter) shall not be considered nondiversified in a subsequent quarter because of a discrepancy between the value of its assets and the diversification requirements unless such discrepancy exists immediately after the acquisition of any asset and such discrepancy is wholly or partly the result of such acquisition.

(f) *Look-through rule for underlying investment company or trust*—(1) *In general.* If this paragraph applies, a beneficial interest in a regulated investment company, a real estate investment trust, or a trust that is treated under sections 671 through 679 as owned by the grantor or another person ("investment company or trust") shall not be treated as a single investment of a segregated asset account. Instead, a pro rata portion of each asset of the investment company or trust shall be treated, for purposes of this section, as an asset of the segregated asset account. In the case of a regulated investment company having one or more segregated portfolios of assets in respect of which a series of stock is preferred over all other series, each segregated portfolio of assets will be treated solely for purposes of this paragraph as a separate regulated investment company.

(2) *Applicability.* This paragraph shall apply if—

(i) All the beneficial interests in the investment company or trust (other than those described in paragraph (f)(3) of this section) are held by one or more segregated asset accounts of one or more insurance companies; and

(ii) Public access to such investment company or trust is available exclusively (except as otherwise permitted in paragraph (f)(3) of this section) through the purchase of a variable contract.

(3) *Interests not held by segregated asset accounts.* The application of this paragraph shall not be prevented by reason of beneficial interests in the investment company or trust that are—

(i) Held by the general account of a life insurance company or a corporation related in a manner specified in section 267(b) to a life insurance company, but only if the return on such interests is computed in the same manner as for the related variable contracts, there is no intent to sell such interests to the public, and a segregated asset account of such life insurance company also holds or will hold a beneficial interest in the investment company or trust;

(ii) Held by the manager, or a corporation related in a manner specified in section 267(b) to the manager, of the investment company or trust, but only if the holding of the interests is in connection with the creation or management of the investment company or trust, the return on such interests is computed in the same manner as for the related variable contracts, and there is no intent to sell such interests to the public;

(iii) Held by the trustee of a qualified pension or retirement plan; or

(iv) Held by the public, or treated as owned by policyholders pursuant to Rev. Rul. 81–225, 1981–2 C.B. 12, but only if (A) the investment company or trust was closed to the public in accordance with Rev. Rul. 82–55, 1982–1 C.B. 12, (B) all the assets of the investment company or trust are attributable to premium payments made by policyholders prior to September 26, 1981, or (C) all the assets of the investment company or trust are attributable to premium payments made in connection with a qualified pension or retirement plan.

(g) *Look-through rule for underlying partnership interest.* If a segregated asset account holds a partnership interest, other than a partnership interest registered under a Federal or State law regulating the offering or sale of securities, the segregated asset account will be deemed to own its proportionate share of each of the assets

of the partnership. For purposes of this section, the interest of a partner in a partnership's assets shall be determined in accordance with his capital interest in the partnership.

(h) *Definitions.* The terms defined below shall, for purposes of this section, have the meanings set forth in such definitions:

(1) *Government security.* The term "government security" shall mean any security issued or (to the extent of the guaranteed or insured amount) guaranteed or insured by the United States or an instrumentality of the United States; or any certificate of deposit for any of the foregoing. For purposes of this paragraph (h)(1), an instrumentality of the United States shall mean any person that is treated for purposes of 15 U.S.C. 80a-2(16), as amended, as a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.

(2) *Treasury security.* The term "Treasury security" shall mean a security the direct obligor of which is the United States Treasury.

(3) *Real property.* The term "real property" shall mean any property that is treated as real property under § 1.856-3 (d) except that it shall not include interests in real property.

(4) *Real property account.* A segregated asset account is a real property account on an anniversary of the account (within the meaning of paragraph (c)(2)(iii) of this section) or on the date a plan of liquidation is adopted if not less than the applicable percentage of the total assets of the account is represented by real property or interests in real property on such anniversary or date. For this purpose, the applicable percentage is 40% for the period ending on the first anniversary of the date on which premium income is first received, 50% for the year ending on the second anniversary, 60% for the year ending on the third anniversary, 70% for the year ending on the fourth anniversary, and 80% thereafter.

(5) *Commodity.* The term "commodity" shall mean any type of personal property other than a security.

(6) *Security.* The term "security" shall include a cash item and any partnership interest registered under a Federal or State law regulating the offering or sale of securities. The term shall not include any other partnership interest, any interest in real property, or any interest in a commodity.

(7) *Interest in real property.* The term "interest in real property" shall include the ownership and coownership of land or improvements thereon and leaseholds of land or improvements thereon. Such term shall not, however, include mineral, oil, or gas royalty interests, such as a retained economic interest in coal or iron ore with respect to which the special provisions of section 631(c) apply. The term "interest in real property" also shall include options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

(8) *Interest in a commodity.* The term "interest in a commodity" shall include the ownership and coownership of any type of personal property other than a security, and any leaseholds thereof. Such term shall include mineral, oil, and gas royalty interests, including any fractional undivided interest therein. Such term also shall include any put, call, straddle, option, or privilege on any type of personal property other than a security.

(9) *Value.* The term "value" shall mean, with respect to investments for which market quotations are readily available, the market value of such investments; and with respect to other investments, fair value as determined in good faith by the managers of the segregated asset account.

(10) *Terms used in section 851.* To the extent not inconsistent with this paragraph (h) all terms used in this section shall have the same meaning as when used in section 851.

(i) *Effective date*—(1) *In general.* This section is effective for taxable years beginning after December 31, 1983.

(2) Exceptions. (i) If, at all times after December 31, 1983, an insurance company would be considered the owner of the assets of a segregated asset account under the principles of Rev. Rul. 81-225, 1981-2 C.B. 12, this section will not apply to such account until December 15, 1986.

(ii) This section will not apply to any variable contract to which Rev. Rul. 77-85, 1977-1 C.B. 12, or Rev. Rul. 81-225, 1981-2 C.B. 12, did not apply by reason of the limited retroactive effect of such rulings.

(iii) In determining whether a segregated asset account is adequately diversified for any calendar quarter ending before July 1, 1987, debt instruments that are issued, guaranteed or insured by the United States or an instrumentality of the United States shall not be treated as Government securities if such debt instruments are secured by a mortgage on real property (other than real property owned by the United States or an instrumentality of the United States) or represent an interest in a pool of debt instruments secured by such mortgages.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it would be impractical to issue it first under the notice and comment procedure provided in 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved.

J. Roger Mentz,

Assistant Secretary of the Treasury.

August 15, 1986.

[FR Doc. 86-20792 Filed 9-12-86; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1620

The Equal Pay Act; Interpretations

Correction

In FR Doc. 86-18366 beginning on page 29816 in the issue of Wednesday, August 20, 1986, make the following correction:

§ 1620.11 [Corrected]

On page 29821, third column, in § 1620.11(c), second line, insert the following after "employees": "and their spouses and families on whether the employee".

BILLING CODE 1505-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning October 1, 1986. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The PBGC adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1986 and will remain in

effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–956–5050 (202–956–5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC's regulation on the valuation of plan benefits in single-employer plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") change significantly the rules for terminating single-employer plans, the valuation rules are much the same. (SEPPAA applies to all plan terminations initiated on or after January 1, 1986.) Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination (like all insufficient plans under prior law) must value guaranteed benefits and (new under SEPPAA) benefit commitments under the plan using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit commitments, although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since May 1, 1986 (51 FR 12701 (April 15, 1986)). Changes in the financial and annuity markets now require a decrease in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after October 1, 1986, which set reflects a decrease of ¼ percent in the interest rate to 7½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after October 1, 1986, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 is revised as follows:

Authority: Secs. 4002(b)(3), 4041 (b) and (c), 4044, 4062 (b) and (c), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299, and by secs. 11007–11009, 11011, Pub. L. 99–272, 100 Stat. 244, 248, 253 [29 U.S.C. 1302, 1341, 1344, 1362].

2. Rate Set 63 of Appendix B is revised and Rate Set 64 of Appendix B is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2, are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after—	before—		k_1	k_2	k_3	n_1	n_2
. .	.	.	.	.	.	.	.	
63	5–1–86	10–1–86	7.75	1.0700	1.0575	1.0400	7	8
64	10–1–86		7.50	1.0675	1.0550	1.0400	7	8

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86–20687 Filed 9–12–86; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal, which was published on March 25, 1986 (at 51 FR 10322). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of October 1986.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–956–5050 (202–956–5059 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).)

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93–406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96–364, 94 Stat. 1302, 1237–1238, and 1261 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_k are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*	*		*		*		*		*		*					
October 1986	.08875	.08625	.08375	.08	.07625	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 9th day of September, 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86–20688 Filed 9–12–86; 8:45 am]

BILLING CODE 7708–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–10–FRL–3075–2]

Approval and Promulgation of State Implementation Plan; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving revisions to the Alaska State Implementation Plan (SIP) pertaining to the carbon monoxide (CO) attainment plans for the Anchorage and Fairbanks areas. Both plans were originally submitted to EPA by the Alaska Department of Environmental Conservation (ADEC) on September 29, 1982; ADEC then submitted a revised plan for the Anchorage area on November 15, 1983; and both plans were supplemented on May 31, 1985. The plans rely heavily on the aggressive implementation of vehicle inspection and maintenance (I/M) programs in both areas. These I/M programs began on July 1, 1985; both programs are enforced through vehicle registration and include a check for tampering. In addition, EPA is also approving the SIP elements dealing with reasonably available control measures (RACM), basic transportation needs and conformity. The successful implementation of the Anchorage and Fairbanks plans will result in the attainment of the CO standard prior to the statutorily required date of December 31, 1987. With this notice, the Anchorage and Fairbanks CO plans become a federally enforceable part of the SIP as required by the Clean Air Act (CAA).

EPA is also approving the removal of all conditions of approval as imposed in the December 30, 1980, **Federal Register** (45 FR 85744).

EFFECTIVE DATE: November 14, 1986.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

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

Air Programs Branch, (1OA–82–9), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99871

Copy of the State's submittal may be examined at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4233, FTS: 399–4233.

SUPPLEMENTARY INFORMATION:

I. Background

On September 29, 1982, the Alaska Department of Environmental Conservation (ADEC) officially submitted to EPA carbon monoxide (CO) plans for the Anchorage and Fairbanks nonattainment areas. ADEC then submitted its revision of the CO SIP for the Anchorage nonattainment area on November 15, 1983 and supplemented both packages on May 31, 1985. Both plans included the implementation of mandatory motor vehicle inspection and maintenance programs which began on July 1, 1985. EPA proposed approval of the Fairbanks plan on March 7, 1986 (51 FR 7960) and the Anchorage revision on March 10, 1986 (51 FR 8203). Today's action gives final approval to the Fairbanks and Anchorage plans as

amended. Additional information can be found regarding the Fairbanks plan and the Anchorage plan in the above mentioned proposed rulemakings.

In these plans and revisions, ADEC fulfilled all conditions of approval dealing with the cost-benefit analyses, emission inventory omissions, population projection consistencies and a procedure for determining conformity of federal projects with the SIPs, as set forth in the December 30, 1980, Federal Register (45 FR 85744).

For additional information regarding the removal of conditions, refer to the February 3, 1983, Federal Register dealing with the proposed approval of the Anchorage plan (48 FR 5135) and the Fairbanks plan (48 FR 5122).

II. Response to Comments

A thirty-day comment period was provided on the notices of proposed rulemaking. During that period one comment was received from the federal Department of Transportation (DOT) expressing concern over the conformity procedures that were adopted by state and local officials. The commentor questioned, among other things, whether the approval of the local and state conformity procedures are consistent with the Clean Air Act.

Section 176 (c) of the CAA specifically states that, "No metropolitan planning organization designated under Section 134 of Title 23, United States Code, shall give its approval to any project, program or plan which does not conform to a plan approved or promulgated under section 110". In order to comply with these requirements and consistent with section 116 of the CAA, state and local officials adopted their own conformity procedures to insure that highway projects would not cause new violations of the standards or delay attainment. These officials believed it was necessary to adopt stricter planning conformity regulations because the federal DOT procedures did not adequately address their concern about CO.

Under the requirements contained in section 110 of the CAA, EPA has no choice other than to approve those procedures. EPA does not have the discretionary authority to delete the transportation conformity procedures from the SIP as the reviewer suggested. EPA agrees with the state and local officials that the procedures are workable and reasonable and that they are consistent with the intent of the CAA. Accordingly, EPA is approving the conformity procedures contained in the Anchorage and Fairbanks SIP revisions. DOT also submitted a follow-up letter expressing additional concerns over the conformity procedures and EPA's guidance on SIPs and section 176(c). More detailed responses to both DOT Letters are available at the EPA Region 10 address listed above.

III. Summary of Rulemaking

With this notice, EPA is approving the Fairbanks and Anchorage CO attainment plans. These approvals are based on review of the SIP plans and revisions, as submitted to EPA by ADEC on September 29, 1982, November 15, 1983, and May 31, 1985.

EPA is also removing all of the conditions of approval that were placed on the Fairbanks and Anchorage CO SIPs as published December 30, 1980 (45 FR 85744). In addition, EPA is also administratively removing outdated and obsolete language referring to CO plans contained in §§ 52.85 through 52.93 of the Code of Federal Regulations.

IV. Administrative Review

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

Under 5 U.S.C. 605(b), I certify that these State Implementation Plan revisions will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 29, 1986.

A. James Barnes,

Acting Administrator.

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

PART 52—[AMENDED]

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

Subpart C—Alaska

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.70 is amended by adding paragraph (c)(12) as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(12) On September 29, 1982, the Commissioner of the Alaska Department of Environmental Conservation submitted a carbon monoxide attainment plan for the cities of Anchorage (section III.B) and Fairbanks (section III.C) as a revision to the Alaska State Implementation Plan. On November 15, 1983, a revision to this plan was submitted for the city of Anchorage. Supplement to the Anchorage and Fairbanks plans revisions to section III.A (Areawide Pollutant Control Program, Statewide Transportation Control Program) and a new State Regulation 18 AAC Chapter 52 (Emissions Inspection and Maintenance Requirements for Motor Vehicles) were submitted on May 31, 1985.

(i) *Incorporation by reference.*

(A) May 31, 1985 letter from the State of Alaska to EPA, and State Regulation 18 AAC 52 (Emissions Inspection and Maintenance Requirements for Motor Vehicles) as filed by the Commissioner for the State of Alaska on May 19, 1985.

(B) Page section III.B.8–3 of the Anchorage Transportation Control Program, Alaska Air Quality Control Plan, revised June 1, 1985 (emissions and air quality projections for Anchorage with vehicle inspection and maintenance program).

(C) Table C.6.a of the Fairbanks Transportation Control Program, Alaska Air Quality Control Plan [reasonable further progress required reductions for Fairbanks] (page section III.C.6–2) revised November 20, 1982.

(ii) *Other material.*

(A) Section III.A Statewide Transportation Control Program.

(B) Section III.B Anchorage Transportation Control Program.

(C) Section III.C Fairbanks Transportation Control Program.

(D) The I/M Program Design for the Fairbanks North Star Borough dated October 25, 1984.

(E) The I/M Program Design for the Municipality of Anchorage dated 1984.

3. Section 52.75 is revised to read as follows:

§ 52.75 Contents of the approved State-submitted implementation plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current State Implementation Plan:

Volume II: Analysis of Problems, Control Actions

Section I—*Background*
A. Introduction (7/1/82)
B. Air Quality Control Regions (7/1/82)
C. Attainment/Nonattainment Designations (7/1/83)
D. Prevention of Significant Deterioration Designations (7/1/83)
Section II—*State Air Quality Control Program (11/1/83)*
Section III—*Areawide Pollutant Control Program*
A. Statewide Transportation Control Program (6/1/85)
B. Anchorage Transportation Control Program (6/1/85)
C. Fairbanks Transportation Control Program (6/1/85)
D. Total Suspended Particulate Matter (7/1/82)
E. Ice Fog (7/1/82)
F. Open Burning (10/30/83)
G. Wood Smoke Pollution Control (7/1/83)
H. Lead Pollution Control (7/1/83)
Section IV—*Point Source Control Program*
A. Summary (10/30/83)
1. Annual Review Report (10/30/83)
B. State Air Quality Regulations (10/30/83)
C. Local Programs (10/30/83)
D. Description of Source Categories and Pollutants
1. Typical Point Sources (10/30/83)
2. Summary of Major Emitting Facilities (10/30/83)
E. Point Source Control
1. Introduction (10/30/83)
F. Facility Review Procedures
1. Who needs a permit? (10/30/83)
2. Standard Application Procedures (10/30/83)
3. PSD Application Procedures (10/30/83)
Preliminary report and meeting (10/30/83)
Pre-construction monitoring (10/30/83)
PSD application format (10/30/83)
4. Nonattainment Application Procedures (10/30/83)
G. Application Review and Permit Development (10/30/83)
1. Application Review (10/30/83)
2. Permit Development Requirements (10/30/83)
Monitoring and Testing Requirements (10/30/83)
Ambient Monitoring (10/30/83)
Continuous Emissions Monitoring (10/30/83)
Source Testing (10/30/83)
3. Prevention of Significant Deterioration Review (10/30/83)
Basis of Program (10/30/83)
PSD Regulations (10/30/83)
PSD Analysis Procedure (10/30/83)
4. Nonattainment Area Review (10/30/83)
5. New Source Performance Standards Source Review (10/30/83)
6. Visibility Review (10/30/83)
7. Sources under EPA Review (10/30/83)
H. Permit Issuance Requirements (10/30/83)
Section V—*Ambient Air Monitoring*
A. Purpose (7/1/82)
B. Completed Air Monitoring Projects (7/1/82)
1. Carbon Monoxide (7/1/82)
2. Nitrogen Oxides (7/1/82)
3. Sulfur Dioxide (7/1/82)
4. Ozone (7/1/82)
5. Total Suspended Particulates (TSP) (7/1/82)
6. Lead (7/1/82)
C. Air Monitoring Network (7/1/82)
1. Network Description (7/1/82)
2. Station Designations (7/1/82)
3. Air Quality Monitoring Procedures (7/1/82)
4. Ambient Sampling for Specific Pollutants (7/1/82)
E. Annual Review (7/1/82)
Volume III. Appendices
Section II. State Air Quality Control Program
II.A. State Air Statutes, except section 46.03.170 (11/15/83)
State Attorney General Opinions on Legal Authority—(2/29/72, 2/29/80)
II.B. Municipality of Anchorage/Cook Inlet/ADEC Agreements (11/15/83)
II.C. Fairbanks North Star Borough Ordinances, except section 8.04.070/FNSB & ADEC Agreements (11/15/83)
Section III. *Areawide Pollutant Control Program*
III.B.3–a Anchorage Graphs of Highest and Second Highest CO Readings for Each Site (11/15/83)
III.B.5–a Anchorage Traffic Improvements (11/15/83)
III.B.5–b Anchorage Contingency Plan (11/15/83)
III.B.5–c Anchorage Transit Ridership (11/15/83)
III.B.8–a Anchorage Graphs of Projected CO Concentrations for Each Site (11/15/83)
III.G. Ordinance of the City and Borough of Juneau (10/6/83)
III.H. Support Documents for Lead Plan (11/15/83)
Section IV. Point Source Control Program
IV.1. PSD Area Classification and Reclassifications (11/15/83)
A. Class I Area Boundaries (11/15/83)
B. Areas Protected form Visibility Degradation (11/15/83)
C. Reclassification (11/15/83)
1. Limitations on PSD Reclassification (11/15/83)
2. PSD Reclassification Procedures (11/15/83)
IV.2. Compliance Assurance (11/15/83)
IV.3. Testing Procedures (11/15/83)
Section V. Ambient Air Monitoring ADEC Ambient Analysis Procedures (11/15/83)
Section V: Air Episode Plan (4/21/72)
Title 18. Environmental Conservation *Chapter 50. Air Quality Control* (10/30/83)
Title 18. Environmental Conservation, *Chapter 52. Emissions Inspection and Maintenance Requirements for Motor Vehicles* (5/31/85)

§ 52.76 [Removed]

4. Part 52 is amended by removing § 52.76 Control Strategy: Carbon Monoxide. Section to be held in reserve.

§§ 52.85–52.93 [Removed]

5. Part 52 is amended by removing §§ 52.85 Traffic Flow Improvements; 52.86 Management of parking supply; 52.87 Idling limitations; 52.88 Inspection/Maintenance program; 52.89 Air bleed to intake manifold retrofit; 52.90 Oxidizing catalyst retrofit; 52.91 Exhaust gas recirculation-air bleed retrofit; 52.92 Central business district access limitations; and 52.93 Monitoring transportation trends. Sections to be held in reserve.

[FR Doc. 86–20030 Filed 9–12–86; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 52 and 81

[A-7-FRL-3065-7]

Revision to State Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rulemaking.

SUMMARY: On November 1, 1985, EPA proposed to approve a State Implementation Plan (SIP) revision for the Omaha, Nebraska, carbon monoxide (CO) nonattainment area and a request for redesignation of Omaha to attainment of the CO standard. No comments were received concerning EPA's proposal. Today's rule takes final action to approve the Omaha CO SIP and the redesignation request.

EFFECTIVE DATE: This action is effective October 15, 1986.

ADDRESSES: Copies of the State submission are available for review during normal business hours at the following locations: Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Nebraska Department of Environmental Control, Air Quality Division, P.O. Box 94877 State House Station, 301 Centennial Mall South, Lincoln, Nebraska 68509; and the Metropolitan Area Planning Agency, 2222 Cumming Street, Omaha, Nebraska 68102.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (913) 236–2893, FTS 757–2893.

SUPPLEMENTARY INFORMATION: On April 12, 1985, EPA received a SIP revision from the State of Nebraska to meet the requirements of Part D and section 110 of the Clean Air Act. On February 22, 1985, the State also requested redesignation of Omaha to attainment of the CO standard.

The SIP indicates that violations of the CO standard in 1982 were caused by traffic congestion due to bridge construction in the vicinity of the monitor. Circumstances surrounding the

period of the violations support this position as follows. First, the highest monitored CO levels began in July rather than during the normal winter CO season. Second, the high CO levels did not occur before or after the period of construction. Third, the problem was localized in the vicinity of the construction. Finally, the violations began on July 14 and ended on November 18, while the construction began on July 11 and ended on November 19. There has only been one exceedance of the standard since that time.

A modeling analysis using 1982 data predicted attainment by 1984. The highest predicted CO level was 8.6 parts per million (ppm) at the 72nd and Dodge receptor. (The CO standard is 9 ppm, eight-hour average.) Two additional scenarios were modeled to ensure future compliance. Both scenarios show continued improvement in Omaha's air quality and maintenance of the CO standard for the years 1987 and 2000. A contingency plan included in the SIP gives additional measures which will be implemented if the standard is not maintained.

An evaluation of the plan by EPA found that it met the requirements of Part D and section 110 of the Clean Air Act. The plan includes transportation control measures (street improvements and traffic signalization improvements) and the Federal Motor Vehicle Control Program and demonstrates attainment of the CO standard before the end of 1984 with maintenance modeled through the year 2000. Current monitoring data indicate that the area has attained the CO standard.

For a more detailed discussion of the plan elements, see the proposed rulemaking of November 1, 1985 (50 FR 45630). No comments were received in response to the proposed rulemaking. Approval will remove the construction ban on stationary sources of CO for Omaha which was imposed in July 1979.

Indirect Source Review

The Nebraska SIP for Omaha demonstrates expeditious attainment and continued maintenance of the CO standard without the use of the indirect source review program in the control strategy. On November 1, 1985 (50 FR 45630), EPA proposed to approve the deletion of the indirect source review program for the Omaha area.

Omaha Redesignation Request

On February 22, 1985, the State of Nebraska requested redesignation of the Omaha CO nonattainment area to attainment based on eight consecutive quarters of monitored air quality data. A modeling analysis submitted with the April 12, 1985, Omaha SIP demonstrates attainment of the CO standard by 1984 with maintenance modeled for the years 1987 and 2000.

Action: (1) EPA approves the Omaha CO revision to the Nebraska SIP; (2) EPA approves the revocation and deletion from the Nebraska SIP of indirect source review rules as they pertain to Omaha; and (3) EPA approves the redesignation of Omaha to attainment of the CO standard.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

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

Dated: July 21, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart CC—Nebraska

1. The authority citation for Part 52 continues to read as follows:

Authority: 42. U.S.C. 7401–7642.

2. Section 52.1420 is amended by adding a new paragraph (c)(33) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

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

* * * * *

(33) A State Implementation Plan revision to provide for attainment of the carbon monoxide standard in Omaha was submitted by Governor Kerrey on April 3, 1985. Action was also taken to delete review requirements for complex sources of air pollution in Omaha; see paragraph (c)(32) above.

(i) *Incorporation by reference.*

(A) An RFP curve from page 27 of the Carbon Monoxide State Implementation Plan for Omaha, Nebraska, dated January 18, 1985.

(ii) *Additional material.*

(A) Narrative submittal entitled "Carbon Monoxide State Implementation Plan for Omaha, Nebraska", including an attainment demonstration.

(B) Emission Inventory for carbon monoxide sources.

PART 81—[AMENDED]

Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

3. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

4. Section 81.328 is amended by revising the entry for Lincoln in the table labeled "Nebraska—CO" to read as follows:

* * * * *

§ 81.328 Nebraska.

NEBRASKA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
City of Lincoln	X	
Remainder of State		X

* * * * *

[FR Doc. 86–18878 Filed 9–12–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 60

[A–4–FRL–3079–9]

Standards of Performance for New Stationary Sources; Delegation of Additional Standards to Florida

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: On May 23, 1986, the Florida Department of Environmental Regulation requested that EPA delegate to the State the authority to implement and enforce EPA's new source performance standards (NSPS) for five additional categories of air pollution sources (listed below under "Supplemental Information"). Since EPA's review of pertinent Florida laws, rules, and regulations showed them to

be adequate to implement and enforce these Federal standards, the Agency has delegated authority for them to Florida. Affected sources are now under the jurisdiction of the State.

EFFECTIVE DATE: July 2, 1986, for 40 CFR Part 60, Subparts BB, KKK, LLL, and OOO; August 19, 1986, for 40 CFR Part 60, Subpart JJJ.

ADDRESSES: Copies of the State's request and EPA's letters of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (listed below) should be submitted to the Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301, rather than to EPA Region IV.

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch at the above address, telephone 404/347-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: Section 111 of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) to any State which has adequate implementation and enforcement procedures. On June 10, 1982, EPA delegated to Florida authority to implement and enforce most of the NSPS then extant. Since then, EPA has updated Florida's authority for NSPS by additional delegations. On May 23, 1986, the Florida Department of Environmental Regulation requested a delegation of authority for the following NSPS (recently promulgated or revised after earlier EPA delegations):

Subpart BB—Kraft Pulp Mills
Subpart JJJ—Petroleum Dry Cleaners
Subpart KKK—Equipment Leaks of VOC from Onshore Natural Gas Processing Plants
Subpart LLL—Onshore Natural Gas Processing: SO_2 Emissions
Subpart OOO—Nonmetallic Mineral Processing Plants

After a thorough review of the request, I determined that such delegation was appropriate with the conditions set forth in the original delegation letter of June 10, 1982, and granted the State's request in a letter dated July 2, 1986—for Subparts BB (redelegation), KKK, LLL, and OOO—and in a letter of amendment dated August 19, 1986—for Subpart JJJ (redelegation). Florida sources subject to the NSPS listed above are now under the jurisdiction of the State of Florida.

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

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

Authority: Section 111 of the Clean Air Act (42 U.S.C. 7411)

Dated: August 28, 1986.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 86-20745 Filed 9-12-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[A-4-FRL-3078-5]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Additional Standards to North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: On July 8, 1986, the North Carolina Division of Environmental Management requested that EPA delegate to the State the authority to implement and enforce EPA's revised new source performance standards (NSPS) for three categories of air pollution sources and EPA's national emission standards for hazardous air pollutants (NESHAP) for one source category. (These are listed below under "**SUPPLEMENTARY INFORMATION**"). Since EPA's review of pertinent North Carolina laws, rules, and regulations showed them to be adequate to implement and enforce these Federal standards, the Agency has delegated authority for them to North Carolina. Affected sources are now under the jurisdiction of the State.

EFFECTIVE DATE: August 7, 1986.

ADDRESSES: Copies of the State's request and EPA's letters of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (listed below) should be submitted to the Air Quality Section, North Carolina Divsion of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Programs Branch at the above address, telephone 404/347-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: Section 111 of the Clean Air Act authorizes EPA to delegate authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) to any State which has adequate implementation and enforcement procedures.

On November 24, 1976, EPA delegated to North Carolina authority to implement and enforce most of the NSPS then extant. Since that date, EPA has updated the State's delegation several times. On July 8, 1986, the North Carolina Division of Environmental Management requested a delegation of authority for the following NSPS and NESHAP (recently promulgated or revised after earlier EPA delegations):

40 CFR Part 60, Subpart D: Fossil-Fuel Fired Steam Generators
40 CFR Part 60, Subpart J: Petroleum Refineries
40 CFR Part 60, Subpart N: Iron and Steel Plants
40 CFR Part 60, Subpart M: Asbestos

After a thorough review of the request, I determined that such delegation was appropriate with the conditions set forth in the original delegation letter of November 24, 1976, and granted the State's request in a letter dated August 7, 1986. North Carolina sources subject to the NSPS listed above are now under the jurisdiction of the State of North Carolina.

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

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

(Section 111 of the Clean Air Act (42 U.S.C. 7411))

Dated: September 4, 1986.

Lee A. DeHihns III,

Deputy Regional Administrator.

[FR Doc. 86-20583 Filed 9-12-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Individual and Family Grant Programs

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: On Thursday, May 15, 1986, FEMA published a proposed rule in the **Federal Register** concerning the Individual and Family Grant (IFG) program. This program is authorized by

the Disaster Relief Act of 1974, Pub. L. 93–288; its regulations are published as 44 CFR 205.54. Comments were accepted until July 14, 1986. FEMA received 15 sets of comments; most are discussed below under **SUPPLEMENTARY INFORMATION.** Each commenter also received a separate response. After consideration of the comments, FEMA is now making certain changes, and publishing a final rule.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Emergency Management Specialist, Disaster Assistance Programs, Federal Emergency Management Agency, Room 710, 500 C Street, SW., Washington, DC 20472 (202–646–3660).

SUPPLEMENTARY INFORMATION: The proposed rule contained broad categories of changes: Duplication of Benefits Changes; Ownership Provisions: Housing and Personal Property Categories; Definitions; Flood Insurance Requirements; Certification of Eligibility; Assumption of Risk; National Eligibility Criteria; Requirements for State Administrative Plans; Funding; Appeals; Audits, and Reporting Requirements. In dealing with the comments here, the same listing will be followed. There are also other comments about sections of the regulation that are not being changed, and some general concerns the commenters had about the operation of the grant program. These will be discussed last.

Duplication of Benefits Changes

The proposed rule stated that a new definition, "expendable items," was being added, to exclude consumable items such as linens, clothing, and basic kitchenware. These would be considered non-duplicative to the provision of other similar assistance by other agencies. Eight comments were received; most supported the change. Two of the commenters requested clarification; particularly, they wanted to know whether other items were included under the definition, since FEMA had used the term "such as" in describing the types of expendable items the agency had in mind. FEMA had intended to allow the States to determine what other small dollar value items would be considered expendable in the given disaster area. However, since the proposal created confusion, FEMA has decided to limit the definition to only linens, clothing, and basic kitchenware (pots, pans, utensils, dinnerware, flatware, small kitchen appliances). The new definition at (c)(5) reflects this change.

Kentucky requested that we add a statement reflecting that IFG assistance is not to be counted by welfare-type agencies as income or a resource in their determination of eligibility for welfare and other human resources programs. We agree, and have added the language to paragraph (b).

Ownership Provisions: Housing and Personal Property

FEMA proposed an additional way for applicants to prove home ownership in situations where the normal documentation (deed, mortgage book, tax receipts) is not usually available, such as in Puerto Rico. Eight comments, including those of Puerto Rico, were received. That comment stated support for the new option, but indicated that a Commonwealth attorney's signed affidavit would be ineffective because attorneys will refuse to take the risk of certifying to that which they are not sure of. The comment went on to say that "an affidavit is a document in which a person, not the attorney, swears that the information contained in it, is true," and "the attorneys don't know the person, nor the details about the properties."

Only one of the other comments was supportive; the rest expressed need for clarification of the procedure—who can fill out an affidavit, who should obtain it, etc. After reviewing these comments, it is FEMA's sense that, in the majority of cases, special options for proving ownership are not required. FEMA will drop the proposed language, and will require instead that the State administrative plans from Puerto Rico and the territories and freely associated States fully describe the system and means of legal proof of residency in those areas, and the nature of the documentation the chief legal officer of the jurisdiction finds legally acceptable. See paragraph (c)(7).

There was also a comment about whether proof of ownership of personal property is necessary, given the language in the preamble: "There has been much confusion about . . . ownership, which is a condition of assistance in the housing and personal property categories." That statement was incorrect. FEMA verifiers will not attempt to verify ownership of personal property, but rather will review the damage to items and determine what other needs the family now has. Paragraph (d)(2) will be modified.

Definitions

The proposed definitions of "individual" and "family" generated seven comments. Three were supportive, three non-supportive, and one requested clarification on a specific issue. The proposed language attempted to provide equity in the provision of IFG assistance between individuals and families, so certain households received assistance as one family rather than a collection of individuals. Based on the comments, and on a desire to be fair, FEMA has newly revised the definitions of "individual" and "family," and has added a definition of "dependent." We think this will clear up many of the comments. The requested clarification dealt with whether the sentence "Families may file only one IFG application" precluded families from filing an appeal. An appeal is not considered a separate application; families and individuals may always file appeals.

Flood Insurance Requirements

FEMA proposed two changes in this area. First, an adequate policy was defined as the amount of coverage which the minimum premium authorized in the National Flood Insurance Program (NFIP) would provide. Second, FEMA proposed to reduce the flood insurance maintenance time requirement to three years. Seven comments were received. Illinois supported the proposed provision. Alabama asked whether the minimum premium would actually provide adequate coverage. In researching this, we learned that, because of premium increases to be effective on October 1, 1986, the minimum premium would no longer adequately cover the grant amount. Therefore, the language concernIng an adequate policy has been changed to the language in FEMA's previous regulations; i.e., a required policy is that which provides $5,000 building coverage and $2,000 contents coverage for a homeowner and $5,000 contents coverage for a renter. Kentucky strongly objected to lowering the maintenance requirement to three years. A suggestion was that States be allowed to set their own time limits for policy maintenance, and also that States be allowed to withhold the insurable items in a grant (housing, personal property) until proof of flood insurance purchase was received. FEMA disagrees with the first suggestion, in that it does not promote uniformity or consistency of eligibility criteria nationwide. FEMA also objects to withholding the housing and personal property portions of a grant until a person sends in proof of purchase. This takes attention away from the seriousness of the need, and also penalizes an applicant unfairly when prerequisites to the obtaining of a policy (e.g., a property survey) may take longer than average to accomplish. The

previous regulations were clear on this, and are not being changed.

Puerto Rico and Florida also had suggestions to allow IFG assistance to persons required to buy and maintain flood insurance, but who, through no fault of their own (e.g., insurance is too expensive, or the family can't find an agent) cannot obtain flood insurance. After balancing this comment against Kentucky's, and considering the mandates of the Flood Disaster Protection Act and the FEMA-supported concept of hazard mitigation, it was decided not to allow this. For those families who have difficulty in finding an agent to sell them a policy, a resource is available through the NFIP. In Florida and Puerto Rico, IFG recipients may contact:

Peter E. Yarnot, Jr., Senior Marketing Representative, Representative, National Flood Insurance Program, 10051 5th St., N. #101, St. Petersburg, FL 33072, (813) 577-7602

Ilia Ferrer, Marketing Representative, National Flood Insurance Program, 1018 Ashford Avenue, Second Floor, Condado, Puerto Rico 00907, (809) 722-6790.

The marketing representatives can assist families to find an agent knowledgeable in selling NFIP policies.

Indiana requested that FEMA reevaluate its three year maintenance rule if the percent of counties declared more than twice goes up significantly. FEMA agrees to do this.

Virginia requested definitions of the terms "insurable portions of a home" and "insurable personal property" as they are used in the flood insurance portions of the proposed rule. The final rule contains a reference to 44 CFR Part 61, Insurance Coverage and Rates. The reader is directed to Appendix A, containing the NFIP standard policy language.

Puerto Rico also asked FEMA to provide grant awards to cover the full three year maintenance period, but because of the supplemental nature of the disaster assistance programs, FEMA has not adopted this suggestion.

Certification of Eligibility

All four comments were supportive of dropping the self-certification procedure in favor of "summary declines" issued by the Small Business Administration. Therefore, this provision is adopted as proposed.

Assumption of Risk

Four of the five comments were generally supportive of the elimination of IFG eligibility for those who knowingly assumed the risk of living in a hazardous area, some of whom were compensated for future flood damage. Puerto Rico did not support the proposal, in that some economically disadvantaged people may not have the means to live elsewhere. They asked FEMA to enforce this provision only when a family was offered a practicable permanent residence outside a risky area and refused. In the same vein, Florida also asked how States would determine who had a hold harmless clause in their lease or deed. Since FEMA intended to enforce the proposed provision only against those who literally gave permission to a government (or other) entity to flood their land, or to hold such an entity harmless if their land was flooded, and those who were previously compensated for future flood damage, FEMA does not view this as a penalty. Rather, it is an enforcement of existing legal instruments where the family willingly participated. FEMA will adopt the rule as proposed. Guidance will be provided to FEMA regional offices and States that early coordination with the U.S. Army Corps of Engineers, the Bureau of Land Management, State and local officials, and others who may be party to flowage easements should be accomplished so as to enforce the restriction against IFG assistance only in the three cited cases. FEMA is now coordinating with the Small Business Administration (SBA), which may be able to assist States to identify in deeds or leases any such flowage easements on applicants who were first processed by the SBA to the point where actual knowledge of the deed or lease was obtained. FEMA's inspectors will also be involved in this identification, relieving the State of this responsibility in many cases. Just as in the verification process stipulated elsewhere in this regulation, the State may have to process such cases in late applications and appeals.

National Eligibility Criteria

There were two proposed changes on eligibility criteria; one having to do with removing the requirement for public transportation as a prerequisite for a grant to repair/provide private transportation, and the more significant, that dealing with verification of IFG applications. On transportation, all four comments were supportive. One of the four, Mississippi, asked FEMA to assure that a family who claimed they needed repairs to a car they owned actually owned the car. FEMA's verification process already calls for obtaining the title or plate number, which the State can then follow up with its Department of Motor Vehicles, if it wishes, to see that the car is in the same applicant's name.

There were nine comments on our proposed verification system. All appeared supportive, and most requested clarifications on the many procedural aspects of verification which cannot be addressed at length in a rulemaking document. Each commenter will be provided a direct reply to its letter. For purposes of this rule, FEMA will provide a brief discussion of the most representative questions and of a few policy issues regarding verification.

Two commenters brought a discrepancy in language to FEMA's attention. In paragraph (d)(4), Verification, it was stated that "The State will be provided most verification data on applicants who were not required to first apply to the Small Business Administration (SBA), and on those who were required to apply to SBA but also had expenses unrelated to SBA's disaster loan program." Since there are no other categories beyond medical/dental, funeral, and "other" where the State will be responsible for verification, that statement will be changed. FEMA will provide verification for the housing, personal property, and transportation categories. The State will be responsible for medical/dental and funeral verifications, and for dealing with any estimates an applicant may provide as part of an appeal. Flood insurance zone information will be provided to the State. Any specific need in the "other" category will be handled by the State as well.

One State asked about reverifications. Unless a FEMA contractor is still on site, the State will be responsible for reverification. Many times, this can be accomplished during a phone conversation.

It was requested that the hold harmless provisions be clarified. If the State makes a grant based on FEMA verification data that turns out to be incorrect, FEMA will not hold the State responsible for repaying to FEMA the Federal share of those grants. The State must pay its 25% share; to do otherwise would be illegal. The final voucher should identify all such cases. The State may elect to use its own recovery procedures to collect its 25% share from the family, but it is unnecessary. The incorrect grants will be considered as eligible for accounting purposes; the 3% administrative allowance will be calculated on a 75% figure which includes these grants. One State asked if it would be held harmless if it performed "FEMA's verification" on late applications and appeals.

FEMA does not intend this; it intended that the State keep the responsibility for verification on late

applications and appeals, and hence the State would be responsible for, not held harmless from, these grants if the information is incorrect. As far as possible while the FEMA contractor is still in the area, FEMA will perform verifications on late applications and appeals for the State.

Another commenter questioned whether the State may exceed its cost guidelines if the applicant provided higher cost estimates in an appeal. This is not a matter of regulation. FEMA would have no problem with this, since the intent of the legislation is to meet the family's need, and the intent of the appeal process is to allow a person the opportunity to obtain more equitable assistance. On the other hand, FEMA would have no problem approving a State administrative plan when the State elected to abide by an absolute limit on a particular grant category, as long as the prices were reasonable within the disaster area.

Two commenters requested that FEMA recruit local contractors who know the language and culture of the area. Under FEMA's stand-by contracts for inspection services, it is possible to pay for the services of a local person to act as guide and interpreter. We have done this in the past and will continue to do so in the future. This should address these concerns adequately, but stay within recognized government contracting procedures.

Requirements for State Administrative Plans

Two of three commenting States supported the proposed provision that State plans are required to be submitted each January. The other State said that this would be impossible to do because of staff shortages. FEMA continues to hold the position that constant readiness is desirable, appropriate, and a good management practice. Financial assistance is available under the Comprehensive Cooperative Agreement (Disaster Preparedness Improvement Grant) for this purpose.

Regarding the requirement for a management/staffing module, three supportive comments were received. One of these asked for definitions of the terms "Grant Coordinating Officer," "IFG program manager," and "department head responsible for the IFG program." FEMA's use of these terms in the proposed regulation was not meant to add new titles to the program. They were used in recognition of the fact that in some States the "Grant Coordinating Officer" as defined in current IFG handbook, is really not the person who has day-to-day management responsibilities for the IFG program. Often the GCO is titular, and another person is the actual program manager. In addition, in some States, the head of the department where the IFG program is assigned is sometimes assigned as official GCO, and in this instance, clearly some assignment of responsibilities to a program manager is warranted. To more clearly express FEMA's intent that all the responsibilities be assigned, clarifications of the terms "GCO" and "program manager" have been added; the other is self-explanatory.

The issues outlined in the rest of the "Requirements" preamble are addressed separately (viz., verification, funding) (including recovery of funds and repayment of the State share), and audit).

Funding

Three States had comments on the proposed funding provisions. Mississippi was supportive. Puerto Rico was not supportive of the idea of requiring the State to specify up front what actions it would take to assure the State share advance would be repaid at the agreed-upon time; it was otherwise supportive. To address this: in this time of fiscal austerity and budget cutting, it is imperative that FEMA be able to collect its debts and, in that vein, to extend a debt no longer than absolutely necessary. Determining whether and how a State can pay its debt is a rational and appropriate first step to FEMA's lending the money; therefore, no change has been made to that proposed provision.

The third commenter (Alabama) requested clarification as to whether a time frame will exist for referring cases to FEMA where FEMA will, if appropriate, attempt recovery of the grant from the individual. FEMA will attempt recovery only in cases of fraud or misapplication of funds (not those which were duplicative of other assistance or those where the applicant failed to provide required proof of purchase of flood insurance). FEMA established an administrative time frame of 270 days for filing final vouchers, 90 days past the 180-day disbursement activity deadline. However, extensions for good reason are often granted (as noted by Alabama, this happens often in the case of late-referred SBA loan denial clients). No separate time frame for referring recovery cases to FEMA is necessary. Extensions can be granted, and "closed" programs reopened for this and other good reasons.

Appeals

A single comment was received, from Puerto Rico. The Commonwealth reacted unfavorably to the provision that interest on unpaid debts starts on the day a Bill for Collection is issued. The comment stated that this provision would deter States from appealing, and proposed that the interest should start on the date the Regional Director signs the letter denying the appeal. For the following reasons, FEMA is not adopting this comment. First, if the decision is favorable, no interest will be collected since the debt will be canceled. If the decision is unfavorable, this simply means the original debt instrument was a proper one, due and payable as indicated on the bill. Second, in order to preclude lengthy delays by either the State (in compiling the appeal), or FEMA (in reviewing and dealing with the new information) during which time interest is accumulating, we imposed the 15 day time frames in paragraph (k), Appeals, on both the State and the Regional Director, and also on the second level appeal authority, the Associate Director, State and Local Programs and Support. We intend this to promote quick turnaround on both parts, while complying with good financial management and claims practices.

Audit

Other than restatements of the proposed revision, no comments were received on this subject.

This portion of the supplementary information deals with general questions and concerns which were brought up during the comment period, but which were not changes from the previous rule.

Kentucky asked for a new definition of "necessary expense," and offered the following: "necessary expense means the cost of a serious need." FEMA agrees with that definition, and has adopted it.

Kentucky also requested a clarification that while assistance in all other categories does not require residency in the disaster area, housing category assistance does require such residency. We agree in large part, and have made the change in (d)(1)(ii).

It was requested by Kentucky that the words "and related expenses" be added to the wording of the "funeral expenses" category to allow, for example, such things as transportation of the body. We agree, and have made the change.

Vermont and Virginia referenced FEMA's new application processes at Disaster Application Centers, and asked for a discussion of the relationship to IFG. In reviewing the existing regulation with respect to application-taking, we agreed that some modification was necessary to conform IFG to these new

approaches. The sections of the regulation that deal with the State administrative plan have been changed accordingly. Briefly, there are four options for registering applicants after the Disaster Applications Centers close and for accepting applications after the published time limitations. The State should be prepared to participate in all four, after a method has been determined appropriate by the Regional Director in consultation with the State:

—The State may take all registrations including those for IFG assistance, at appropriate centers or locations, and then perform the required follow-up to obtain summary declines, etc., and transfer the application to the appropriate agencies;
—FEMA may take registrations via telephone, and perform the required follow-up;
—Service center operations; and/or
—FEMA and the State may "circuit ride" to obtain registration/applications.

Mississippi requested that the requirement for informal reconsiderations (as opposed to formal appeals) be eliminated, in that the appeal process was sufficient. While we may agree, it seems more appropriate to allow informal processes, which may preclude the need for formal ones in many cases. Therefore, to accommodate both concerns, we are modifying the reconsideration guidance to make it optional on the State's part.

Virginia requested a definition of "immediate threat of damage," applicable to protective measures in the housing category. To promote uniformity of interpretation, FEMA is providing the following definition. "'Immediate threat' means that the disaster-damaged condition is causing a potential safety threat and, if not repaired, will cause actual safety hazards from common environmental events (e.g., additional rain, flooding, erosion, wind)."

Florida and Vermont requested changes to the IFG maximum grant amount and the 3% administrative funding limit. Since both of these limits are imposed by law, they cannot be changed by regulation. Florida also requested that FEMA eliminate the requirement that an applicant apply for other available assistance, but rather, to provide IFG assistance for certain specified items without regard to the availability of such other assistance. Unfortunately, FEMA cannot adopt that comment. Section 408 of the Disaster Relief Act, which authorizes the IFG program, specifically states that the program is intended to meet needs "in those cases where such individuals or families are unable to meet such expenses or needs through assistance under other provision of this Act, or from other means." However, developmental work is now underway which will computerize records of applicants for disaster assistance, including assistance they have received from other means, thus aiding and speeding up eligibility decisions in the IFG program. The new combined verification system will also improve timeliness.

Content of the Rule

This rule implements section 408 of the Disaster Relief Act of 1974, 42 U.S.C. 5178. It provides FEMA policy and national eligibility criteria for use by States in implementing the Individual and Family Grant Program.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—FEDERAL DISASTER ASSISTANCE (PUB. L. 93-288)

Accordingly, 44 CFR Part 205 is amended.

1. The authority citation for Part 205 continues to read as follows:

Authority: 42 U.S.C. 5001; Reorg. Plan No. 3 of 1978; E.O. 12148.

2. Section 205.54 is revised to read as follows:

§ 205.54 Individual and Family Grant (IFG) programs.

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State making grants to individuals or families who, as a result of a major disaster, are unable to meet disaster-related necessary expenses or serious needs. The total Federal grant under this section will be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expenses not to exceed 3 percent of the Federal grant (see computation of State administrative expenses in paragraph (g)(6) of this section). The total Federal grant is made only on condition that the remaining 25 percent of the actual cost of meeting individuals' or families' necessary expenses or serious needs is paid from funds made available by the State. With respect to any one major disaster, an individual or family may not receive a grant or grants under this section totaling more than $5,000, including both the Federal and State shares. The Governor or his/her designee is responsible for the administration of the grant program. The provisions of this regulation are in accordance with OMB Circular A-102, Uniform Requirements for Grants to State and Local Governments, to which the reader is referred for more information (45 FR 55086, August 18, 1980).

(b) *Purpose.* The grant program is intended to provide funds to individuals or families to permit them to meet those disaster-related necessary expenses or serious needs for which assistance from other means is either unavailable or inadequate. Meeting those expenses and needs as expeditiously as possible will require States to make an early commitment of personnel and resources. States may make grants for emergency needs in instances where there is an unreasonable delay in receiving assistance from other means, with a commitment from the applicant that when assistance is received from other means the State must be reimbursed. The grant program is not intended to indemnify disaster losses or to permit purchase of items or services which may generally be characterized as nonessential, luxury, or decorative. Assistance under this program is not to be counted as income or a resource in the determination of eligibility for welfare or other income-tested programs supported by the Federal government, in that IFG assistance is intended to address only disaster related needs.

(c) *Definitions used in this section.*

(1) "Necessary expense" means the cost of a serious need.

(2) "Serious need" means the requirement for an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

(3) "Family" means a social unit living together and composed of:

(i) Legally married individuals or those couples living together as if they were married and their dependents; or

(ii) A single person and his/her dependents; or

(iii) Persons who jointly own the residence and their dependents.

(4) "Individual" means anyone who is not a member of a family, as described above.

(5) "Dependent" means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together where the children live in the affected residence with the parent who does not actually claim them on the tax return.

(6) "Expendable items" means consumables, as follows: linens, clothes, and basic kitchenware (pots, pans, utensils, dinnerware, flatware, small kitchen appliances).

(7) "Assistance from other means" means assistance including monetary or in-kind contributions, from other governmental programs, insurance, voluntary or charitable organizations, or from any sources other than those of the individual or family. It does not include expendable items.

(8) "Owner-occupied" means that the residence is occupied by: the legal owner; a person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence, and pays no rent; or a person who has lifetime occupancy rights in the residence with formal title vested in another. In States where documentation proving ownership is not recorded or does not exist, the State is required to include in its administrative plan a State Attorney General approved set of conditions describing adequate proof of ownership.

(9) "Flowage easement" means an area where the landowner has given the right to overflow, flood, or submerge the land to the government or other entity for a public purpose.

(d) *National eligibility criteria.* In administering the IFG program, a State shall determine the eligibility of an individual or family in accordance with the following criteria:

(1) *General.* (i) To qualify for a grant under this section, an individual or family representative must:

(A) Make application to all applicable available governmental disaster assistance programs for assistance to meet a necessary expense or serious need, and be determined not qualified for such assistance, or demonstrate that the assistance received does not satisfy the total necessary expense or serious need;

(B) Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made; and

(C) Certify to refund to the State that part of the grant for which assistance from other means is received, or which is not spent as identified in the grant award document.

(ii) Individuals or families who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their alienage, their residency in the major disaster area, or their residency within the State in which the major disaster has been declared except that for assistance in the "housing" category, ownership and residency in the declared disaster area are required (see paragraph (d)(2)(i)).

(iii) The Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition and construction purposes. Subpart K of Part 205 implements Pub. L. 93–234 for FEMA assistance generally. This paragraph refines those requirements for the IFG program. To the extent that this paragraph is inconsistent with Subpart K, this paragraph applies.

(A) For the purposes of this paragraph, "financial assistance for acquisition or construction purposes" means a grant to an individual or family to repair, replace, or rebuild the insurable portions of a home, and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, see 44 CFR Part 61, Insurance Coverage and Rates.

(B) A State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard area which has been identified by the Director for at least one year as flood-prone, unless the community in which the structure is located is participating in the National Flood Insurance Program (NFIP). However, if a community qualifies for and enters the NFIP during the six-month period described in 44 CFR 205.253(a)(3)(i), the Governor's Authorized Representative (GAR) may request a time extension (see subparagraph (j)(1)(ii) of this section) from the Regional Director for the purpose of accepting and processing grant applications in that community. The Regional Director or Associate Director, as appropriate, may approve the State's request if those applicable governmental disaster assistance programs which were available during the original application period are available to the grant applicants during the extended application period.

(C)(*1*) The State may not make a grant for acquisition or construction purposes in a designated special flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for three years, or as long as they live in the residence to which the grant assistance relates, whichever is less. Adequate flood insurance, for IFG purposes, means a policy which covers $5,000 building and $2,000 contents (homeowners) or $5,000 contents (renters). If the grant recipient fails to obtain the required flood insurance, he/she must return to the State the amount of the grant received for acquisition and construction on insurable real estate and personal property, and the flood insurance premium. If a grant recipient cancels a required policy within the three year period, he/she is ineligible for subsequent IFG assistance for the remainder of the three year period for such items up to the amount which should have been insured by the flood insurance policy. The cost of the first year's policy is considered a necessary expense for those who are required under this section to obtain flood insurance.

(*2*) After a determination that flood insurance is required and after disbursement of a grant, States shall require the grant recipient to provide proof of purchase of the required flood insurance.

(D) A State may not make a grant for acquisition or construction purposes where an applicant who is required to apply to the SBA or Farmers Home Administration in accordance with paragraph (d)(1)(i)(A) of this section is denied loan assistance because of failure to have obtained and/or maintained a flood insurance policy required as a condition of previous loan assistance.

(E) A State may not make a grant for acquisition or construction purposes when the applicant is deemed to have assumed the risk knowingly, that is, when property is located within a flowage easement, or in an area between a river and a levee (where the family built the home after the levee was built, or was compensated for future flood damage at the time the levee was built), or when a residence is located on land leased to an individual where that lease holds the government harmless from the risk of damage. This restriction does not apply if an applicant is going to use the funds to move out of the risk area.

(iv) In order to comply with the President's Executive Orders on Floodplain Management (E.O. 11988) and Protection of Wetlands (E.O. 11990), the State must implement the IFG program in accordance with FEMA regulations 44 CFR Part 9. That part specifies which IFG program actions require a floodplain management decision-making process before a grant may be made, and also specifies the steps to follow in the decision-making process. Should the State determine that an individual or family is otherwise eligible for grant assistance, the State shall accomplish the necessary steps in

accordance with that section, and request the Regional Director to make a final floodplain management determination.

(2) *Eligible categories.* Assistance under this section shall be made available to meet necessary expenses or serious needs by providing essential items or services in the following categories:

(i) Housing. With respect to primary residences (including mobile homes) which are owner-occupied at the time of the disaster, grants may be authorized to:

(A) Repair, replace, or rebuild;

(B) Provide access. When an access serves more than one individual or family, an owner-occupant whose primary residence is served by the access may be eligible for a proportionate share of the cost of jointly repairing or providing such access. The owner-occupant may combine his/her grant funds with funds made available by the other individuals or families if a joint use agreement is executed (with no cost or charges involved) or if joint ownership of the access is agreed to;

(C) Clean or make sanitary;

(D) Remove debris from such residences. Debris removal is limited to the minimum required to remove health or safety hazards from, or protect against additional damage to the residence;

(E) Provide or take minimum protective measures required to protect such residences against the immediate threat of damage, which means that the disaster damage is causing a potential safety hazard and, if not repaired, will cause actual safety hazards from common weather or environmental events (example: additional rain, flooding, erosion, wind); and

(F) Minimization measures required by owner-occupants to comply with the provisions of 44 CFR Part 9 (Floodplain Management and Protection of Wetlands), to enable them to receive assistance from other means, and/or to enable them to comply with a community's floodplain management regulations.

(ii) Personal property. Proof of ownership of personal property is not required. This category includes:

(A) Clothing;

(B) Household items, furnishings, or appliances. If a pre-disaster renter receives a grant for household items, furnishings, or appliances and these items are an integral part of mobile home or other furnished unit, the pre-disaster renter may apply the funds awarded for these specific items toward the purchase of the furnished unit, and toward mobile home site development, towing, set-up, connecting and/or reconnecting;

(C) Tools, specialized or protective clothing, and equipment which are required by an employer as a condition of employment;

(D) Repairing, cleaning or sanitizing any eligible personal property item; and

(E) Moving and storing to prevent or reduce damage.

(iii) Transportation. Grants may be authorized to repair, replace, or provide privately owned vehicles, or to provide public transportation.

(iv) Medical or dental expenses.

(v) Funeral expenses. Grants may include funeral and burial (and/or cremation) and related expenses.

(vi) Cost of the first year's flood insurance premium to meet the requirements of this section.

(vii) Cost for estimates required for eligibility determinations under the IFG program. Housing and personal property estimates will be provided by the government. However, an applicant may appeal to the State if he/she feels the government estimate is inaccurate. The cost of an applicant-obtained estimate to support the appeal is not an eligible cost.

(viii) Other. A State may determine that other necessary expenses and serious needs are eligible for grant assistance. If such a determination is made, the State must summarize the facts of the case and thoroughly document its finding of eligibility. Should the State require technical assistance in making a determination of eligibility, it may provide a factual summary to the Regional Director and request guidance. The Associate Director also may determine that other necessary expenses and serious needs are eligible for grant assistance. Following such a determination, the Associate Director shall advise the State, through the Regional Director, and provide the necessary program guidance.

(3) *Ineligible categories.* Assistance under this section shall not be made available for any item or service in the following categories:

(i) Business losses, including farm businesses and self-employment;

(ii) Improvements or additions to real or personal property, except those required to comply with paragraph (d)(2)(i)(F) of this section;

(iii) Landscaping;

(iv) Real or personal property used exclusively for recreation; and

(v) Financial obligations incurred prior to the disaster.

(4) *Verification.* The State will be provided most verification data on IFG applicants who were not required to first apply to the SBA. The FEMA Regional Director shall be responsible for performing most of the required verifications in the categories of housing (to include documentation of home ownership and primary residency); personal property; and transportation (to include notation of the plate or title number of the vehicle; the State may wish to follow up on this). Certain verifications may still be required to be performed by the State, such as on late applications or reverifications, when FEMA or its contractors are no longer available, and on medical/dental, funeral and "other" categories. Eligibility determination functions shall be performed by the State. The SBA will provide copies of verifications performed by SBA staff on housing and personal property (including vehicles) for those applicants who were first required to apply to SBA. This will enable the State to make an eligibility determination on those applicants. When an applicant disagrees with the grant award, he/she may appeal to the State. The cost of any estimate provided by the applicant in support of his/her appeal is not eligible under the program.

(e) *State administrative plan.* (1) The State shall develop a plan for the administration of the IFG program that includes, as a minimum, the items listed below:

(i) Assignment of grant program responsibilities to State officials or agencies.

(ii) Procedures for:

(A) Notifying potential grant applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(B) Participating with FEMA in the registration and acceptance of applications, including late applications up to the prescribed time limitations;

(C) Reviewing verification data provided by FEMA and performing verifications for medical, dental, funeral and "other" expenses, and also for all grant categories in the instance of late applications and appeals. FEMA will perform any necessary reverifications while its contract personnel are in the disaster area, and the State will perform any others;

(D) Determining applicant eligibility and grant amounts, and notifying applicants of the State's decision;

(E) Determining the requirement for flood insurance;

(F) Preventing duplication of benefits between grant assistance and assistance from other means;

(G) At the applicant's request, and at the State's option, reconsidering the State's determinations;

(H) Processing applicant appeals, recognizing that the State has final authority. Such procedures must provide for:

(*1*) The receipt of oral or written evidence from the appellate or representative;

(*2*) A determination on the record; and

(*3*) A decision by an impartial person or board;

(I) Disbursing grants in a timely manner;

(J) Verifying by random sample that grant funds are meeting applicants' needs, are not duplicating assistance from other means, and are meeting floodplain management and flood insurance requirements. Guidance on the sample size will be provided by the Regional Director;

(K) Recovering grant funds obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, not expended or committed as of the date the State requests Federal reimbursement, or authorized for acquisition or construction purposes where proof of purchase of flood insurance is not provided to the State. Except for those mentioned in the previous sentence, grants made properly by the State on the basis of Federally sponsored verification information are not subject to recovery by the State, i.e., FEMA will not hold the State responsible for repaying to FEMA the Federal share of those grants. The State is responsible for its 25 percent share of those grants. As an attachment to its voucher, the State must identify each case where recovery actions have been taken or are to be taken, and the steps taken or to be taken to accomplish recovery;

(L) Conducting any State audits that might be performed in compliance with the Single Audit Act of 1984;

(M) Reporting to the Regional Director, and to the Federal Coordinating Officer as required; and

(N) Reviewing and updating the plan each January.

(iii) National eligibility criteria as defined in paragraph (d) of this section.

(iv) Provisions for compliance with 44 CFR Part 11, Claims, and the State's own debt collection procedures.

(v) Pertinent time limitations for accepting applications, grant award activities, and administrative activities, to comply with Federal time limitations.

(vi) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; for repaying the advanced State share as of the date agreed upon by the Governor and the Regional Director; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(vii) Provisions for safeguarding the privacy of applicants and the confidentiality of information, except that the information may be provided to agencies or organizations who require it to make eligibility decisions for assistance programs, or to prevent duplication of benefits, to State agencies responsible for audit or program review, and to FEMA or the General Accounting Office for the purpose of making audits or conducting program reviews.

(viii) A section identifying the management and staffing functions in the IFG program, the sources of staff to fill these functions, and the management and oversight responsibilities of:

(A) The GAR;

(B) The department head responsible for the IFG program;

(C) The Grant Coordinating Officer, i.e., the State official assigned management responsibility for the IFG program; and

(D) The IFG program manager, where management responsibilities are assigned to such a person on a day-to-day basis.

(2) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan to implement this program.

(3) The Governor shall submit a revised State administrative plan each January to the Regional Director. The Regional Director shall review and approve the plan annually. In each disaster for which assistance under this section is requested, the Regional Director shall request the State to prepare any amendments required to meet current policy guidance. The Regional Director must then work with the State until the plan and amendment(s) are approved.

(4) The State shall make its approved administrative plan part of the State emergency plan, as described in § 205.4 of these regulations.

(f) *State initiation of the IFG program.* To make assistance under this section available to disaster victims, the Governor must, either in the request to the President for a major disaster declaration or by separate letter to the Regional Director, express his/her intention to implement the program. This expression of intent must include an estimate of the size and cost of the program. In addition, this expression of intent represents the Governor's agreement to the following:

(1) That the program is needed to satisfy necessary expenses and serious needs of disaster victims which cannot otherwise be met;

(2) That the State will pay its 25 percent share of all grants to individuals and families;

(3) That the State will return immediately upon discovery advanced Federal funds that exceed actual requirements;

(4) To implement an administrative plan as identified in paragraph (e) of this section;

(5) To implement the grant program throughout the area designated as eligible for assistance by the Associate Director; and

(6) To maintain close coordination with and provide reports to the Regional Director.

(g) *Funding.* (1) The Regional Director may obligate funds incrementally for the Federal share of the IFG program based upon the determination that:

(i) The Governor has indicated the intention to implement the program, in accordance with subparagraph (f) of this section;

(ii) The State's administrative plan meets the requirements of this section and current policy guidance; and

(iii) There is no excess advance of the Federal share due FEMA from a prior IFG program. The State may eliminate any such debt by paying it immediately, or by accepting an offset of the owed funds against other funds payable by FEMA to the State. When the excess Federal share has been repaid, the Regional Director may then obligate funds for the Federal share for the current disaster.

(2) The Regional Director may increase the State's letter of credit in increments of funds to meet the Federal share of program needs if the above conditions are met. The State may withdraw funds for the Federal share in the amounts made available to it by the Regional Director.

(3) The Regional Director may obligate funds incrementally for the State share of the IFG program based upon the Governor's request (for subsequent obligations, the GAR may request). Along with an estimate of the total amount needed to meet the State's 25 percent share, the initial request for authority to borrow the State share shall include:

(i) A certification that the State is unable immediately to pay its 25 percent share, and the reasons for this inability;

(ii) A statement of the specific actions the State will take to enable it to pay its 25 percent share; and

(iii) A certification that the State will repay the advance, and the date for this repayment, which will be agreed upon in the FEMA/State agreement. A Bill for Collection (BFC) will be issued on the repayment date if the advance is not repaid as agreed. Prior to the repayment date, the State may request, and the Regional Director may approve, a revision to the FEMA/State agreement to extend the State share due date if good cause exists.

(4) The Regional Director may increase the State's letter of credit in increments of funds to meet the State share of program needs if the above conditions are met, and if the State is not delinquent in repaying State share debts from previous IFG programs. The State may eliminate this debt by accepting an offset of the owed funds against other funds payable to the State by FEMA.

(5) The Regional Director must recover any advance of the State share not repaid by the date established in accordance with subparagraph (g)(3)(iii), and any excess advance of the Federal share not repaid immediately upon discovery of the excess by using debt collection procedures at 44 CFR Part 11. Debt collection procedures must also be used when recovering funds due FEMA upon examination of the State's final voucher.

(6) Payable costs include 75 percent of the costs of meeting necessary expenses or serious needs, and expenses incurred in administering the grant program. The amount payable for administrative purposes is computed by dividing the payable Federal cost of meeting necessary expenses and serious needs by .97, and subtracting the payable Federal costs of meeting such expenses or needs from the quotient. Costs for grants that are improperly or inadequately documented are not payable. Costs for grants that are not in conformance with national eligibility criteria or the approved State administrative plan are not payable. Costs for grants that have not been expended or committed by the grant recipient at the time the State submits its final voucher may be payable only if the Regional Director determines, based on justification provided by the State, that adequate steps are being taken to correct the deficiency. Costs for grants made on the basis of fraudulent information, that were misapplied by the grant recipient, that duplicate assistance from other means, or that were authorized for acquisition or construction where proof of purchase of flood insurance was not provided by the grant recipient, may be payable only if the State has taken the steps required by its administrative plan to recover the funds. If the State has been unable to recover the funds, the Regional Director shall consider the costs payable, but shall institute debt collection procedures against the individual when fraud or misapplication are involved. If the State did not take the steps required by its administrative plan, the costs are not payable, and shall be suspended. The State must identify each case where deficiencies exist but for which it is requesting payment, and the steps it has taken to remedy the deficiency. This section is consistent with OMB Circular A-87, Cost Principles for State and Local Governments, to which the reader is referred for more information (46 FR 9548, January 28, 1981).

(h) *Voucher analysis.* Final reimbursement to the State, or final debt collection, shall be based on examination of a voucher filed by the State within the time limitations stated in subparagraph (j). The voucher is either the final SF-269, Financial Status Report (used when the funding method is letter of credit), or FEMA Form 90-27, Request for Advance or Reimbursement (used when the Treasury check or wire transfer is the funding method).

(1) If no significant deficiencies were found during the mid program review, a second review and narrative summary shall be prepared, along with examination of the fiscal portion of the voucher. The review shall include the following determinations:

(i) That the State specifically identified in its accounts all Federal and State funds committed to the IFG program;

(ii) That the State's share was provided from funds made available by the State;

(iii) That the State has repaid, or is taking the necessary steps to enable it to repay, the State share and any excess advances of the Federal share which exceed program needs; and

(iv) That the claimed administrative costs were correctly calculated.

(2) If significant deficiencies (25 percent of case files examined) existed during the mid program review, a second review shall be prepared, along with an additional case file sample and a document containing the determinations in subparagraph (h)(1) above and the following additional determinations that the grant payments:

(i) Meet eligibility criteria stated in the approved State administrative plan;

(ii) Were disaster related;

(iii) Are based on adequate FEMA verification documentation, and other documentation (flood insurance requirement, information on assistance from other means, grant award document, etc.);

(iv) Do not exceed $5,000;

(v) Were spent by the named disaster victim and spent as indicated in the grant award document;

(vi) Do not represent cases of fraud, misapplication or duplication of benefits, where the State has failed to take measures appropriate to its administrative plan; and

(vii) If based on an appeal, contain adequate justification for the final determination.

Voucher analysis results in approval of the final voucher in whole or in part, disapproval of the final voucher, request for a Federal audit, or suspension until deficiencies have been corrected by the State.

(i) *Audits.* The State should perform the audits required by the Single Audit Act of 1984. Refer to 44 CFR Part 14, Administration of Grants; Audits of State and Local Governments, which implements OMB Circular A-128 regarding audits. All programs are subject to Federal audit.

(j) *Time limitations.* (1) In the administration of the IFG program:

(i) The Governor shall indicate his/her intention to implement the IFG program no later than seven days following the day on which the major disaster was declared and in the manner set forth in paragraph (f) of this section;

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration date, and for a minimum of 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely manner;

(iii) The State shall complete all grant award activity, including eligibility determinations, disbursements, and disposition of appeals, within 180 days following the declaration date. The Regional Director shall suspend all grant awards disbursed after the specified completion date; and

(iv) The State shall complete all administrative activities and submit final reports and vouchers to the Regional Director within 90 days of the completion of all grant award activity.

(2) The GAR may submit a request with appropriate justification for the extension of any time limitation. The Regional Director may approve the request for a period not to exceed 90 days. The Associate Director may

approve any request for a further extension of the time limitations.

(k) *Appeals*—(1) *Bills for Collection (BFC's).* The State may appeal the issuance of a BFC by the Regional Director. Such an appeal shall be made in writing within 30 days of the issuance of the bill. The appeal must include information justifying why the bill is incorrect. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision. Interest on BFC's starts accruing on the date of issuance of the BFC, but is not charged if the State pays within 30 days of issuance. If the State is successful in its appeal, interest will not be charged; if unsuccessful, interest is due and payable, as above.

(2) *Other appeals.* The State may appeal any other decision of the Regional Director. Such appeals shall be made in writing within 30 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(3) *Appeals to the Associate Director.* The State may further appeal the Regional Director's decisions to the Associate Director. This appeal shall be made in writing within 30 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Associate Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(l) *Exemption from Garnishment.* All proceeds received or receivable under the IFG program shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable. The above exemptions will not apply to the requirement imposed by paragraph (e)(1)(ii)(K) of this section.

(m) *Debt Collection.* In cases involving fraud or misapplication of IFG funds, the Regional Director shall institute debt collection activities against the individual according to the procedures outlined in 44 CFR Part 11, Claims.

Dated: September 3, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86-20744 Filed 9-12-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 42

[CC Docket No. 84-283; FCC 86-367]

Common Carrier Services; Revision of Part 42, Preservation of Records of Communication Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised the record retention requirements for communication common carriers to eliminate the detailed list of records and prescribed retention periods and to make other revisions intended to give carriers greater flexibility in record retention and to relieve recordkeeping burdens. Also, pursuant to a petition of the U.S. Department of Justice, the Commission decided to require the retention of telephone toll records for 18 months to assist in law enforcement activities.

EFFECTIVE DATE: November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Clifford Rand, Accounting and Audits Division, Common Carrier Bureau, (202)634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted August 7, 1986, and released August 22, 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 contractor, International Transcription Service, (202)857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In a Notice of Proposed Rulemaking (NPRM) released July 17, 1985, the Commission proposed to revise Part 42 of its Rules and Regulations, "Preservation of Records of Communication Common Carriers", to reduce the record retention and reporting burdens imposed on the carriers. Based on an analysis of the comments filed in this proceeding, we have decided to adopt our proposals with some modifications.

2. Comments were due on or before August 23, 1985 and reply comments on or before September 9, 1985. Fourteen comments and seven reply comments were received from telephone and telegraph companies, a state commission, and government agencies.

3. We proposed to eliminate § 42.9, "List of records" and to rely instead on the carriers' own record retention needs as documented by a master index of records. As an alternative, we proposed to continue to prescribe a list of records with fewer records and shorter retention periods. Twelve respondents support elimination of the list of records but suggest some modifications. Generally, the respondents in favor of eliminating the list of records state that this would reduce paperwork burdens by allowing the carriers greater flexibility in record retention practices and would reduce this Commission's administrative burden. Four respondents, on the other hand, favor the alternative of prescribing a list with fewer records because they believe that reliance on the carriers' own record retention needs will result in a lack of uniformity among carriers and that a master index would be more burdensome for the carriers to maintain and more difficult for this Commission to administer.

4. After considering the comments, we have decided to eliminate the list of records. We are not concerned about the lack of uniformity of record retention practices among carriers as long as records needed by this Commission are available. We believe the carriers' need for records for their own business operations and to meet the requirements of other agencies will assure the availability of the records needed by this Commission. We also believe that eliminating the list of records will greatly reduce the carriers' record retention burdens.

5. Because our proposed elimination of the list of records would rely more heavily on the carriers' documentation of their record retention practices, we proposed to make the master index required in § 42.4 subject to review by Commission staff and to reserve the right to add records or lengthen retention periods upon a finding that retention periods may be insufficient for our regulatory purposes. The principal concern expressed by several respondents is that our proposal would require carriers to maintain a copy of the master index at each location where records are stored instead of an index only of records stored at that site. It was not our intention to extend the requirement for a master index to each location where records are stored, and we have revised § 42.4 to clarify that point. We have decided not to adopt a suggestion that no requirement be made as to the location of the master index; however, we have revised the wording

to require that the master index be maintained at the "operating company headquarters" rather that at the "general offices" of the carrier. The master index shall continue to include all records retained by the carrier. We have decided not to require the filing of the indices with this Commission and we are not establishing a formal review program.

6. The Commission proposed to modify § 42.5, "Preservation and protection of reproductions of original records" to permit carriers to use the preservation media of their choice. Although most parties agree with our proposals, some propose modifications which include: discouraging the use of new, experimental media forms; certifying the duplication rather than the accuracy of records in machine-readable media; and, specifying rules for magnetic storage media. In addition, parties state that detailed requirements related to microfilm should be eliminated in favor of the standard embodied in the Uniform Photographic Copies of Business and Public Records as Evidence Act.[1] We have decided to allow the carriers to use the storage medium of their choice. We believe that allowing carriers to use the most efficient storage media available will reduce record storage and retrieval costs and permit carriers to use new storage technologies. Based on the comments, we have decided to require certification that records on machine-readable media have been accurately duplicated rather than that each record is accurate. We have decided not to prescribe specific rules for machine-readable media because our goal is to reduce burdensome and unnecessary recordkeeping requirements for this type of medium. Finally, we agree that the detailed requirements related to microfilm in § 42.5(c) should be replaced by a reference to the Federal Business Records Act.

7. We proposed to eliminate § 42.6, "Destruction of records", with conforming changes to § 42.2, "Designation of supervisory official". Since none of the comments objected to these changes we have adopted them as proposed.

8. We proposed to eliminate § 42.7, "Premature destruction", which requires reporting of premature destruction of records with 90 days of discovery. Only one comment recommended retention of this section. Since we have decided to eliminate the list of records and to rely more heavily on the carriers' procedures as documented in the master index, we have decided not to require the continued reporting of premature destruction of records to this Commission. Nevertheless, because we are relying on the carriers' documented procedures to verify the availability of records, we have decided to modify the requirements for the master index of records to require the addition of a certified statement documenting any loss or destruction of records before expiration of the retention period set forth in the master index. We believe this will serve this Commission's needs with the least burden on the carriers.

9. We also sought comment on the regulatory need for § 42.8, "Extension of period for retention of telegraph messages." The three comments on this provision stated that there is no current regulatory need for it. Therefore, we have decided to eliminate this section.

10. Fourteen respondents commented on our proposal to extend the retention period to telephone toll records from six months to 18 months consistent with a petition filed by the Department of Justice (DOJ). Nine respondents oppose the extension claiming that it is unnecessary, that it is not adequately supported by DOJ, and that its cost will exceed its benefits. After considering the opposing comments we have decided to extend the retention period as proposed. We believe that DOJ has provided sufficient detail to warrant this extension. We also believe that the increased cost is offset by valid public policy considerations. We have decided not to adopt a separate review procedure for this provision. We believe the review required every three years under the Paperwork Reduction Act [2] adequately provides for reevaluation of the need for this requirement. In adopting this extension, we have modified the proposal to require retention of only sufficient toll records to provide the information actually needed by DOJ. DOJ indicated that it needed the following information: the name, address, and telephone number of the caller, telephone number called, date, time, length of the call, and automatic message accounting tapes. Finally, in response to two requests for clarification, we have noted that Part 42 is applicable to the OCCs and that a carrier should retain records for toll calls it bills including billings on behalf of another carrier.

11. We proposed in a new § 42.7 to require that carriers add to the index of records any records relevant to complaint proceedings that are not already included therein and to retain these records until final disposition of the complaint. Several comments oppose this, claiming it would be duplicative of the rules governing complaints in §§ 1.711–1.735 of this Commission's Rules and Regulations. We have determined that this provision is not duplicative of §§1.711–1.735. Section 42.7 instructs carriers to keep records of complaint proceedings. Sections 1.711–1.735 prescribe the procedures for formal and informal complaints and detail the appropriate steps a carrier should follow in a complaint proceeding. We have also determined that there is no need to prescribe more detailed requirements in § 42.7 as requested by some respondents.

12. Also, in this *Report and Order*, we have decided not to initiate a proceeding to extend the applicability of Part 42 to the unregulated affiliates of telephone companies. We did, however, revise the applicability section to remove the language that distinguishes among types of common carriers, and we confirmed that Part 42 is applicable only to fully subject carriers.

Other Matters

13. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, *supra*, and found to impose modified requirements of burden upon the public. Implementation of any new or modified requirement of burden will be subject to approval by the Office of Management and Budget as prescribed by this Act.

14. In compliance with the provision of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that these reporting changes can be readily implemented by all carriers subject to Part 42 of the Commission's Rules and Regulations without a significant economic impact on a substantial number of small entities because current reporting requirements have been reduced by the final rules.

Ordering Clauses

15. Accordingly, it is ordered, That pursuant to the provisions of Sections 4(i), 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 219 and 220, Part 42 is hereby revised as set forth below effective November 14, 1986.

16. It is further ordered, That CC Docket No. 84–283 is hereby terminated.

17. It is further ordered, That the Secretary shall cause a copy of this Report and Order to be served on each state commission.

[1] This refers to the Federal Business Records Act, 28 U.S.C 1732.

[2] 44 U.S.C. 3507.

18. It is further ordered, That the Secretary shall cause a summary of this Report and Order to be published in the **Federal Register.**

Appendix

The Federal Communications Commission is revising Part 42, *Preservation of Records of Communication Common Carriers* to read as follows:

PART 42—PRESERVATION OF RECORDS OF COMMUNICATION COMMON CARRIERS

Applicability

Sec.
42.01 Applicability.

General Instructions

42.1 Scope of the regulations in this part.
42.2 Designation of a supervisory official.
42.3 Protection and storage of records.
42.4 Index of records.
42.5 Preparation and preservation of reproductions of original records.
42.6 Retention of telephone toll records.
42.7 Retention of other records.

Authority: Sec. 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(i). Interprets or applies secs. 219 and 220, 48 Stat. 1077–78, 47 U.S.C. 219, 220.

Applicability

§ 42.01 Applicability.

This part prescribes the regulations governing the preservation of records of communication common carriers that are fully subject to the jurisdiction of the Commission.

General Instructions

§ 42.1 Scope of the regulations in this part.

(a) The regulations in this part apply to all accounts, records, memoranda, documents, papers, and correspondence prepared by or on behalf of the carrier as well as those which come into its possession in connection with the acquisition of property, such as by purchase, consolidation, merger, etc.

(b) The regulations in this part shall not be construed as requiring the preparation of accounts, records, or memoranda not required to be prepared by other regulations, such as the Uniform System of Accounts, except as provided hereinafter.

(c) The regulations in this part shall not be construed as excusing compliance with any other lawful requirement for the preservation of records.

§ 42.2 Designation of a supervisory official.

Each carrier subject to the regulations in this part shall designate one or more officials to supervise the preservation of its records.

§ 42.3 Protection and storage of records.

The carrier shall protect records subject to the regulations in this part from damage from fires, and other hazards and, in the selection of storage spaces, safeguard the records from unnecessary exposure to deterioration.

§ 42.4 Index of records.

Each carrier shall maintain at its operating company headquarters a master index of records. The master index shall identify the records retained, the related retention period, and the locations where the records are maintained. The master index shall be subject to review by Commission staff and the Commission shall reserve the right to add records, or lengthen retention periods upon finding that retention periods may be insufficient for its regulatory purposes. When any records are lost or destroyed before expiration of the retention period set forth in the master index, a certified statement shall be added to the master index, as soon as practicable, listing, as far as may be determined, the records lost or destroyed and describing the circumstances of the premature loss or destruction. At each office of the carrier where records are kept or stored, the carrier shall arrange, file, and currently index the records on site so that they may be readily identified and made available to representatives of the Commission.

§ 42.5 Preparation and preservation of reproductions of original records.

(a) Each carrier may use a retention medium of its choice to preserve records in lieu of original records, provided that they observe the requirements of paragraphs (b) and (c) of this section.

(b) A paper or microfilm record need not be created to satisfy the requirements of this part if the record is initially prepared in machine-readable medium such as punched cards, magnetic tapes, and disks. Each record kept in a machine-readable medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it has been accurately duplicated. This statement shall be executed by a person duplicating the records. The records shall be indexed and retained in such a manner that they are easily accessible, and the carrier shall have the facilities available to locate, identify and reproduce the records in readable form without loss of clarity.

(c) Records may be retained on microfilm provided they meet the requirements of the Federal Business Records Act (28 U.S.C. § 1732).

§ 42.6 Retention of telephone toll records.

Each carrier that offers or bills toll telephone service shall retain for a period of 18 months such records as are necessary to provide the following billing information about telephone toll calls: the name, address, and telephone number of the caller, telephone number called, date, time, length of the call, and automatic message accounting tapes. Each carrier shall retain this information for toll calls that it bills whether it is billing its own toll service customers for toll calls or billing customers for another carrier.

§ 42.7 Retention of other records.

Except as specified in § 42.6, each carrier shall retain records identified in its master index of records for the period established therein. Records relevant to complaint proceedings not already contained in the index of records should be added to the index as soon as a complaint is filed and retained until final disposition of the complaint. Records a carrier is directed to retain as the result of a proceeding or inquiry by the Commission to the extent not already contained in the index will also be added to the index and retained until final disposition of the proceeding or inquiry.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86–20469 Filed 9–12–86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–51, RM–5123]

Radio Broadcasting Services; Altus, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 300A to Altus, Oklahoma, as the community's second local FM service, at the request of Robert M. Kerr. The channel can be allocated in compliance with the Commission's minimum distance separation and other technical requirements without the imposition of a site restriction. With this action, the proceeding is terminated.

EFFECTIVE DATES: October 15, 1986. The window period for filing applications

will open on October 15, 1986, and close on November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-51, adopted August 21, 1986, and released September 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 NW., 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In paragraph (b) of § 73.202, the table of allotments, in the entry for Altus, Oklahoma, Channel 300A is added.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-20770 Filed 9-12-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-16, RM-4976, RM-5365]

Radio Broadcasting Services; South Sioux City and Winnebago, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 296A, with a site restriction of 4.4 kilometers (2.7 miles) northwest, to South Sioux City, Nebraska, at the request of Rudy LeRoy Spirk and Channel 289A to Winnebago, Nebraska, at the request of The Winnebago Tribe of Nebraska. The allotments could provide each community with its first local FM service.

With this action, this proceeding is terminated.

EFFECTIVE DATES: October 14, 1986. The window period for filing applications for these channels will open on October 15, 1986, and close on November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-16, adopted August 21, 1986, and released September 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 NW., 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In paragraph (b) of § 73.202, the table of allotments is amended by adding, under Nebraska, South Sioux City, Channel 296A, and Winnebago, Channel 289A.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-20769 Filed 9-12-86; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 522, 552, and 553

[APD 2800.12 CHGE 30]

General Services Administration Acquisition Regulation; Labor Standards

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise Parts 522, 552, and 553 to conform to the Federal Acquisition Regulation (FAR) as recently revised by FAC 84-4 to reflect requirements of Pub. L. 99-145, the Department of Defense Authorization Act, and to conform to the regulation issued by the Department of Labor that provides for the publication of prevailing wage rates established under the Davis-Bacon and related acts through a Government Printing Office subscription publication. Acquisition Circular AC-86-2 is cancelled and pertinent portions of the temporary regulation are incorporated in the regulation. The intended effect is to improve the regulatory coverage by bringing it in line with applicable Federal regulations.

EFFECTIVE DATE: August 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4764.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 1986, the General Services Administration (GSA) published in the **Federal Register** (51 FR 4366) Acquisition Circular AC-86-2 which temporarily amended Part 522 of the GSAR to implement the provisions of Pub. L. 99-145, the Department of Defense Authorization Act, that amended Contract Work Hour and Safety Standards Act and the Walsh-Healy Public Contracts Act, and invited comments from interested parties. Comments received from the Office of Federal Procurement Policy, Office of Management and Budget and various GSA offices have been reviewed, reconciled and incorporated when appropriate in the final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA 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.). The rule merely amends the GSAR to make it conform to the FAR as recently revised to implement Pub. L. 99-145 and to the Department of Labor (DOL) regulation that was recently revised to change the method of publication of Davis-Bacon wage determinations. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 522, 552, and 553

Government procurement.

1. The authority citation for 48 CFR Parts 522, 552, and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 522 is amended by revising the title of section 522.302 to read as follows:

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 522.3—Contract Work Hours and Safety Standards Act

Sec.

522.302 Liquidated damages and overtime pay.

3. Section 522.302 is amended by revising the section title to read as follows:

522.302 Liquidated damages and overtime pay.

4. Section 522.402–3 is revised to read as follows:

522.402–3 Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), requires that certain contracts contain a clause (see FAR 52.222–4), specifying that a laborer or mechanic doing any part of the work covered by the contract may not be required or permitted to work more than 40 hours in any workweek unless the laborer or mechanic is compensated at not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in any workweek. For violations of the excess hours provisions of the act, the contractor is liable for restitution of unpaid wages to the employee and for the payment of liquidated damages to the Government at a rate of $10 per calendar day for each employee who was required or permitted to work overtime hours in violation of the act. For conditions under which a contractor may be relieved of the assessment of liquidated damages, see GSAR 522.405–13. Procedures to be followed in withholding funds to cover underpayments to employees are prescribed in GSAR 522.405–9 and GSAR 522.405–10.

(b) In addition to the requirements under GSAR 522.402–3(a), the act provides that employers must not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards issued by the Secretary of Labor. Violation of the safety and health standards provisions of the act may be cause for termination of the contract.

5. Section 522.403 is amended by revising the second clause listed in paragraph (a) and by revising paragraph (c) to read as follows:

522.403 Contract clauses.

(a) * * *

Contract Work Hours and Safety Standards Act Overtime Compensation clause at FAR 52.222–4.

* * * * *

(c) Every construction contract in excess of $2,000 for work outside the United States, but which is nevertheless subject to the Contract Work Hours and Safety Standards Act as set forth in FAR Subpart 22.3, shall include the Contract Work Hours and Safety Standards Act Overtime—Compensation clause at FAR 52.222–4.

6. Section 522.404–1 is amended by revising paragraph (a) to read as follows:

522.404–1 Types of wage determinations.

(a) A notice of the general wage determination is published in the **Federal Register.** The wage determination is used by all Government agencies. It specifies prevailing wage rates for the types of construction named in the determination for use in contracts performed within a given geographical area. The determination remains in effect until modified, superseded, or canceled by a notice in the **Federal Register.** The determination must be used whenever possible. They are issued at the discretion of the Department of Labor upon agency request or on the initiative of the Department of Labor. The General Wage Determinations Issued Under The Davis-Bacon and Related Acts are available to contracting offices by subscription. Subscriptions may be obtained by contacting: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or telephone (202) 783–3238.

* * * * *

7. Section 522.404–4 is amended by revising paragraph (a), the introductory text of (b), and paragraphs (c), and (d) to read as follows:

522.404–4 Modifications of wage determinations.

(a) The Secretary of Labor may modify a wage determination by issuing a "letter of inadvertence" to correct a clerical error in the determination, a "notice of modification" which specifies changes in the determination, or a "supersedeas decision," which is a reissuance of the entire determination with changes incorporated. All these modifications expire on the same day as the original determination. Since the need for inclusion of a modification (other than letter of inadvertence) in a solicitation is determined by the time of receipt by the contracting agency concerned, all modifications shall be timedate stamped immediately upon receipt by the agency. Letters of inadvertence are applicable retroactively to the date of award regardless of when they are issued or received by the contracting officer. The need to include a modification of a general wage determination in a solicitation is determined by the publication date of the notice in the **Federal Register.**

(b) A modification to an individual or installation determination received by the contracting officer concerned 10 calendar days or more before bid opening, or a notice of a modification to a general determination published in the **Federal Register** 10 calendar days or more before bid opening, shall be processed as follows:

* * * * *

(c) When a modification that affects wage rates in a solicitation is received by the contracting agency (or when a general determination notice is published in the **Federal Register**) less than 10 days before bid opening in the case of sealed bid contracts, the solicitation should be modified if the contracting officer determines that there is reasonable time to notify all potential offerors of the changes. If the contracting officer finds that there is not enough time to notify potential offerors' the modification may be disregarded. The contracting officer must include in the contract file a written explanation when any modification is not incorporated in the solicitation. A copy of the statement must be furnished to the Department of Labor upon request.

(d) If the contract has not been awarded within 90 calendar days after bid opening, any modifications to the wage determinations for which a notice was published in the **Federal Register** prior to award will be effective with respect to that contract unless an extension from the 90 day period has been obtained from DOL. If a situation arises where award cannot be made within 90 calendar days after bid opening, the agency labor relations advisor or legal counsel should be contacted for guidance in obtaining an extension of the 90 day period. (If an extension is necessary, the contracting officer must not incorporate modifications to the general wage determination for which a notice was published after the bid opening without obtaining legal review and concurrence.)

* * * * *

8. The table of contents for Part 552 is amended by reserving section 522.222–71 and reads as follows:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 552.2—Text of Provisions and Clauses

Sec.

522.222–71 [Reserved]

552.222–71 [Removed and Reserved]

9. Section 552.222–71 is removed and reserved.

PART 553—FORMS

10. Section 553.270–3 is amended by revising paragraphs (a), (b), (c), and (e) to read as follows:

553.270–3 Contract clauses.

(a) GSA Form 2166, Service Contract Act of 1965 (as amended), is for use in connection with sealed bid and negotiated contracts for services to which the Act applies. Because the clause on this form must be included in solicitations/contracts in full text, the form may not be incorporated by reference.

(b) GSA Form 3504, Service Contract Clauses, is for use in connection with sealed bid and negotiated contracts for services, except small purchases. Until the form is revised, contracting officers must modify clauses 4, 13, 17, and 27 to conform to the current FAR requirements.

(c) GSA Form 3505, Labor Standards (Construction Contract), is for use in connection with sealed bid and negotiated contracts subject to the Davis-Bacon and related Acts. Because the clauses on this form must be included in solicitations/contracts in full text, the form may not be incorporated by reference. Until the form is revised, contracting officers must modify paragraph 2 of the form to include the March 1986 version of FAR clause at 52.222–4.

* * * * *

(e) GSA Form 3507, Supply Contract Clauses, is for use in connection with sealed bid and negotiated contracts for supplies. However, because most of the clauses on the form also apply to contracts for the rental of personal property, the form may also be used for rental contracts. Until the form is revised, contracting officers must modify articles 15, 16, 30, 33, 46, and 53 of the form to conform to the current requirements of the FAR and GSAR.

* * * * *

Dated: August 25, 1986.

Richard H. Hopf, III,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 86–20787 Filed 9–12–86; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-8)]

Exemption From Regulation; Boxcar Traffic

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is exempting boxcar joint rates from regulation, except joint rates on traffic originating or terminating at facilities served by Class III railroads. To the extent that an exemption is granted, the Commission finds continued regulation of boxcar joint rates unnecessary under the criteria of 49 U.S.C. 10505. Boxcar joint rates that are included in the exemption are no longer subject to tariff, notice, or other regulatory requirements. The exemption, however, is subject to full or partial revocation, should that become necessary to remedy anticompetitive conduct.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275–7245,

or

Thomas Gire, (202) 275–1723.

SUPPLEMENTARY INFORMATION: A notice reopening this exemption proceeding for further comment following judicial remand was published at 50 FR 23741, June 5, 1985, and time for filing reply comments was extended at 50 FR 40984, October 8, 1985.

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.

This action will not have a significant impact on a substantial number of small entities and will not significantly affect the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

For the reasons set forth in the preamble and explained fully in the decision, Part 1039 of Title 49, *Code of Federal Regulations*, is amended as follows.

PART 1039—CONTRACTS AND EXEMPTIONS

(1) The authority citation for Part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713, 10762, and 11105; 5 U.S.C. 553.

§ 1039.14 [Amended]

(2) Paragraph (b)(7) of § 1039.14, which designates "joint rates" as a subject of retained jurisdiction, is deleted. [A new paragraph (b)(7) and other new provisions are being promulgated in a notice of final rules which will be published in Ex Parte No. 346 (Sub-No. 19) in the near future. These include a provision—paragraph (c)(5)—that continues regulation of boxcar joint rates on traffic originating or terminating at facilities located on Class III railroads.]

Decided: September 5, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons concurred in the result with a separate expression. Chairman Gradison dissented in part with a separate expression. Commissioner Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86–20713 Filed 9–12–86; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 51, No. 178
Monday, September 15, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants, and Children; Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: A proposed rule that would amend 7 CFR Part 246, by prescribing a revised funding formula for the Special Supplemental Food Program for Women, Infants and Children (WIC), was published in the **Federal Register** on September 9, 1986 (51 FR 23093). A 30-day comment period, ending October 9, 1986, was announced. This notice extends that public comment period to November 8, 1986. The Department anticipates that the quality of the comments received will be enhanced if commentors are provided an additional 30 days in which to respond. The comments will thus be of greater value to the Department in developing the final rule.

DATE: Comments on the proposed rule must be received on or before November 8, 1986.

ADDRESS: Comments may be mailed to Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756–3746.

SUPPLEMENTARY INFORMATION: A number of considerations have led the Department to conclude that a 60-day comment period would be more appropriate. Consultations with State agencies preceded publication of the proposed rule, and the published proposal reflects substantive changes made at their request. Nevertheless, the State WIC Directors have generally supported a 60-day comment period. In light of the complexity of the proposed rule, the Department recognizes the merit of this assertion. The WIC Program would best be served by obtaining carefully formulated comments. Such comments will be very valuable to the Department in developing the final rule.

While State level WIC managers' input into the deliberations leading to publication of the proposed rule had a significant influence on the substance of the proposed formula, a larger universe of local level managers has not had the opportunity for input. Since the proposed rule would affect their functions as well as those conducted at State level, providing them more time to formulate their comments is appropriate.

In addition, the preamble to the proposed rule requested not only comments on the proposed revision to the food funding formula but also recommendations for revising the formula currently used to allocate administrative and program services funds. While the proposal to revise the food funding formula provides commentors with a specific proposal, no such specific proposal is provided with respect to the administrative and program services funding formula. State and local WIC managers and other interested parties are being asked to provide recommendations based solely on their own experience and original thinking. The Department recognizes the need for an administrative and program services funding formula that fairly reflects efficiency in the use of these funds, and that considerable expertise in achieving that objective exists at the State and local levels. It is hoped that extending the comment period will encourage more State and local WIC managers and other qualified persons to respond to this portion of the request for comments and to carefully consider their recommenations. The preparation of a proposed rule on the allocation of administrative and program services funds would thus benefit from input of enhanced quantity and quality.

The Department will accept comments postmarked on or before November 8, 1986. Commentors who have already submitted comments are welcome to submit additional recommendations if they wish to address new subjects or revise previous remarks. Otherwise, the comments previously submitted will be considered in the comment analysis.

Dated: September 10, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–20794 Filed 9–12–86; 8:45 am]

BILLING CODE 3410-30-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Records Reproduction and Search Costs

AGENCY: Federal Trade Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission proposes to amend its rules concerning fees assessed members of the public for reproduction and search costs incurred in processing requests for Commission records. The proposed amendments would reduce certain fees and increase others to reflect changes in costs to the government of providing the services. The amendments would also alter the criteria under which fees, for requests made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552 and for requests made pursuant to § 4.8 of the Commission's rules of Practice (16 CFR 4.8), could be waived. The criteria reflect judicial interpretations and guidance from the U.S. Department of Justice on the considerations given to the waiver of FOIA fees.

DATE: Comments will be received until October 15, 1986.

ADDRESS: Comments should be addressed to the Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 at the above address during the hours of 9:00 a.m. until 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Keith Golden, Information Services Division, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580 (202) 523–4912.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission's current

regulations on the availability of public information are contained in § 4.8 of its Procedures and Rules of Practice (16 CFR 4.8), and set forth the procedures for inspecting, copying or obtaining reproductions of records. The proposed amendments would reduce certain fees and increase others to reflect changes in costs to the government of providing the services. The amendments would also alter the criteria under which those fees would be waived in two respects. First, the Commission would include in the Rule several criteria to be used in determining whether a waiver of fees would be in the public interest. Second, the Commission would remove the provision in the Rule currently calling for an automatic waiver of fees for indigents. This amendment is necessary to bring Commission policy in line with court decisions which have held that indigent status in itself does not justify the waiver of fees. Like other requesters an indigent must show that a waiver of fees would be in the public interest, namely that the public will benefit from the requested disclosure. E.g., *Rizzo* v. *Tyler*, 438 F. Supp. 895, 900–01 (S.D.N.Y. 1977).

Finally, the Comission would change the Rule to provide that requests for waiver of fees made by government agencies will be granted only when the underlying request for documents is made for law enforcement purposes.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

In consideration of the foregoing, the Commission proposes to amend Title 16, Chapter I, Subchapter A, the Code of Federal Regulations, as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

2. Section 4.8(b) is amended by substituting the following sentence for the second sentence of that section.

§ 4.8 [Amended]

(b) * * * Subject to appropriate limitations, the availability of facilities and payment of prescribed duplication fees, any person may copy any of the public records available for inspection at each of those offices, or reproductions of any such records will be provided by the Commission to any person upon request in person or upon written request. * * *

3. Section 4.8(c)(1) is amended by substituting the following three sentences for the second and third sentences of that section.

§ 4.8 [Amended]

* * * * *

(c)(1) * * * Such a determination will ordinarily not be made unless the service to be performed will benefit primarily the public as opposed to the requester, or unless the requester is a government agency requesting the information for use in a law enforcement matter. In determining to grant a request for a waiver of fees, the Commission will consider criteria such as: whether a genuine public interest exists in the subject matter of the requested documents; the value to the public of the disclosable documents; whether the requested information already exists in the public domain; the requester's qualifications and ability and intention to disseminate the information to the public; the personal benefit, if any, to be gained by the requester; and any other matters bearing on the issue of waiving the fees for the requested materials. The first $5.00 of search and/or duplication fees are free to any requester unless the Deputy Executive Director for Planning and Information determines that requests are being made in such a way as to circumvent the Commission's fee policy or the requester requires a paper copy of material that is immediately available for free distribution on microfiche. * * *

4. Section 4.8(c)(2) is revised to read as follows:

§ 4.8 [Amended]

(c) * * *

(2) The following uniform schedule of fees applies to all constituent units of the Commission:

Reproduction

Paper Copy (up to 8½" X 14")
(Reproduced by Commission staff)...$0.14 per page
(Reproduced by Requester)....$0.05 per page
Computer Paper.....$0.14 per page

Microfilm Services

Film Copy—Paper to 16mm film...$0.02 per frame
Fische Copy—Paper to 105mm fische...$0.02 per frame + $0.23 per fiche
Film Copy—Repreduction of existing 100 ft. roll of 16mm film.....$3.35 per roll
Fiche Copy—Reproduction of existing 105mm fiche.....$0.04 per roll
Paper Copy—Converting existing 16mm film to paper
(Conversion by Commission Staff)...$0.23 per page
(Conversion by Requester).....$0.14 per page
Paper Copy—Converting existing 105mm fiche to paper
(Conversion by Commission Staff)...$0.23 per page
(Conversion by Requester).....$0.14 per page
Film Cassettes.....$3.60 per cassette

Search Fees

Clerical.....$11.30 per hour
Other professional.....$20.50 per hour
Attorney/Economist.....$30.40 per hour

Certification.....$10.35 each

By direction of the Commission dated: September 9, 1986.

Emily H. Rock

Secretary.

[FR Doc. 86–20765 Filed 9–12–86; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-23602; File No. S7-21-86]

Securities; Net Capital, Customer Protection, Recordkeeping and Quarterly Securities Count Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comments on the costs and benefits of the following proposed amendments to its net capital, customer protection, recordkeeping and quarterly securities count rules under the Securities Exchange Act of 1934 ("Act") in connection with the treatment of repurchase and reverse repurchase agreements entered into by registered broker-dealers. The net capital rule would be amended to establish deductions from net worth in arriving at net capital for repurchase and reverse repurchase agreements under certain credit risk circumstances. The rule would be further amended to require additional capital when the broker-dealer has attained a high degree of leverage as a result of those agreements. The customer protection rule would be amended to require broker-dealers that agree to retain securities subject to repurchase agreements to disclose the rights and liabilities of the parties, and to disclose that the Securities Investor Protection Corporation ("SIPC") has taken the position that coverage under the Securities Investor Protection Act of 1970 is not available for repurchase agreement participants. The customer protection rule would be further amended to require broker-dealers that agree to retain securities subject to repurchase agreements ("hold in custody repos") to maintain such

securities within their possession or in a safe location. An exception to this requirement would be made for intra-day deliveries of securities underlying institutional-sized term hold in custody repos. The rule would be further amended to require broker-dealers to identify the securities subject to those repurchase transactions. The recordkeeping rule would be amended to specifically require broker-dealers to maintain certain books and records with respect to their repurchase and reverse repurchase transactions, including stock records, ledgers, and copies of all confirmations. The quarterly securities count rule would be amended to clarify that broker-dealers are required to account for securities that are the subject of repurchase and reverse repurchase agreements, as they would for other securities for which they are responsible.

DATE: Comments to be received by November 14, 1986.

ADDRESSES: Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Reference should be made to File No. S7–21–86. Copies of the submission and of all written comments will be available for public inspection at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272–2904, Julio A. Mojica, (202) 272–2372, or Michael P. Jamroz (202) 272–2398, Division of Market Regulation, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: A repurchase agreement ("repo") involving a security is the sale of that security at a specified price with a simultaneous agreement to repurchase the security at a specified price on a specified future date. A reverse repurchase agreement involving a security is the purchase of that security at a specified price with a simultaneous agreement to resell the security at a specified price on a specified future date.

The market in repurchase agreements involving government securities has grown enormously in the last five years. The market generally works efficiently for both purchasers and sellers. It is a vital element in the financing of the inventory carried by government securities dealers, and is important in the channelling of short term funds into areas of need.

The Commission is concerned, however, with the effects of recent failures of several government securities dealers. Some participants in the government securities repurchase market, that were forced into liquidation proceedings, caused substantial harm to non-broker-dealers through fraudulent practices or inadequate accountability. In some instances, the broker-dealers pledged the securities that were the subject of hold in custody repurchase agreements.[1] Several of the situations involved broker-dealers that transmitted funds in excess of the value of the securities received under reverse repurchase agreements. The failures usually involved broker-dealers that were highly leveraged as a result of repurchase transactions. Some maintained inadequate books and records relating to their repurchase transactions.[2]

These failures, along with the recommendations of the Securities Industry Association's Capital Committee, have prompted the Commission to reexamine the financial responsibility rules for registered broker-dealers with respect to repurchase transactions.

The Commission proposes to amend the rules to ensure accountability of monies and securities obtained through repurchase agreements and to limit the leverage now available to some poorly capitalized firms in the market. The Commission also proposes for comment an amendment to its net capital rule which would disallow certain intercompany transactions between a regulated broker-dealer and an unregulated affiliate unless its examiners are permitted to inspect the books of that affiliate. Finally, the Commission requests comment on whether broker-dealers should report repurchase and reverse repurchase transactions at market value for net capital purposes.

I. Accountability for Money and Securities

1. Rule 17a–3

Rule 17a–3 prescribes the books and records that a broker-dealer is required to maintain. The Commission proposes to amend the rule in three ways to ensure accountability for the cash and securities involved in repo transactions. The proposed amendments would specifically require a broker-dealer to: (i) Maintain a separate ledger reflecting the assets and liabilities resulting from repurchase transactions (commonly referred to as a "Repo Book"); (ii) record securities subject to repurchase and reverse repurchase agreements on the securities record; and (iii) maintain copies of confirmations that it sends out with regard to repurchase transactions. The purpose of these amendments is to ensure that all repurchase and reverse repurchase transactions are properly recorded on the books and records of the broker-dealer.

2. Rule 17a–13

Rule 17a–13 requires that broker-dealers physically count, verify and account for securities held in their physical possession or otherwise within the broker-dealer's control or direction. Currently, the Rule does not contain a specific reference to securities that are the subject of repurchase and reverse repurchase agreements. The proposed amendments would make it clear that a broker-dealer is held accountable for repo securities as it is for other securities subject to its possession or control.

II. Hold in Custody Repurchase Agreements

1. Disclosure and Possession or Control Requirements

Rule 15c3–3 generally restricts a broker-dealer's use of customer property in its business. With respect to customer funds, the Rule requires the broker-dealer to compute, on a periodic basis, the "Formula for Determination of Reserve Requirement for Brokers and Dealers" ("Reserve Formula"), which compares the amount of funds that it owes customers or has obtained through the use of customer securities to the amount of funds it is owed, either by customers, or in connection with customer securities transactions. Pursuant to the Reserve Formula calculation, any excess customer funds held by the broker-dealer must be deposited in a "Special Reserve Bank Account for the Exclusive Benefit of Customers".

In addition, the Rule requires the broker-dealer to maintain in its possession or control fully-paid customer securities and excess margin securities. Excess margin securities are those securities in a customer's margin account that exceed in value 140 percent of the amount that a margin customer owes the broker-dealer.

In connection with the failures of various Government securities dealers, the Commission has observed fraudulent practices relating to "hold in

[1] A "hold in custody" repurchase agreement is a repurchase agreement where the broker-dealer retains custody of the repo participant's securities.

[2] *See The Regulation of the Government Securities Market*, Report by the Securities and Exchange Commission to the Subcommittee on Telecommunications, Consumer Protection and Finance of the Committee on Energy and Commerce of the U.S. House of Representatives (June 20, 1985).

custody" repurchase agreements. In the E.S.M. Government Securities, Inc. ("ESM") and Bevill, Bresler & Schulman, Inc. ("BBS") failures, the broker-dealers allegedly hypothecated the securities subject to repurchase agreements.

In the current BBS litigation, the Court is considering whether securities subject to hold in custody repurchase agreements are covered under the Securities Investor Protection Act of 1970 ("SIPA").[3] SIPC's position is that persons engaging in repurchase and reverse repurchase agreements are not customers within the meaning of SIPA and are therefore not covered under SIPA.

Under the proposed amendments, broker-dealers that retain securities subject to repurchase agreements would be required to disclose the rights and liabilities of the parties. This can be done by means of a written repo agreement between the broker-dealer and the customer. The broker-dealer would further be required to disclose SIPC's position that repo participants are not protected by SIPA.

The proposed rule would also specifically require the broker-dealer to confirm the securities subject to the repurchase transaction held in its custody. If different securities are substituted for those that were originally identified as the subjects of the repurchase agreement, an updated confirmation stating the identity of the securities that are currently the subjects of the agreement would be required.

Finally, the proposed rule will generally require broker-dealers to maintain possession or control, at least overnight, over all securities subject to hold in custody repurchase agreements. The Commission understands that in a significant number of term hold in custody repurchase agreements, the broker-dealers, during the trading day, do not maintain possession or control of the securities which are the subject of the repos. The securities are segregated by the close of business on the day of the transaction, but are promptly returned to the broker-dealers' "free box" at the opening of business the following day. Thus, the broker-dealers may deliver the securities to complete other transactions. By the close of business of that day, the repo participant is either repaid or securities are once again segregated. This process is continued until the maturity of the term repo.

The possession or control requirements of Rule 15c3–3 are among the most important aspects of the Commission's financial responsibility program. They have worked extremely well in the equity market and are well understood as necessary and desirable rules. Moreover, in light of the abuses uncovered in connection with the recent failures of government securities dealers, the Commission believes that requiring overnight possession or control of securities which are the subject of term hold in custody repos is essential to preventing improper over-pledging of those positions.

The Commission recognizes, however, that full application of Rule 15c3–3 to term hold in custody repos would be at variance with current industry practice. As a general rule, the Commission believes that, in the normal brokerage business, where broker-dealers are entrusted with custody of customers' securities, commingling of those securities with firm proprietary positions is inappropriate. However, alteration of existing practices may cause serious disruption to settlements in the government securities markets. In light of the substantially institutional nature of the repo markets and in the absence of problems in the huge and efficient government securities market resulting solely from the industry practice of not assigning specific securities to term hold in custody repos during the trading day, the Commission believes that adequate protection of repo participants can be achieved by requiring possession or control on an overnight basis.

The Commission therefore proposes to include in the amendments to Rule 15c3–3 an exception with respect to intraday possession or control of securities underlying term hold in custody repos. The exception would be limited to repos with a minimum dollar amount of $1,000,000.[4]

The Commission also solicits comments as to whether other requirements (*e.g.*, consent) or disclosures should be imposed as a condition for the exception.

The Commission believes that the above provisions regarding hold in custody repos will further the purposes of the Commission's financial responsibility rules which are to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers. Comments are solicited on the potential sources of cost and the potential benefits associated with the proposed amendments to Rule 15c3–3. The Commission also seeks quantification of any costs and/or benefits identified.

2. Hold in Custody Repos and Free Credit Balances

The Commission also requests comment on whether Rule 15c3–3 should limit the ability of broker-dealers to enter into hold in custody repurchase agreements with certain customers to prevent abuses of free credit balances. During examinations of broker-dealers, the examination staff has observed that some firms designate inventory to be used for hold in custody repos with small retail customers with free credit balances in apparent circumvention of Rule 15c3–3.

III. Leverage and Risk Control

1. Reverse Repurchase Agreement Deficits

The net capital rule requires that a broker-dealer's net capital must exceed the greater of § 25,000 or 6⅔ percent of its aggregate indebtedness, if the broker-dealer does not elect the alternative method of computing net capital. If it does elect the alternative method, the broker-dealer's net capital must exceed the greater of $100,000 or 2 percent of its aggregate debit items as computed in accordance with the Reserve Formula of Rule 15c3–3. Net capital is computed by deducting from net worth, among other things, illiquid assets and certain percentage deductions of the market value of securities, generally referred to as "haircuts".

Subparagraph (c)(2)(iv)(F) of Rule 15c3–1 presently prescribes a schedule of haircuts ranging from 0 percent to 100 percent of deficits resulting from reverse repurchase agreements (*i.e.*, the difference between the contract price and the market value of the security). The amount of the charge depends on the time to maturity of the repo agreement.

The schedule of deductions that is currently set forth in the Rule does not reflect all of the risk inherent in certain reverse repurchase transactions. If a broker-dealer does not receive securities or other property of sufficient worth to cover the contra party's obligation under a reverse repurchase agreement, that broker-dealer is exposed to risk for the amount of the deficiency.

Instead of the present schedule of deductions, the broker-dealer would be required, under the proposed amendments, to deduct that portion of the reverse repurchase receivable which exceeds the market value of the underlying securities regardless of its

[3] *See In re Bevill, Bresler & Schulman, Inc. No. 85–2224 (D.N.J.) (Hill v. Fidelity New York, F.A., Adversary No. 85–5274).*

[4] The Commission specifically requests comment as to the appropriateness of the $1,000,000 level as the cutoff point for the exception, or whether a higher or lower dollar threshhold should be used.

time to maturity. The Commission understands that most broker-dealers, when engaging in reverse repurchase agreements, receive securities or margin worth more than the amount of funds extended to the repo participants.

2. Repurchase Agreements.

The net capital rule requires a broker-dealer to apply the haircuts in the Rule that relate to the securities underlying a repurchase agreement, if the securities allocate to its proprietary positions. The proposed amendments, in addition to the above haircuts, would require the broker-dealer to incur deductions in arriving at net capital, under certain circumstances, when the value of the securities subject to the repurchase agreement exceeds the funds received by the broker-dealer. The Rule as amended would set forth three separate tests which, if exceeded by the broker-dealer, would require a charge to net worth in computing net capital. The broker-dealer would be required to deduct only the greater of the three separate computations.

Under the first test, the broker-dealer would deduct the amount by which the value of the securities subject to a repurchase agreement exceeds 105 percent of the funds received by the broker-dealer under that agreement. This charge takes into account the risk that the broker-dealer is exposed to when it delivers securities under a repurchase agreement that are valued in excess of the amount the broker-dealer receives under the agreement. The Commission recognizes, however, that broker-dealers normally provide excess securities under a repurchase agreement as a "cushion" or margin. Thus, under the proposed amendments, the broker-dealer does not incur a deduction unless the value of the securities subject to the repurchase agreement exceeds 105 percent of the amount received by the broker-dealer.

The second test contemplates the risk associated with delivering an excessive amount of securities under repurchase agreements with a particular contra party. Under this test, the broker-dealer would deduct the excess of the difference between the market value of securities subject to agreements with a contra party and the funds received (if less than the market value of the securities) over 25 percent of the broker-dealer's tentative net capital.[5]

The third test compares the risk the broker-dealer incurs from all of its repos to its tentative net capital. Under this test, the broker-dealer would compare the aggregate market value of securities subject to repurchase agreements to the total amount it has received under such agreements. If the aggregate market value of the securities exceeds the funds received by an amount greater than 300 percent of the broker-dealer's tentative net capital, the broker-dealer would be required to deduct the amount that equals the excess over 300 percent of the broker-dealer's tentative net capital. In computing the proposed haircuts, the broker-dealer would be allowed to net repurchase and reverse repurchase agreements entered into with the same party.

3. Excess Margin on Reverse Repurchase Agreements

Some broker-dealers create leverage by obtaining the use of funds through matched repurchase agreements. Those broker-dealers enter into reverse repurchase agreements, receive securities that are valued substantially in excess of the amount advanced, then sell the securities pursuant to repurchase agreements to obtain an amount of cash greater than the amount advanced under the reverse repurchase agreements. Under the proposed amendments, the broker-dealer would be required to increase its required net capital by 10 percent of the excess market value of securities subject to reverse repurchase agreements with one contra party over 105 percent of the funds paid pursuant to such agreements.

In addition to specific comments regarding these proposals, the Commission requests comment on whether the increased net capital requirement will sufficiently address the substantial leverage provided by certain reverse repurchase agreements and whether there are alternative solutions. In this connection, the Commission requests comment on whether the 105 percent limitation is the appropriate factor or whether it should vary depending on the type and maturity of security underlying the reverse repurchase agreement.

IV. Transactions With Affiliates

Some registered broker-dealers are affiliated with unregistered broker-dealers in government securities, or with other entities with whom the registered broker-dealers do business. Sometimes the registered broker-dealer does repo business with the general public and passes the securities or funds to the affiliated unregistered entity, creating a receivable due from the affiliate.

The Commission in the past has found it difficult to trace funds or securities without routinely examining the books of affiliated entities.[6] Even if the securities are in the custody of the registered broker-dealer, it is difficult to determine who actually controls them.

In the BBS failure, for example, reverse repurchase transactions with third parties were apparently disguised as intercompany transactions. When this was discovered, the self-regulatory organization's examination staff had difficulty determining which entity controlled the securities subject to those agreements. In the E.S.M. failure, expenses and losses attributable to the government securities dealer were transferred to an affiliate via fictitious intercompany transactions. The financial statements of E.S.M., which did not reflect those expenses and losses, were disseminated to various third parties.

Under the circumstances, the Commission preliminarily believes that any receivable otherwise allowable for net capital purposes from an affiliate should be disallowed and the value of securities or other property given to an affiliate in connection with a liability which is in excess of that liability should be a charge to capital, unless the affiliate makes available upon request its books and records to the examination staffs of the Commission and the Examining Authority of the registered broker-dealer involved.[7] Transactions with an affiliate which is either an insurance company regulated by a state, an investment company registered under the Investment Company Act of 1940, a federally insured savings and loan association or a bank as defined in section 3(a)(6) of the Act would be exempt from this provision. The Commission requests comment on whether other classes of affiliates should be exempt from this provision.

V. Marking Repos to the Market

Under generally accepted accounting principles, repos are treated as financing transactions. Currently, the security is recorded at market value in the broker-dealer's inventory and the corresponding liability reflects the

[5] Tentative net capital equals net capital plus haircuts on securities positions.

[6] Currently, the Commission may only inspect the books and records of an unregistered government securities dealer either by consent or by use of a subpoena based on possible violations of the Federal securities laws.

[7] The term "Examining Authority" is defined in Rule 15c3-1(c)(12) to mean the national securities exchange or national securities association of which the broker-dealer is a member, or if the broker-dealer is a member of more than one, a self-regulatory organization designated by the Commission as having responsibility for the broker-dealer's compliance with the financial responsibility rules.

monies borrowed plus accrued interest. No adjustment is made to reflect any gain or loss that the broker-dealer incurs due to the difference between the market interest rate and the repurchase agreement interest rate. Several industry groups have recommended changing this treatment. The Securities Industry Association's Capital Committee has recommended to the Commission that:

". . . it would be appropriate to impose a haircut on repo and reverse repo transactions to the extent such transactions expose the broker-dealer to interest rate risk."[8]

Similarily, the Repurchase Agreements Task Force of the Stockbrokerage Auditing Subcommittee of the American Institute of Certified Public Accountants ("Task Force") has concluded:

". . . an entity that follows the accounting principles established for brokers and dealers in securities should report a term repurchase or term reverse repurchase agreement in government securities at market value in the financial statements."[9]

The Task Force further concluded that term repo transactions have attributes similar to proprietary trading positions and should be reported in the financial statements in a manner similar to proprietary trading positions, that is, by marking the agreements to market.

The Commission believes that this is an important issue which should be explored further. In addition to whether repos and reverse-repos should be marked to the market for net capital purposes, the Commission asks whether a separate haircut representing the market risk inherent in repurchase and reverse repurchase agreements should be imposed. The Commission solicits the comments of broker-dealers, accounting firms and others on this matter.

VI. Costs and Benefits

The Commission requests comment on the costs and benefits of the proposed rule amendments and the effect of those costs and benefits on the repo market.

1. With respect to the proposed amendments to Rules 17a–3 and 17a–13 regarding accountability for money and securities, the Commission believes that most broker-dealers are currently in compliance with the proposed provisions, and will not incur significant additional costs if and when they are adopted. The Commission also believes that the accountability provisions, if adopted, will facilitate the self-regulatory organizations' and the Commission's ability to carry out their respective regulatory and oversight responsibilities.

Other views on the potential sources of cost and potential benefits are sought by the Commission, particularly if commentators can include quantification of any costs and/or benefits identified.

2. Potential costs associated with the proposed amendments to Rule 15c3–3 may include legal costs to determine the rights and liabilities of the parties involved in a hold in custody repo agreement, and the cost of disclosing the identity of securities subject to a hold in custody repo and/or keeping that disclosure current. The Commission understands that, while some broker-dealers currently send lists of the securities that they are holding on behalf of their repo participants, others may not, and therefore may incur a cost because of this required disclosure.

Comments are solicited on the potential sources of cost and the potential benefits associated with the proposed amendments to Rule 15c3–3. The Commission also seeks quantification of any costs and/or benefits identified.

3. The proposed amendments to Rule 15c3–1 may require a broker-dealer to take deductions in arriving at net capital under certain circumstances and to increase its required net capital in certain situations, thereby causing it to incur costs associated with such deductions and required increase.

The Commission believes these leverage and risk limitations will serve to protect all customers and other persons dealing with the broker-dealer, not just the repo participants.

The Commission requests comment on the potential sources of cost and potential benefits associated with this proposed amendment, and specifically requests quantification of any costs and/or benefits identified.

4. Finally, the Commission requests that comments be addressed to the potential sources of cost and potential benefits of a rule requiring broker-dealers to mark repo agreements to market for net capital purposes, and invites quantification of any costs and/or benefits identified.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the objective of the proposed amendments is to further the purposes of the various financial responsibility rules which are to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers and to require broker-dealers to maintain such records as necessary or appropriate in the public interest or for the protection of investors. The Analysis states that the proposed amendments would subject small broker-dealers to additional recordkeeping, disclosure, capital and accountability requirements. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Michael P. Jamroz, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549 (202) 272–2398.

VIII. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78*o*(c)(3), 78q and 78w, the Commission proposes to amend §§ 240.15c3–1, 240.15c3–3, 240.17a–3, and 240.17a–13 of Title 17 of the Code of Federal Regulations in the manner set forth below.

IX. Text of Proposed Amendments

In accordance with the foregoing, it is proposed to amend 17 CFR Part 240 as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w * * *. Sections 240.15c3–1, 240.15c3–3, 240.17a–3 and 240.17a–13 are also issued under Secs. 15(c)(3) and 17(a), 15 U.S.C. 78*o*(c)(3) and 78q(a).

2. By revising paragraphs (c)(2)(iv)(F)(*1*) and (c)(2)(iv)(F)(*2*) and by adding paragraphs (a)(9) and (c)(2)(iv)(H) of § 240.15c3–1 as follows:

§ 240.15c3–1 Net capital requirements for brokers and dealers.

(a) * * *

(9) *Certain Additional Capital Requirements for Brokers or Dealers Engaging in Reverse Repurchase Agreements.* A broker or dealer that engages in reverse repurchase agreements shall maintain net capital in addition to the amounts required under paragraphs (a) (1)–(8) or (f) of this section in an amount equal to 10 percent of the excess of the market value of securities subject to reverse repurchase agreements with any one person over 105 percent of the contract prices for

[8] *See* Letter from Michael Minikes, Chairman of the SIA Capital Committee dated July 26, 1985 at p. 14.

[9] *See Conclusions on Accounting for Repurchase and Reverse Repurchase Transactions.* Repurchase Agreements Subcommittee of the American Institute of Certified Public Accountants, August 31, 1984.

resale of the securities under reverse repurchase agreements with that person.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(F)(*1*) For purposes of this paragraph:

(*i*) The term "reverse repurchase agreement deficit" shall mean the excess of the contract price for resale of the securities under a reverse repurchase agreement over the market value of those securities.

(*ii*) The term "repurchase agreement deficit" shall mean the excess of the market value of securities subject to the repurchase agreement over the contract price for repurchase of the securities.

(*iii*) As used in paragraph (*i*) and (*ii*) of this section, the term "contract price" shall include accrued interest.

(*2*) In the case of a reverse repurchase agreement, the deduction shall be equal to the reverse repurchase agreement deficit, reduced by:

(*i*) Any margin or other deposits held by the broker or dealer on account of the reverse repurchase agreement;

(*ii*) Any excess market value of the securities over the contract price for resale of those securities under any other reverse repurchase agreement with the same person; and

(*iii*) The excess of the contract price for resale over the market value of securities subject to repurchase agreements with the same person.

(*3*)(*i*) In the case of repurchase agreements, the deduction shall be the greatest of:

(*A*) The excess of the repurchase agreement deficit over 5 percent of the contract price for resale of the securities; or

(*B*) The excess of the aggregate repurchase agreement deficits with any one person over 25 percent of the broker or dealer's net capital before the application of paragraphs (c)(2)(vi) or (f)(3) of this section; or

(*C*) The excess of the aggregate repurchase agreement deficits over 300 percent of the broker or dealer's net capital before the application of subparagraphs (c)(2)(vi) or (f)(3) of this section.

(*ii*) In determining the required deduction under subsection (F)(3)(i), the broker, or dealer may reduce a repurchase agreement deficit by:

(*A*) Any margin or other deposits held by the broker or dealer on account of a reverse repurchase agreement with the same person to the extent not otherwise used to reduce a reverse repurchase agreement deficit;

(*B*) Any excess market value of the securities over the contract price for resale of those securities under any reverse repurchase agreement with the same person to the extent not otherwise used to reduce a reverse repurchase agreement deficit; and

(*C*) The excess of the contract price over the market value of securities subject to other repurchase agreements with the same person to the extent not otherwise used to reduce reverse repurchase agreement deficit.

* * * * *

(*H*) Any receivable from an affiliated person of the broker or dealer (to the extent not otherwise deducted from net worth), and the market value of any property securing a liability to an affiliate (to the extent not otherwise deducted from net worth) in excess of the amount of such liability, unless the books and records of the affiliate are made available for examination when requested by the representatives of the Commission or the Examining Authority for the broker or dealer and such books and records demonstrate the validity of the receivable or payable. The provisions of this subsection shall not apply where the affiliate is a registered broker or dealer or bank as defined in section 3(a)(6) of the Act or insurance company as defined in section 3(a)(19) of the Act or investment company registered under the Investment Company Act of 1940 or federally insured savings and loan association.

* * * * *

3. By adding paragraph (b)(4) to § 240.15c3–3 as follows:

§ 240.15c3–3. Customer protection-reserves and custody of securities.

* * * * *

(b) * * *

(4) A broker or dealer that has agreed to retain in custody securities that are the subjects of a repurchase agreement with a person other than a broker or dealer shall:

(i) Disclose in writing to the contra party to the repurchase agreement:

(A) The rights and liabilities of the parties as to the monies payable under such repurchase agreement;

(B) The rights and liabilities of the parties as to the securities subject to such repurchase agreement; and

(C) That the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the contra party with respect to the repurchase agreement.

(ii) Confirm the specific securities that are the subjects of the agreement at the time the agreement was entered into and as often as the securities are changed.

(iii) Maintain physical possession or control of such securities. A broker or dealer shall not be required to maintain physical possession or control during the trading day of securities subject to a repurchase agreement with a contract price of $1,000,000 or greater. For purposes of this subparagraph, securities are within the broker or dealer's control only if they are in the control of the broker or dealer within the meaning of paragraphs (c)(1), (c)(5) or (c)(6) of this section.

* * * * *

4. By revising paragraphs (a)(4)(v), (a)(4)(vi), (a)(5) and (a)(8), and adding paragraph (a)(4)(vii) to § 240.17a–3.

§ 240.17a–3 Records to be Made by Certain Exchange Members, Brokers and Dealers.

(a) * * *

(4) * * *

(v) Securities failed to receive and failed to deliver;

(vi) All long and all short securities record differences arising from the examination, count, verification and comparison pursuant to Rule 17a–13 and Rule 17a–5 hereunder (by date of examination, count, verification and comparison showing for each security the number of long or short count differences);

(vii) Repurchase and reverse repurchase agreements.

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker or dealer for his account or for the account of his customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

* * * * *

(8) Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

* * * * *

5. By revising paragraph (b)(1), (b)(2) and (b)(3) of § 240.17a–13 as follows:

§ 240.17a-13 Quarterly security counts to be made by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(1) Physically examine and count all securities held, including securities that are the subjects of repurchase or reverse repurchase agreements;

(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

(3) Verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than thirty days;

* * * * *

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

September 4, 1986.

[FR Doc. 86-20719 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-295-84]

Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the diversification requirements for variable annuity, endowment, and life insurance contracts. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by November 14, 1986.

The regulations are proposed to be effective, generally, for taxable years beginning after December 31, 1983.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-295-84), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) to provide rules under section 817 (h) of the Internal Revenue Code of 1954, as added by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 750). Those temporary regulations prescribe diversification requirements for variable annuity, endowment, and life insurance contracts.

This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. (T.D. 8101) published in the Rules and Regulations section of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a Regulatory Flexibility Analysis is not required (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

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

Drafting Information

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

List of Subjects in 26 CFR 1.801-1 through 1.832-6

Income taxes, Insurance companies.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86-20791 Filed 9-12-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Iowa as an amendment to the State's permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Iowa requested the amendment be made to bring the Iowa program regulations concerning sedimentation pond design events into conformance with the Federal regulations.

This notice sets forth the times and locations that the Iowa program and the proposed amendment will be available for public inspection, the comment period during which interested persons

may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., October 15, 1986, will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Iowa regulatory program. If requested, a public hearing on the proposed amendments has been scheduled for October 6, 1986. Any person interested in speaking at the hearing should contact Mr. William J. Kovacic at the address or telephone number listed below by September 30, 1986. If no person has contacted Mr. Kovacic by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing if requested, is scheduled for 1:00 p.m. at the Kansas City Field Office, 1103 Grand Avenue, Kansas City, Missouri 64106.

Written comments and requests for an opportunity to speak at the hearing should be directed to Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Copies of the Iowa program, the proposed modification to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Kansas City Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 L Street, NW., Washington, DC 20240

Iowa Department of Soil Conservation, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

The Iowa progran was conditionally approved by notice published in the January 21, 1981, **Federal Register** (48 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register.** Subsequent actions concerning the conditions of approval and program are identified at 30 CFR 915.11 and 915.15.

II. Submission of Revisions

By letter dated August 12, 1986, Iowa submitted amendments to subrule 4.522(15)c and 4.522(15)g. Proposed subrule 4.522(15)c amends the sedimentation pond detention time rule so that it more closely reflects the language found at 30 CFR 816.46(c)(1)(iii)(C). The proposed rule would allow a sedimentation pond to be designed for a precipitation event less than a 10-year, 24-hour one if approved by the regulatory authority. Iowa proposes to remove and reserve the subrule at 4.522(15)g. This deletes a requirement that there be no out flow through an emergency spillway during a 10-year, 24-hour or lesser precipitation event.

The full text of the proposed program amendments submitted by Iowa is available for public inspection at the addresses listed above.The Director now seeks public comment on whether the proposed amendments meet the requirements for approval pursuant to 30 CFR 732.17 and 732.15. If approved, the amendments will become part of the Iowa program.

III. Procedural Matters

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this section is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 8, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86–20760 Filed 9–12–86; 8:45 am]

BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 86–1]

Registration of Claims To Copyright Notice of Inquiry; Colorization of Motion Pictures

AGENCY: Library of Congress, Copyright Office.

ACTION. Notice of Inquiry.

SUMMARY: This notice of inquiry is issued to advise the public that the Copyright Office of the Library of Congress is examining the copyright registrability of colorization (colored versions) of black-and-white motion pictures. This notice is intended to elicit public comment, views, and information which will assist the Copyright Office in developing its practices regarding colorization and may lead to proposals to amend the regulations.

DATES: Initial comments should be received on or before October 15, 1986. Reply comments should be received on or before December 15, 1986.

ADDRESS: Interested persons should submit ten copies of their written comments to Office of the General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, telephone (202) 287–8380.

SUPPLEMENTARY INFORMATION: 1. *Originality requirement for derivative works.* The existing Copyright Office regulations provide that "mere variations of . . . coloring" are not subject to copyright. 37 CFR 201.1(a).

It has been suggested,[1] and the courts have held[2] that while color *per se* is uncopyrightable and unregistrable, arrangements or combinations of colors may warrant copyright protection.

Original and quantitatively non-trivial contributions by an author to a preexisting work may sustain a copyright in a derivative work. *Durham Industries, Inc.* v. *Tomy Corporation*, 630 F.2d 905, 909 (2d Cir. 1980). A derivative work is a work "based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, . . . or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship is a derivative work." 17 U.S.C. 101 (1982).

Copyright in a derivative work extends only to the new material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. 17 U.S.C. 103(b). The copyright in such a work is independent of, and does not affect or enlarge the scope, duration, ownership or subsistence of any copyright protection in the preexisting material. *Ibid.* Moreover, copyright protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully. *Ibid.*, 103(a).

To be copyrightable, the new material in the derivative work must constitute an "original work of authorship." To be copyrightable, a derivative work must embody new and original creativity that makes the resulting work more than a trivial variation of the original. Thus, the quantity of new matter added is relevant to copyrightabilty. Courts have defined the necessary *quantum* of original creative authorship in different ways, ranging from "a modicum," "a minimum," or "an appreciable amount" of creative authorship. The colorization of motion pictures presents new questions concerning the registrability of claims to copyright. The Copyright Office wants to elicit the views of the public with respect of claims in colorization.

2. *Colorization processes.* A motion picture generally embodies the contributions of many persons whose efforts are brought together to make a cinematographic work of authorship. Copyrightable elements include audio and visual components, literary or dramatic and musical elements, integrated into a unique whole. Mere mechanical or industrial processes however have never served as the basis for original or derivative authorship. Thus, for example, a claim to copyright based solely on conversion from 35mm film to one-half inch videocassette will not be registered, even though technical skill is often needed to assure faithful reproduction. In a highly technologic environment, distinguishing industrial artisanship from artistic creativity is not always easy. This is, however, what the Office must do—within the limits of its overall authority—under 17 USC 410(a).

The process of colorization of black-and-white motion pictures is an attempt to respond effectively to the apparent demands and tastes of the viewing public, which tends to prefer color.

The Copyright Office is aware of sharply held differences of view on the aesthetic consequences of colorizing previously distributed black and white film. Although it follows with interest the public and industry debate as to whether colorizations risks "mutilating" the conscious artistry of black-and-white cinematographers, these issues can not and do not form any part of this present inquiry.

Colorization practices tangentially raise questions about the term of copyright. Motion picture marketing practices might, in some cases, result in the effective extension of the copyright term in copyrighted preexisting works or in the recapture of works previously in the public domain. The Copyright Office requests that parties with knowledge of industry practices address these and other possibilities.

To date, the Copyright Office is aware that at least two enterprises have ventured in the business of colorization. They are the Color Systems Technology, Inc. (hereafter "CST") of Hollywood, California, and the Colorization, Inc. of Toronto, Canada. The systems may involve the use by "colorists" and art directors of computer data bases storing information gleaned by researchers relating to the actual color of costumes, sets, locales, and performers in black-and-white films. They apparently involve the application of colors to shots in films by individuals interacting with computers and special software. "Perfection" of the results may involve use of animation techniques. Once the colorists make certain initial decisions, the actual process of imposing color onto the entire film appears to be largely computer directed.

In addition to these computer-assisted coloring systems, another means of adding color to film exists, known as "Chromaloid." A so-called "color-retrieval" process, it does not appear to be computer-assisted.

3. *Specific questions.* To assist the Copyright Office in determining the registrability of colorized black-and-white motion pictures, comments are specifically requested on the following questions:

1. Which steps, if any, in the colorization processes involve individual creative human authorship?

2. Who are the authors of the copyrightable elements, if any, in colorized film?

3. With specific reference to the role of computer programs in colorization processes:

(a) How are colors selected? How are colors made available for selection? What factors influence color selection? How wide is the range of choice?

(b) In addition to coloring in the strict sense, are other cinematographic contributions, such as animation or other hand or computer assisted effects, utilized in colorizing?

4. Are all colorization processes intended solely to create videotapes in color? Are any methods now available or under development that would permit the commercially feasible colorization of 35mm prints of a quality that would permit theatrical distribution?

Copies of all comments received will be available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office, Room 401, James Madison Building, Library of Congress, 1st & Independence Avenue, SE., Washington, DC 20559.

If the Copyright Office decides to propose any change in the relevant regulations, it will publish a proposed text in the **Federal Register** and invite further comments at that time.

Authority: 17 U.S.C. 409, 410, and 702.

List of Subjects in 37 CFR Part 202

Claims, Copyright, Copyright Office, Registration of claims to copyright.

[1] NIMMER ON COPYRIGHT Section 2.14 (1985).

[2] *Pantone, Inc.* v. *A. I. Friedman, Inc.*, 294 F. Supp. 545 (S.D.N.Y. 1968); *Sargent* v. *American Greeting Corp.*, 588 F. Supp. 912, 918 (N.D. Ohio, 1984).

Dated: August 20, 1986.

Ralph Oman,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 86-20712 Filed 9-12-86; 8:45 am]

BILLING CODE 1410-07-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Foreign Medical Schools

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Administrator of Veterans' Affairs has the authority by law to deny or discontinue educational assistance to any veteran enrolled in an institution of higher learning not located in a State if the Administrator determines that the enrollment is not in the best interest of the veteran or the Federal Government. The Administrator is exercising this authority by providing additional criteria a foreign medical school must meet before a veteran's enrollment in the school's courses may be approved. This should ensure that the medical education veterans are receiving abroad is comparable to that which other veterans are receiving in the United States.

DATE: Comments must be received on or before October 15, 1986 .

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, VA Central Office, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 29, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service (225), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. (202) 389-2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.4260 is amended to provide criteria which foreign medical schools must meet before their courses can be approved for VA training.

The General Accounting Office (GAO), in a study entitled "Policies on U.S. Citizens Studying Medicine Abroad Need Review and Reappraisal" (HRD-81-32), stated: "The substantial numbers of U.S. citizens going abroad to study medicine with the goal of returning to practice in this country, together with the recent proliferation of foreign medical schools established to attract U.S. citizens, are reasons for growing concern . . . ." After visiting a sample of foreign medical schools with high enrollments visiting a sample of foreign medical schools with high enrollments of U.S. citizens, GAO found that none". . . offered a medical education comparable to that available in the United States . . . ."

To overcome this, GAO recommended that the Secretary of Eduaction issue regulations establishing criteria to ensure that approved foreign medical schools were comparable to U.S. medical schools, and that the VA approve only those schools approved by the Secretary. Subsequently, the Secretary issued final regulations for determining the eligibility of foreign medical schools under the guaranteed student loan program (34 CFR 601.1 through 601.7). However, the VA could not adopt the same standards as the Department of Education because of some conflicts with Title 38, U.S. Code. The proposed revisions to this section adopt the Department of Education's criteria found in 34 CFR 601.4 with the exception of § 601.4(e) and with some modifications designed to make these criteria consistent with Title 38.

The VA decided not to propose a paragraph similar to § 601.4(e) for two reasons. That paragraph requires that a foreign medical school's American graduates have achieved a pass rate of not less than 50 percent on the examination of the Educational Commission for Foreign Medical Graduates. That examination is no longer given to American graduates of foreign medical schools Furthermore, in Universidad Central Del Este v. Terrel H. Bell the United States Court for the District of Columbia set aside § 601.4(e). The Department of Education is no longer using it to decide if a foreign medical school should be eligible under the Guaranteed Student Loan Program. Since pursuant to the court order the Department of Education is not implementing § 601.4(e), it would be inappropriate for the VA to propose a similar regulation. Once the Department of Education has adopted objective criteria based upon the knowledge gained by American students at foreign medical schools, the VA will also adopt objective criteria.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the VA does not believe that the Congress intended RFA apply to foreign small entities. Even if this were not the case, the number of small entities affected would not be substantial. There are approximately 125 foreign medical schools with courses approved for VA training. Although there are insufficient data available to enable the VA to state the exact number of these which are small entities, the VA estimates that the percentage is small. A small percentage of 125 is not a substantial number.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these proposed regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 8, 1986.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by revising § 21.4260 to read as follows:

§ 21.4260 Courses in foreign countries.

(a) *Approval of postsecondary courses in foreign countries.* (1) In order to be approved a postsecondary course offered in a foreign country must meet all the provisions of this paragraph. A course offered by a foreign medical

school (other than one located in Canada) must also meet all of the provisions of paragraph (b) of this section. (38 U.S.C. 1676)

(i) The educational institution offering the course is an institution of higher learning, and

(ii) The course leads to a standard college degree or its equivalent.

(2) For the purpose of this paragraph, a degree is the equivalent of a standard college degree when the program leading to the degree has the same entrance requirements as one leading to a degree granted by a public degree-granting institution of higher learning in that country. (38 U.S.C. 1676; Pub. L. 96-466)

(b) *Approval of courses offered by a foreign medical school.* In addition to meeting all the criteria stated in paragraph (a) of this section, a course offered by a foreign medical school (other than one in Canada) must also meet all of the following criteria.

(1) The school satisfies the criteria for listing as a medical school in the World Directory of Medical Schools published by the World Health Organization (WHO).

(2) The evaluating bodies (such as medical associations or educational agencies) whose views are considered relevant by the Director, Education Service and which are located in the same country as the school—

(i) Recognize the school as a medical school, and

(ii) Approve the school.

(3) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom instruction at least 32 months long. This program must be—

(i) Supervised closely by members of the school's faculty, and

(ii) Provided either

(A) Outside the United States in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, or

(B) Inside the United States, through a training program for foreign medical students which has been approved by all the medical licensing boards and evaluating bodies whose views are considered relevant by the Director, Education Service.

(4) The school has graduated classes during each of the two 12-month periods immediately preceding the date on which the VA receives the school's application for approval of its courses.

(5) The Director, Education Service shall withdraw approval of any course when the course or the school offering it fails to meet any of the approval criteria in this section or in chapter 36, title 38, United States Code.

(6) In making the decisions required by this paragraph, the Director, Education Service may consult with the Secretary of Education. The Director may review any information about a foreign medical school which the Secretary may make available. (38 U.S.C. 1676)

(c) *Approval of enrollments in foreign courses.* (1) Except as provided in paragraph (c)(2) of this seciton, the VA will approve the enrollment of a veteran or eligible person in a course offered by an educational institution not located in a State when—

(i) The veteran or eligible person meets the eligibility and entitlement requirements of §§ 21.1040 through 21.1045, §§ 21.3040 through 21.3046 or §§ 21.5040 and 21.5041, as appropriate;

(ii) The veteran's or eligible person's program of education meets the requirements of § 21.4230 or § 21.5230 as appropriate; and

(iii) The course meets the requirements of this section and all other applicable VA regulations.

(2) The VA may deny or discontinue the payment of educational assistance allowance to a veteran or eligible person pursuing a course in an institution of higher learning not located in a State when the VA finds that the veteran's or eligible person's enrollment is not in the best interest of the veteran, eligible person or the Federal Government. (38 U.S.C. 1676)

[FR Doc. 86-20691 Filed 9-12-86; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[AD-FRL-3078-8]

Toxic Substances; Standards To Reduce Public Exposure to Chromium Emissions From Comfort Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of information.

SUMMARY: The purpose of this notice is to solicit information that would: (1) Help EPA determine if there is a need for standards to reduce public exposure to chromium emissions from comfort cooling towers (CCT's), and (2) help EPA develop any standards that are needed. The Agency is considering whether to develop standards that would eliminate the use of chromium-based chemicals for treatment of recirculating cooling water in existing and new CCT's. Such standards could be developed under the authority of the Clean Air Act, the Toxic Substances Control Act, or both Acts.

DATE: *Comments.* Comments must be received by October 15, 1986.

ADDRESS: *Docket.* A docket has been established for public comments. Send comments to Central Docket Section (LE-131), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460, Attention: Docket A-86-10. Comments should be submitted in duplicate if possible.

FOR FURTHER INFORMATION CONTACT: Dr. James U. Crowder or Mr. Ron Myers, Industrial Studies Branch (MD-13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5601.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA announced in the June 10, 1985, **Federal Register** (50 FR 24317) that the Agency was considering adding chromium or hexavalent chromium (Cr^{+6}) to the list of hazardous air pollutants under section 112 of the Clean Air Act. That notice also presented a preliminary estimate of nationwide chromium emissions from 11 source categories, including cooling towers, and announced that further studies were underway to improve the preliminary emission estimates and to identify additional source categories.

Hexavalent chromium in the form of sodium bichromate is sometimes added to cooling tower water. The primary purpose of the chromium is to protect the heat exchanger and chiller components of the cooling system from corrosion. Chromium added to the cooling tower water is either discharged into a wastewater system as blowdown or emitted into the air in droplets of water called "drift."

There are two types of cooling towers, industrial and comfort, with differences in cooling system conditions between the two. Comfort cooling towers are defined as cooling towers that are dedicated exclusively to and are an integral part of heating, ventilation, and air conditioning (HVAC) or refrigeration systems. Major users of CCT's include hotels; hospitals; shopping malls; banks; manufacturing plants; and office, insurance, and government buildings. Industrial cooling towers are defined as cooling towers used to control the temperatures of process fluids in

industrial production units. This notice is for CCT's; a separate EPA project is considering industrial cooling towers.

There are an estimated 200,000 CCT's in the United States. Of these, an estimated 20,000 to 50,000 are operating with chromium-based chemicals added to the cooling water. Chromate concentrations reportedly range from 1 to 30 milligrams per liter [1 to 30 parts per million (ppm)]. Based on an estimated 35,000 CCT's using chromate chemicals, an assumed chromium concentration of 13 ppm, and a drift rate for a typical low-efficiency drift eliminator (0.03 percent of recirculating water), between $1x10^9$ and $2.2x10^9$ gallons of drift containing 41 to 91 megagrams (45 to 100 tons) of Cr^{+6} are estimated to be emitted annually from CCT's. A range of emissions is presented to bound the extremes of the estimated size distribution of all CCT's.

II. Control Technology

Two possible methods for controlling chromium emissions from CCT's have been identified: Eliminating the use of chromium-based water treatments and use of high-efficiency drift eliminators.

A requirement to use nonchromium-based corrosion inhibitors would eliminate Cr^{+6} emissions from CCT's. Nonchromium water treatment substitutes, specific ones of which include phosphates, nitrates, molybdates, and polysilicates, are believed to be readily available. In fact, several nonchromium water treatment programs that provide adequate corrosion protection are marketed currently for CCT's by the same vendors that sell chromium treatment programs. The Agency has no information indicating that these substitutes should be considered as hazardous air pollutants.

The majority (75 to 90 percent) of CCT's use nonchromium alternatives or use no corrosion inhibitors, and present information indicates that these systems do not experience significant adverse impacts from corrosion as a result of not using chromium-based corrosion inhibitors. Also, cooling tower and water treatment vendors have stated that switching from chromium to nonchromium corrosion inhibitors is not expected to cause any operation or maintenance problems with the chiller components (heat exchanger) of the cooling system. The preliminary estimates also show that the costs of the alternative treatment programs are reasonable and that the nationwide impacts on building rental costs are negligible.

Preliminary information indicates that a standard for CCT's based upon high-efficiency drift eliminators theoretically may reduce Cr^{+6} emissions from most towers using chromium-based chemicals by 50 to 90 percent. One drift eliminator vendor has estimated that 25 to 45 percent of all CCT's can be retrofitted with high-efficiency drift eliminators by replacement of existing low-efficiency drift eliminators; 50 to 75 percent of all CCT's may require extensive modification (replacement of existing electric motor(s) by larger motor(s), metal fabrication, etc.); and, for 5 percent of all CCT's, retrofit essentially would require building a new tower because of space limitations within the tower.

However, to implement an effective standard based on use of high-efficiency drift eliminators, some combination of equipment specifications, performance testing, site inspection, and/or product certification would be necessary. At the present time, there is no single standard high-efficiency drift eliminator design, and it is unclear how emission rates or efficiencies of these drift eliminators are related to their design. Therefore, it would be difficult to specify design requirements for a high-efficiency drift eliminator.

Additionally, performance testing of each CCT is not considered reasonable because of the cost of testing. A cooling tower performance test is estimated to cost about $10,000 to $20,000. This cost is high relative to the cost of high-efficiency drift eliminators. Development and implementation of an insepction and/or certification program would be costly and time consuming. The Agency also would need to develop a reference test method, develop a standard set of test conditions for certification testing related to actual operating conditions of a variety of types of cooling towers, and identify critical installation criteria to be specified in the installation instructions of the drift eliminator. For these reasons, high-efficiency drift eliminators are not considered a feasible control option at this time primarily because of the difficulties in implementing such an option.

In conclusion, the elimination of chromium use in CCT's appears to be a technically and economically feasible control technique. Such an approach would eliminate CCT chromium emissions. It also would provide additional environmental benefits because a source of water pollution would be removed by eliminating chromium in the blowdown from CCT's. In contrast, high-efficiency drift eliminators do not appear to be an appropriate control option for CCT's at this time.

III. Information Requested

The Agency is continuing to refine estimates of emissions and is further assessing control technologies. The on-going data gathering effort is designed to define more accurately: (1) The current nationwide baseline emissions from chromium use in CCT's and (2) the feasibility and costs of alternative water treatment programs.

The major tasks that EPA plans to gather additional information and data on CCT's include: (1) case studies of individual CCT's based upon interviews with owners/operators of CCT's; (2) interviews with cooling tower manufacturers, cooling system manufacturers and suppliers, chemical suppliers and service companies, and architect/engineer consulting firms; and (3) review of information provided by interested parties responding to this notice or attending a public meeting of the National Air Pollution Control Techniques Advisory Committee held on September 17, 1986, in Durham, North Carolina.

To refine the estimated baseline emissions and potential for control of chromium emissions, the Agency is soliciting data on the technical, cost, economic, implementation, and health aspects of regulating chromium use in CCT's. Specifically, the Agency solicits information on the following subjects. First, for the control option that is based on the elimination of the use of chromium-based water treatments the following information is requested:

1. Number and distribution of CCT's in operation in the U.S., including:

a. Number, size, location, and alternative chemicals used in CCT's using nonchromium water treatment programs;

b. Number, size and location of CCT's using no corrosion inhibitor;

2. Any significant differences among the designs of comfort cooling systems that use CCT's that would preclude the use of nonchromium-based corrosion inhibitors in some systems;

3. Nonchromium-based water treatment program used in CCT's, including costs of the program;

4. Availability of assessments (quantitative or qualitative) of corrosion and scaling rates in comfort cooling systems using chromium or nonchromium water treatment programs;

5. Comparisons, including quantities of chemicals used, for chromium- and nonchromium-based treatment programs based on experience in switching from chromium to nonchromium programs;

6. Health effects from nonchromium corrosion inhibitors. Second, for the other control option described in this notice that involves the application of high-efficiency drift eliminators, the Agency requests information on the following subjects;

1. The Agency's tentative decision to eliminate from further study high-efficiency drift eliminators as a potential regulatory option for CCT's;

2. Number, size, location, chromium concentrations, and feasibility of retrofitting high-efficiency drift eliminators for CCT's using chromium-based corrosion inhibitors;

3. Test methods and conditions for certification of the effectiveness of cooling tower drift elininators, including the costs and resources involved in these programs;

4. Appropriate criteria for evaluating whether a certified drift eliminator is achieving the certified level of drift emissions after installation.

Third, to assess baseline estimates, the Agency solicits information on drift rates from CCT's and the types of drift eliminators used on CCT's.

Information submitted in response to this notice should be documented and be as quantitative and precise as possible. However, any other relevant information is also of interest to the Agency.

Dated: September 5, 1986.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-20589 Filed 9-12-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[FR 3023-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Dioxin-Containing Wastes

AGENCY: Environmental Protection Agency.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is today issuing a final decision to deny the petition submitted by the Vulcan Materials Company, who requested that EPA amend its rule listing certain dioxin-containing wastes as acute hazardous wastes. EPA's decision to deny the petition is based on the Agency's re-examination of a health study underlying this portion of the rule, as well as an evaluation of comments submitted to the Agency in response to its proposal to deny this petition. Therefore, the Agency will not modify the rule as suggested by the petitioner.

DATE: This decision is effective September 15, 1986.

ADDRESSES: The OSW docket is located in the sub-basement at the following address, and is open from 9:30 to 3:30, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment (by calling Mia Zmud at (202) 475-9327, or Kate Blow at (202) 382-4675) to review docket materials. Refer to "Docket number" F-86-VPDF-FFFFF when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

Copies of the following documents are available for viewing in the OSW docket room:

1. Vulcan Co. Rulemaking Petition (transmitted by Covington and Burling, April 12, 1985).

2. Audit of NCI Bioassay on Orally Administered HCDD to Rats and Mice, prepared by Gerald P. Schoenig, Ph.D., November 21, 1984.

3. FR Notice announcing tentative denial of Vulcan Rulemaking Petition (50 FR 41125).

4. Letter: Chris Sexsmith to Judith Bellin, August 1, 1985.

5. Memorandum: Clint Skinner to Esther Saito, July 26, 1985.

6. Memorandum: Clint Skinner to Esther Saito, July 4, 1985.

7. Memorandum: Robert McGaughy and Amy Rispin to Don Barnes, August 16, 1985, with attachments:

a. Response to comments concerning the NCI/NTP bioassay study of HxCDD.

b. Memorandum from John Doull to Daniel Byrd, June 3, 1985.

c. OHEA's response to comments regarding the carcinogenicity of TCDD and HxCDDs.

8. Memorandum: Judith Bellin to Addressees, July 15, 1985.

9. Letter: Mike Stone to Judith Bellin, June 26, 1985.

10. Final Audit Report on Hexachlorodibenzodioxin, prepared by Toxicology and Allied Science Department, Dynamac Corp., June 6, 1985.

11. Comments from Vulcan Materials regarding proposal to deny petition.

12. Comments from Reichold (transmitted by Paul, Hastings, Jenofsky, and Walker) regarding proposal to deny petition.

13. Response to comments on EPA's proposed denial of Culvan's petition.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or at (202) 382-3000 in Washington, DC. For technical information contact Matthew Straus, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4766.

SUPPLEMENTARY INFORMATION: The Vulcan Materials Company (Vulcan) filed a rulemaking petition with the Agency requesting that EPA amend its rule listing certain dioxin-containing wastes resulting from the production or manufacturing use of pentachlorophenol (PCP) as acute hazardous wastes (see 40 CFR 261.31 (Hazardous Wastes F021 and F027), 50 **Federal Register** (FR) 1978 (January 14, 1985)). Vulcan requested that the wastes be listed as toxic, rather than acute hazardous wastes, and that they be subject only to the standards applicable to toxic hazardous wastes (and, therefore, not subject to the additional management standards for certain dioxin-containing hazardous wastes).

On October 8, 1985 (50 FR 41125), the Agency published its tentative decision to deny Vulcan's petition. The Agency listed these wastes as acute hazardous wastes in part because they contain substantial concentrations of the potent carcinogens, hexachlorodibenzo-*p*-dioxins (HxCDDs).

In support of its contention that these wastes should not be listed as acute hazardous wastes, Vulcan maintains that the basis for the Agency's conclusions is incorrect because the bioassay establishing the carcinogenicity of HxCDDs is too flawed to be useful. In support of this contention, they submitted an audit report on this bioassay which was sharply critical of the procedures used.

The Agency based its proposed denial of Vulcan's petition on (1) a careful re-evaluation of the original bioassay and the audit submitted by Vulcan, (2) an independent audit performed by an Agency contractor, and (3) a memorandum from a noted toxicologist who made a limited review of the bioassay. (See 50 FR 41125, October 8, 1985.)

Comments were received on EPA's proposal to deny Vulcan's petition from the petitioner and from a former manufacturer of pentachlorophenol. The Agency has carefully reviewed these comments. Our response to these comments is available in the RCRA docket. For the reasons stated in that "Response to Comments" document, the

Agency finds Vulcan's comments not persuasive.

In light of our further review of the HxCDD bioassay (and of the various audits and examinations thereof), as well as information on HxCDD's mobility and persistence, EPA is denying Vulcan's petition for rulemaking.

Dated: September 7, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-20746 Filed 9-12-86; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 51, No. 178
Monday, September 15, 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

Advanced Notice of Proposed USDA Guidelines for Biotechnology Research; Notice of Meetings

Purpose

The Department of Agriculture published an advanced notice of proposed Guidelines for Biotechnology Research in the **Federal Register** on June 26, 1986 (51 FR 23367–23393). The advanced notice was incorporated into an overall statement by the Office of Science and Technology Policy (51 FR 23302–23309) of a Coordinated Framework for Regulation of Biotechnology.

The purpose of the advance notice was for the Department of Agriculture to obtain public comment at an early stage of the development of its guidelines for biotechnology research. As a part of this process, the Department of Agriculture will conduct a series of information meetings to inform the public of, and obtain public comment on, the content and nature of the advanced notice of proposed guidelines. As noted in the **Federal Register**, the Department of Agriculture is interested particularly in several areas that are not yet complete or fully defined, that is, (1) definitions; (2) special environmental containments; (3) biological containments; (4) classification of organisms; and (5) animal guidelines. The Department is also interested in obtaining comments concerning the potential health, environmental, safety, and economic impacts of the guidelines before they are adopted.

The meetings will be chaired by USDA officials. They will be formal one-day sessions with no time allocated for discussion. Individuals who are unable to attend but wish to comment may request background material and submit their views in writing to the address below.

Individuals who wish to participate will have ten minutes for their oral presentation and will be required to submit written copies of their remarks prior to presentation. These presentations will be made on a first come, first served basis. Submissions will be carefully considered and used by USDA in its final development of the guidelines.

Locations and Dates

Three meetings will be held each beginning at 9:00 A.M.; the first in San Francisco, CA in Room 2007, 450 Golden Gate Avenue, on September 19, 1986. The second will be in St. Louis, MO in Room 1612 Federal Building, 1520 Market Street on September 23, 1986. The third will take place in Washington, DC in the Jefferson Auditorium, South Building, USDA, 14th and Independence Avenue, SW. on September 26, 1986.

Contact Person

Any questions about the proposed meetings or any comments by individuals unable to attend should be directed to: Dr. John Patrick Jordan, Administrator, Cooperative State Research Service (CSRS), USDA, Room 304–A, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 447–4423.

Done at Washington, DC, this 29th day of August 1986.

Orville G. Bentley,

Assistant Secretary for Science and Education.

[FR Doc. 86-20704 Filed 9–12–86; 8:45 am]

BILLING CODE 3410-22-M

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: October 8–9, 1986.

Time: 8:30 a.m.–5 p.m., October 8; 8:30 a.m.–5 p.m., October 9.

Place: University Park Holiday Inn, 425 West Prospect Avenue, Fort Collins, Colorado.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: C. F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–1560.

Done at Beltsville, Maryland, this 19th day of August 1986.

Charles F. Murphy,

Exeutive Secretary, National Plant Genetic Resources Board.

[FR Doc. 86–20705 Filed 9–12–86; 8:45 am]

BILLING CODE 3410-03-M

Office of Inspector General

Privacy Act of 1974; Public Notice of Computer Matching Programs—Cross-State Wage, Unemployment Compensation, and Food Stamp Recipient Match of Food Stamp Program Participants in Oregon, Washington, and Idaho

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of matching programs—wage earners, unemployment compensation recipients and Food Stamp recipients match of Food Stamp Program participants in Oregon, Washington and Idaho.

SUMMARY: The Office of Inspector General (OIG), U.S. Department of Agriculture (USDA), is providing notice that it intends to conduct continuing matching programs to detect and prevent fraud and abuse in the USDA Food Stamp Program. In each of the three states of Oregon, Washington and Idaho, the matches will compare wage earner and unemployment compensation files against the food stamp participant rolls in the other two states for the purpose of identifying persons who have received USDA food stamps to which they are not entitled by crossing state lines. In addition, in each of the three states of Oregon, Washington and Idaho, the file of food stamp participants will be compared against the food stamp

participant files of the other two states to detect persons who have crossed state lines to obtain duplicate food stamp benefits.

The matches will be made under written agreements between USDA and each of the source agencies involved. Set forth below is the information required by paragraph 5f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, U.S. Department of Agriculture, Office of Inspector General, Washington, DC, 20250, telephone (202) 447-6915.

Report of Matching Programs: Cross-State Wage, Unemployment Compensation, and Food Stamp Recipient Match of Food Stamp Program Participants in Oregon, Washington and Idaho

a. Authority: Pub. L. 95-452, Inspector General Act of 1978, 5 U.S.C. App.

b. Program Description and Purpose: One of the responsibilities of OIG under the Inspector General Act of 1978 (Pub. L. 95-452) is to prevent and detect fraud and abuse in USDA programs. As part of the effort to meet this responsibility, OIG plans to match lists of food stamp participants in each of the States of Oregon, Washington and Idaho against files of wage earners and unemployment compensation recipients in the other two states to detect underreporting of income by persons crossing state lines in order to obtain food stamp benefits without entitlement. In addition, the lists of food stamp participants in each of the three states of Oregon, Washington and Idaho, will be compared to the lists of food stamp participants in the other two States to detect persons that cross state lines to obtain duplicate food stamp benefits. The matches will be conducted on a one-time basis.

All matches will be accomplished through the use of computer files and will identify common elements of State food stamp program files and respective State wage earner and unemployment compensation data files by comparing social security numbers (SSN) or some combination of SSN with name and/or date of birth. OIG will followup on these matches of common elements or "hits" through review of State food stamp program records and matching source records, and interviews of the "matching" individuals as necessary. Instances where this followup work identifies fraud or abuse may be referred to the State program agency for corrective action or to the proper authorities for prosecution, as appropriate.

c. Files to be used in this matching program are: (1) U.S. Department of Agriculture—State agency food stamp master files for selected States.

(2) Oregon Department of Human Resources, Employment Division, Wage Data File.

(3) Washington Employment Security Department Wage Data File.

(4) Idaho Department of Employment Wage Data File.

d. Projected starting and ending dates: This matching is scheduled to begin in fiscal year 1986 and end in fiscal year 1987. Other States may be selected for similar matches in fiscal years 1986 and 1987.

e. Security safeguards: Computer files used in the matching program will be stored in secure libraries and access will be restricted to only those individuals who have a legitimate need to handle the material in order to accomplish the matches. The personal privacy of individuals identified on the files will be protected by strict compliance with the Privacy Act of 1974. Information concerning "non-matching" individuals will not be extracted for any purpose and source files will not be used for any matches without specific written agreement between USDA and the respective source agency.

f. Disposition of source records and "hits": All files received will be destroyed or returned to their source at the completion of the matches. Resulting "hit" information may be retained in the workpapers of the respective case reports.

Dated: September 8, 1986.

Robert W. Beuley,

Inspector General.

[FR Doc. 86-20706 Filed 9-12-86; 8:45 am]

BILLING CODE 3410-23-M

Packers and Stockyards Administration

Certification of Central Filing System

The Statewide central filing system of Montana is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Jim Waltermire, Secretary of State, for all farm products produced in that State.

This issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: September 9, 1986.

B. H. Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86-20710 Filed 9-12-86; 8:45 am]

BILLING CODE 3410-KD-M

Soil Conservation Service

Lane's Creek Watershed; Union and Anson Counties, NC

AGENCIES: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Lane's Creek Watershed, Union and Anson Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Bobbye J. Jones, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Room 535, Federal Building, Raleigh, North Carolina 27601, telephone 919-856-4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 12, 883 acres of cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bobbye J. Jones.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 8, 1986.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 86-20785 Filed 9-12-86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Virginia 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 community forum of the Virginia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on September 19, 1986 at the Sheraton Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia. The purpose of the meeting is to discuss a briefing memorandum on human rights law and a proposed project on voter registration.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Benjamin Bostic, or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 523-5264, (TDD 202/523-5264). Hearing impaired persons who will attend the meeting and require the service 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 rules and regulations of the Commission.

Dated at Washington, DC, September 19, 1986

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-20776 Filed 9-12-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB).

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Manufacturers' Shipments, Inventories, and Orders
Form Number: Agency—M-3 (SD), M-3 (MD); OMB—0607-0008
Type of Request: Revision of a currently approved collection
Burden: 4,400 respondents; 17,600 reporting hours
Needs And Uses: This is the only survey that provides monthly statistical information to Government and industry on the entire manufacturing sector of the economy. These statistics are an essential part of the development of the gross national product accounts, and the survey is designated a "principal Federal economic indicator" by the Office of Information and Regulatory Affairs, OMB.
Affected Public: Businesses or other for-profit institutions
Frequency: Monthly
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 10, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-20752 Filed 9-12-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-428-602]

Postponement of Final Antidumping Duty Determination; Brass Sheet and Strip From the Federal Republic of Germany

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from all of the respondents in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on these requests, we are postponing our final determination as to whether sales of brass sheet and strip from the Federal Republic of Germany (FRG) have occurred at less than fair value until not later than January 5, 1987. We are also postponing our public hearing from October 6, 1986 until October 31, 1986.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Terri Feldman, (202-377-0160) or John Brinkmann, (202-377-3965), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230

On March 10, 1986, we published a notice in the **Federal Register** (51 FR 10070) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether brass sheet and strip from the FRG were being, or were likely to be, sold at less than fair value. On April 24, 1986, the International Trade Commission determined that there is a reasonable indication that imports of brass sheet and strip from the FRG are materially injuring a U.S. industry. On August 22, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchandise (51 FR 30090). The notice stated that if the investigation proceeded normally, we would make our final determination by November 3, 1986.

On August 20, 1986, Wieland Werke AG and Langenberg Kupfer-und Messingwerke GmbH KG, respondents in this investigation requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. Respondents account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the requests.

We are postponing the date of the final determination until not later than January 5, 1987.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford

interested parties an opportunity to comment on this preliminary determination at 10 a.m. on October 31, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Asssistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. 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, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 24, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 3, 1986.

[FR Doc. 86-20803 Filed 9-12-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-601]

Postponement of Final Antidumping Duty Determination; Brass Sheet and Strip From Sweden

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of brass sheet and strip from Sweden have occurred at less than fair value until not later than January 5, 1987. We are also postponing our public hearing from October 6, 1986 until October 31, 1986.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, (202-377-3965), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

On April 7, 1986, we published a notice in the **Federal Register** (51 FR 11776) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether brass sheet and strip from Sweden were being, or were likely to be, sold at less than fair value. On April 24, 1986, the International Trade Commission determined that there is a reasonable indication that imports of brass sheet and strip from Sweden are materially injuring a U.S. industry. On August 22, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchandise (51 FR 30088). The notice stated that if the investigation proceeded normally, we would make our final determination by November 3, 1986.

On August 29, 1986, Granges Metallverken, the respondent in this investigation requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. The respondent accounts for a significant proportion of exports of the merchandise to the United States. If an importer who accounts for a significant proportion of exports of the merchandise under investigation requests an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request.

We are postponing the date of the final determination until not later than January 5, 1987.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2 p.m. on October 31, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Consititution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. 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, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 24, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

September 9, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-20804 Filed 9-12-86; 8:45 am]

BILLING CODE 3510-DS-M

Cyanuric Acid and Its Chlorinated Derivatives From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by Nissan Chemical Industries, Ltd., Shikoku Chemcials Corporation, Mitsubishi Corporation, and ICI Americas, Inc., the Department of Commerce has conducted an administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The review covers two of the three known manufacturers and/or exporters of this merchandise to the United States and the the period November 1, 1983 through March 31, 1984. The review indicates the existence of dumping margins for one of the firms during the period.

As a result of the review, the Department has preliminarily determined to assess antiduming duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18148) the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. We began the current review of the orders under our old regulations. After the promulgation of our new regulations, the respondents, Nissan Chemcial Industries, Ltd. and Shikoku Chemcials Corporation, requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We therefore published a notice of initiation of the review on January 21, 1986 (51 FR 2747).

Scope of The Review

Imports covered by the review are sales of cyanuric acid (also known as isocyanuric acid) and its chlorinated derivatives (dichloro isocyanurates, i.e., sodium dichloro isocyanurate, potassium dichloro isocyanurate, and sodium dichloro isocyanurate dihydrate, and trichloro isocyanuric acid), used in the swimming pool trade. We categorize the merchandise as cyanuric acid, dichloro isocyanurates and trichloro isocyanuric acid, which we determine are separate classes of kinds of merchandise. These products are sold in three basic consistencies: power, granular, and tablet. The merchandise is currently classifiable under item number 425.1050 of the Tariff Schedules of the United States Annotated.

The review covers two of the three known manufacturers of Japanese cyanuric acid and its chlorinated derivatives exported to the United States, and the period November 1, 1983 through March 31, 1984.

Untied States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), because sales were made to unrelated Japanese trading firms for export to the United States and the manufacturers knew the destination of the merchandise at the time of sale. Purchase price was based on the packed f.o.b. price to the unrelated trading firms in Japan. We made adjustments, where applicable, for Japanese brokerage, handling, inland freight, and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, insurance, rebates, credit expenses, advertising and promotion, the differences in packing.

We disallowed a claim for competitive discounts (free samples) because there was not a direct relationship between free merchandise and sales of the merchandise under consideration. No other adjustments were claimed or allowed.

The petitioner alleged that home market sales by Nissan and Shikoku were at prices below their costs of production. We compared the home market sale prices to costs of production and found no sales below the cost of production.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period November 1, 1983 through March 31, 1984:

Manufacturer	Margin (percent)
Nissan Chemical Industries, Ltd.:	
Dichloro isocyanurates	0
Trichloro isocyanuric acid	0
Shikoku Chemcials Corporation:	
Cyanuric Acid	9.05
Dichloro isocyanurates	16.59
Trichloro isocyanuric acid	10.76

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this administrative review, whose first shipments occurred after March 31, 1984 and who is unrelated to any reviewed firm, a cash deposit of 9.05 percent for cyanuric acid, 16.59 percent fo dichloro isocyanurates, and 10.76 percent for trichloro isocyanuric acid shall be required. These deposit requirements are effective for all shipments of Japanese cyanuric acid and its chlorinated derivatives (except cyanuric acid produced by Nissan Chemical Industries, Ltd.) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: September 9, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 20801 Filed 9–12–86; 8:45 am]

BILLING CODE 3510-DS-N

Drycleaning Machinery From West Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by Boewe Reinigungstechnik GmbH and Multimatic Inc., the Department of Commerce has conducted an administrative review of the antidumping finding on drycleaning machinery from West Germany. The review covers the two known manufacturers and/or exporters of this merchandise exported to the United States and the period November 1, 1984 through October 31, 1985. The review indicates the existence of dumping margins for one firm during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2209/5255.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 32155) the final results of its last administrative review of the antidumping finding on drycleaning machinery from West Germany (37 FR 23715, November 8, 1972). We received requests for an administrative review from one respondent, Boewe Reinigungstechnik GmbH (formerly Boewe Maschinenfabrik GmbH), and one importer, multimatic Inc., in accordance with § 353.53a(a) of the Commerce Regulations, and we published a notice of initiation of the antidumping duty administrative review on December 13, 1985 (50 FR 50933).

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery, currently classifiable under item 670.4100 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of this merchandise exported to the United States and the period November 1, 1984 through October 31, 1985.

United States Price

In calculating United States price the Department used purchase price or exporter's sale price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and exporter's sales price were based on the delivered packed price to unrelated purchasers in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, U.S. customs duties, ocean freight, marine insurance, brokerage charges, discounts, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. Where applicable, we made an adjustment for any increased value resulting from further assembly performed on the imported merchandise after importation and before its sale to an unrelated purchaser in the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price when sufficient quantities of such or similar merchandise were sold in the home market, or the price to third countries when there were insufficient quantities of such or similar merchandise sold in the home market to provide a basis of comparison, or constructed value, all as defined in section 773 of the Tariff Act.

For the third-country price we used the packed ex-factory price to unrelated purchasers in Switzerland and New Zealand. No adjustments were claimed or allowed.

Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and U.S. packing. The amount added for general expenses was ten percent of the sum of the materials and fabrication costs or actual general expenses, whichever was higher. The amount added for profit was eight percent of the sum of materials, fabrication, and general expenses, or actual profit, whichever was higher.

Home market price was based on the packed ex-factory or delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight, cash discounts, guarantees, certain sales office expenses, technical expenses, and certain miscellaneous payments incurred on behalf of the customer. We made further adjustments, where applicable, for differences in credit expenses, commissions to unrelated parties, packing costs, differences in the physical characteristics of the merchandise, and for indirect expenses to offset U.S. selling expenses for ESP calculations.

Where possible, we compared sales by Boewe's American subsidiary (Boewe Systems and Machinery) to distributors with Boewe's sales in West Germany through agents to end-users. However, when there were no contemporaneous home market sales through agents, we compared sales to distributors in the U.S. with direct sales to end-users in the home market. We made no adjustment for claimed level-of-trade differences because the claims were inadequately quantified.

We disallowed claimed adjustments for "warranty expenses" because we do not consider such repair work performed outside the warranty period to be true warranty expenses, but rather goodwill. We disallowed as indirect expenses certain research and development, advertising, traffic department, management, and general and administrative expenses, because these claimed adjustments were either not directly related to the sales used for comparison purposes, or were not selling expenses. We also disallowed claimed adjustments for "trade-in losses" as price reductions. We do not consider the amounts deducted from the price of a new machine for a trade-in to be a discount. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/ exporter	Time period	Margin (Percent)
Boewe Reinigung-stechnik	Nov. 1, 1984 to Oct. 31, 1985	1.87
Seco Maschinen-bau	Nov. 1, 1984 to Oct. 31, 1985	0

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such written comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 31, 1985 and who is unrelated to any reviewed firm, a cash deposit of 1.87 percent shall be required. These deposit requirements are effective for all shipments of West German drycleaning machinery entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: September 9, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-20802 Filed 9-12-86; 8:45 am]

BILLING CODE 3510-05-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washintgon, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523-5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

Value engineering is the technique by which contractors (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) are required to establish a program to identify and submit to the Government methods for performing more economically. These recommendations are submitted to the Government as value engineering change proposals (VECP's) and they must include specific information. This information is needed to enable the Government to evaluate the VECP and, if accepted to arrange for an equitable sharing plan.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 400; total annual responses; 1600; hours per response 30; and total reporting hours 48,000.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0027, Value Engineering Requirements.

Dated: September 5, 1986.

Margaret A. Willis.

FAR Secretariat.

[FR Doc. 86-20683 Filed 9-12-86; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523-5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

The offeror in submitting the Balance of Payments Program Certificate certifies that each end product or service, except the end products or services listed in the certificate is a domestic end product or service and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Offers are evaluated by giving a certain preference to domestic end products or services over foreign end products or services in accordance with section 25.303(b) of the Federal Acquisition Regulation.

b. Annual reporting burden

This is estimated as follows: Respondents, 1,243; responses per respondent, 5; total annual responses, 6,215; hours per response, .167; and total reporting hours, 1,038.

Obtaining Copies of Proposals. Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0023, Balance of Payments Program Certificate.

Dated: September 5, 1986.

Margaret A. Willis

FAR Secretariat.

[FR Doc. 86-20684 Filed 9-12-86; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523-5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:

a. Purpose:

It is the Government's policy to improve environmental quality. Accordingly, Executive Agencies must conduct their acquisition activities in a manner that will result in effective enforcement of the Clean Air Act (42 U.S.C. 7401, et seq.) and the Clean Water Act (33 U.S.C. 1251, et seq.) The information required by the Clean Air and Water Certification is used to determine a contractor's compliance with these laws. A determination of non compliance by the contracting officer

requires notifying the agency head or designee who, in turn notifies the Environmental Protection Agency, (EPA) Administrator or a designee in writing. Government contracting offices use the information to determine a firm's eligibility for award of a contract and to provide information to the EPA.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents 83,400; responses per respondent 20; total annual responses 1,668,000; hours per response, .0047; and total burden hours, 7,840.

Obtaining copies of Proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0021, Clean Air and Water Certification.

Dated: September 5, 1986.

Margaret A. Willis

FAR Secretariat.

[FR Doc. 86–20685 Filed 9–12–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 8, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Close Air Support will meet at the Lawrence Livermore National Laboratory, Livermore, CA, on September 30 and October 1, 1986.

The purpose of this meeting is to discuss information and data received in previous meetings and to draft a report.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–20823 Filed 9–12–86; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

September 4, 1986.

The USAF Scientific Advisory Board Aeronautical Systems Division Advisory Group will meet at Aeronautical Systems Division Headquarters, Building 14, Wright Patterson Air Force Base, Ohio, October 7 and 8, 1986.

The purpose of this meeting is to discuss selected acquisition, product assurance, artificial intelligence, and aircraft programs and to advise the commander on technological aspects of these programs.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–20682 Filed 9–12–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP86–159–000]

Blue Dolphin Pipe Line Co.; Rate and Tariff Filing

September 9, 1986.

Take notice that on September 3, 1986, Blue Dolphin Pipe Line Company (Blue Dolphin) tendered for filing revised tariff sheets establishing rates, tariffs and terms and conditions upon which Blue Dolphin will provide self-implementing transportation for others under section 311 of the Natural Gas Policy Act and Subpart G of Part 284 of the Commission's Regulations (promulgated under Order Nos. 436, *et al.*) 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 September 4, 1986.

Blue Dolphin filed Second Revised Sheet No. 1, Third Revised Sheet No. 2 and Original Sheets Nos. 39–100 to its FERC Gas Tariff, Original Volume No. 1. Sheet No. 40 sets out the applicable rates for firm and interruptible transportation, with volumetric maximum and minimum charges. Sheets 41–55 contain Rate Schedule FT for firm service and pro forma service agreement. Sheets 56–70 contain Rate Schedule IT for interruptible service and pro forma service agreement. Sheets 71–99 contain the general terms and conditions.

Blue Dolphin asks for whatever waivers are necessary for the Commission to approve the new rates. Blue Dolphin also asks that the new rates, tariffs and terms and conditions be effective on October 3, 1986.

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 September 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. 86–20700 Filed 9–12–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–104–001]

Colorado Interstate Gas Co.; Tariff Filing

September 9, 1986

Take notice that on September 5, 1986, Colorado Interstate Gas Company (CIG) tendered for filing a new transportation tariff designated as FERC Gas Tariff Original Volume No. 1–A. CIG states that this Original Volume No. 1–A contains: (1) New firm transportation rate schedules (Rate Schedules TF–1 and TF–2); (2) general terms and conditions applicable to both firm and interruptible transportation service; and (3) *Pro Forma* service agreements applicable to both firm and interruptible transportation services. In addition, CIG further states that the previously filed and presently effective Rate Schedules GTI ON–1 and GTI OFF–1 (Original Sheet Nos. 33I through 33L of CIG's FERC Gas Tariff Original Volume No. 1) providing for interruptible transportation service pursuant to the Commission's Order No. 436 "grandfathered" transportation provisions and § 284.7 of the Commission's regulations have been incorporated in this Original Volume No. 1–A Tariff with certain changes conforming to the General Terms and Conditions established in such Volume No. 1–A Tariff.

CIG states that the reason for this filing is to comply with §§ 284.7, 284.8 and 284.9 of the Commission's regulations regarding the provision of firm as well as interruptible transportation service and to comply with the Commission's Order of June 30, 1986 requiring that CIG establish appropriate operating conditions relative to the provision of transportation service under §§ 284.7, 284.8 and 284.9 of the Commission regulations.

Copies of this filing have been served on all of CIG's jurisdictional customers and affected 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. All such motions or protests should be filed on or before 9–16–86. 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. 86–20701 Filed 9–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86–153–000]

United Gas Pipe Line Co.; Petition for Declaratory Order

September 9, 1986.

Take notice that United Gas Pipe Line Company (United) on August 20, 1986, filed a petition for a declaratory order seeking relief from the take-and-pay provisions of Northwest Alaskan Pipeline Company's Rate Schedule X–3, under which United must request and take and pay for a minimum volume of 150,000 Mcf per day, subject to *force majeure*, during each day of the year.

United Seeks (a) a determination that United is excused from performance under the terms of Rate Schedule X–3, or (b) a determination that the policies and regulations established in Order No. 380 should be applied to Rate Schedule X–3 and the take-and-pay provisions therefof should be declared unlawful, or (c) a determination that the combination of rate and minimum take provisions of Rate Schedule X–3 is unjust and unreasonable. If United is denied relief under all of the proceding requests, United Requests a determination that United may recover from its historical downstream customers a ratable portion of any take-and-pay costs United incurs, or allocate to those customers volumes that United is required to take, under the terms of Rate Schedule X–3 and the related Agreement between Northwest Alaskan and United.

United states that Commission actions, including Order Nos. 380 and 380–A and Order No. 436, and the resulting decline in purchases by United's customers constitute events of *force majeure* under the terms of Rate Schedule X–3. United further states that other events in natural gas markets beyond its control have contributed to the decline in purchases by United's customers and also constitute events of *force majeure* under the terms of Rate Schedule X–3.

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 September 30, 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 Commisson and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20702 Filed 9–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86–158–000]

United Gas Pipe Line Co; of Tariff Filing

September 9, 1986.

Take notice that on September 3, 1986 United Gas Pipe Line Company (United) filed in compliance with § 284.8 of the Commission's Regulations (18 CFR 284.8) an interim transportation service which may be provided on behalf of intrastate pipelines and local distribution companies. The tariff includes Rate Schedule FTS, related General Terms and Conditions and Fourth Revised Sheet No. 4–E setting forth the applicable rates, all as more fully detailed in the filing. United requests that its tariff filing be accepted to become effective on September 1, 1986. United expressly notes that its tariff filing was without prejudice to its pending certificate application in Docket No. CP86–526 and its request for authorization therein.

Any person desiring to be heard or protest said tariff filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 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 in accordance with the Commission rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20703 Filed 9–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86–343–001]

Foster Wheeler Power Systems, Inc., Mount Carmel Facility; Application for Certification of Qualifying Status of a Cogeneration Facility

September 8, 1986.

On August 26, 1986, Foster Wheeler Power Systems, Inc. (Applicant), of 110 South Orange Avenue, Livingston, New Jersey 07039, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located approximately 1.5 miles northwest of Mount Carmel, Pennsylvania. The facility will consist of two circulating fluidized bed combustion boilers, an extraction/condensing steam turbine generator, and related auxiliary equipment. The primary energy source for the facility will be waste in the form of anthracite coal culm. The useful thermal energy output of the facility will be utilized to maintain optimal growing conditions in an affiliated hydroponic greenhouse. The electric power production capacity of the facility will be 45 megawatts. The facility was previously certified as a 40 megawatt

qualifying small power production facility (QF86-343-000) on February 27, 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

/Secretary.

[FR Doc. 86-20788 Filed 9-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-1025-000 et al.]

Turbo Power Systems; Applications for Certification of Qualifying Status of Cogeneration Facilities

September 9, 1986.

On August 29, 1986, Turbo Power Systems (Applicant), of 10497 Town and Country Way, Suite 500, Houston, Texas 77024, submitted for filing 9 applications for certification of facilities as qualifying cogeneration facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The docket numbers, locations and electric power production capacities of the nine topping-cycle cogeneration facilities are listed below. Each facility will consist of a combustion turbine, a heat recovery steam generator, an extraction steam turbine-generator, steam/gas heat exchanger and a turbo expander. The extracted steam will be sold to either transcontinental Gas Pipe Line Corporation or Elizabethtown Gas Co. for use in their gas line pressure reduction stations. The primary source of energy will be natural gas. The installation of the facilities is scheduled to commence during the second quarter of 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determing the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Docket No.	Location	Capacity
QF86-1025-000	Erie Street M&R Station, E'izabeth, New Jersey	9,500 kW
QF86-1026-000	Cloverleaf M&R Station, Woodbridge Township, New Jersey	9,500 kW
QF86-1027-000	Central M&R Station, Middlesex County, New Jersey	13,500 kW
QF86-1028-000	Westhampton M&R Station, Burlington County, New Jersey	13,500 kW
QF86-1029-000	Paramus M&R Station, Paramus, New Jersey	30,500 kW
QF86-1030-000	Woodbury M&R Station, Deptford Township, New Jersey	9,500 kW
QF86-1031-000	Lawnside M&R Station, Camden County, New Jersey	9,500 kW
QF86-1032-000	Harmony Road M&R Station, Gloucester County, New Jersey	9,500 kW
QF86-1033-000	East Rutherford M&R Station, East Rutherford, New Jersey	30,500 kW

[FR Doc. 86-20789 Filed 9-12-86; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Floodplains/Wetlands Involvement Determination for the Redding Direct Interconnection Project Shasta County, CA

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplain/wetlands involvement and opportunity for comment.

SUMMARY: The Western Area Power Administration (Western) proposes to provide the city of Redding, California, with a second direct interconnection to the Federal electrical transmission system. The proposed project consists of constructing approximately one-half mile of new double-circuit 230-kilovolt (kV) transmission line and a new 115/230-kV substation to connect Redding's 115-kV transmission system directly to Western's 230-kV transmission system and the Airport Substation.

Pursuant to the requirements of the Department of Energy's "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR 1022), Western has determined that this project would involve activities within floodplain/wetlands areas.

The proposed line would cross the 100-year floodplain of Churn Creek, designated on Federal Emergency Management Agency Flood Insurance Rate Maps. A proposed new tap structure that would replace an existing transmission tower, which would be used to loop the existing transmission system into and out of a proposed substation, and three or four new transmission line support structures would be located in the floodplain. The proposed crossing of the Churn Creek floodplain is located at the boundary of sections 21 and 28, T. 31 N., R. 4 W. Maps and further information are available from Western at the address provided below.

DATE: Any comments or suggestions are due September 30, 1986.

ADDRESS: Send written comments or suggestions to: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Weintraub, Environmental Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825, (916) 978-4460.

Issued at Golden, Colorado, September 4, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-20716 Filed 9-12-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3078-9]

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 ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT. Nanette Lieman, (202) 382–2740 or FTS 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Application for Registration of Pesticide-Producing Establishments (EPA ICR #0158). (This is a reinstatement of a previously approved collection; there are no changes.)

Abstract: This standing statutory requirement of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 7(a) and (b), is for the registration of establishment firms and sites producing pesticide products, pesticide chemical ingredients, and pest-mitigating devices.

Respondents: Pesticide manufacturers.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0193, National Emission Standard for Air Pollutant (NESHAP) for Beryllium, was approved 8/21/86 (OMB #2060–0092; expires 8/31/88).

EPA ICR #0596, Application and Summary Report for an Emergency Exemption for Pesticides, was approved 8/19/86 (OMB #2070–0032; expires 8/31/89).

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: September 5, 1986.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 86–20588 Filed 9–12–86; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3080–3]

Science Advisory Board, Radiation Advisory Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the Science Advisory Board's Radiation Advisory Committee will be held on October 1–2, 1986 in the Administrator's Conference Room, 1101 West Tower of the U.S. Environmental Protection Agency's headquarters building at 401 M St., SW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday and adjourn no later than 5:00 p.m. Thursday.

The main purpose of the meeting is to hear the reports of the three subcommittees which met in September. These are the National Radon Survey Design Review Subcommittee, the Drinking Water Subcommittee, and the Radon Mitigation Subcommittee. The Committee will also review the Office of Radiation Program's *EPA Idaho Radionuclide Exposure Study*. Copies of this document may be obtained by calling or writing Terrance McLaughlin (202) 475–9610 at The Office of Radiation Programs ANR–460, U.S. Environmental Protection Agency, 401, M St. SW., Washington, DC. 20460. The Office of Radiation Programs will also brief the Committee on its plans and programs for FY87.

The meeting is open to the public; however, seating is limited. Any member of the public wishing to attend or obtain information should contact Mrs. Kathleen Conway, Executive Secretary, or Mrs Dorothy Clark, Staff Secretary, (A101–F) Radiation Advisory Committee, Science Advisory Board, by noon on September 29, 1986. The telephone number is (202) 382–2552.

Dated: September 10, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86–20749 Filed 9–12–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59784; FRL–3080–2]

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 86–234 and 86–235, September 18, 1986

Y 86–236, 86–237 and 86–238, September 24, 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 extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–234

Manufacture. Confidential.

Chemical. (G) Polyester of carbomonacylic acid, sulfonated carbomonocyclic ester, alkylene glycol and cyloalkylene glycol.

Use/Production. (S) Size for textile. Prod. range. Confidential

Toxicity Data. Acute oral: > 3.2 g/kg; Acute dermal: > 1.0 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: None; COD: 1.7 g; LC_{50} 96 hr (fathead minnow, Snails, Daphnids, Flatworms): 100 mg/1.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–235

Manufacturer. Confidential.

Chemical. (G) Epoxy ester.

Use/Production. (S) Site-limited and industrial spray applied coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–236

Manufacturer. Confidential.

Chemical. (G) Saturated polyester.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-237

Manufacturer. Confidential.
Chemical. (G) Polyesteramide of aliphatic diacid, diamine, and alicyclic diol.
Use/Production. (G) Adhesive for polymer. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: None.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-238

Manufacturer. Confidential.
Chemical. (G) Modified tall oil alkyd.
Use/Production. (S) Industrial base resin for metal coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: September 8, 1986.

James A. Combs,

Acting Division Director, Information Management Division.

[FR Doc. 86-20750 Filed 9-12-86; 8:45 am]

BILLING CODE 6560-50-M

Office of Pesticides and Toxic Substances

[OPP-30273; FRL-3080-9]

Natural Ag, Bentech Laboratories, Inc. Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the pesticide product "YEA", containing the active ingredient poly-*D*-glucosamine (hereafter referred to as chitosan), an active ingredient not included in any previously registered product pursuant to section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Elsewhere in this issue of the **Federal Register**, a related document is published announcing the filing of a pesticide petition by Natural Ag proposing to exempt chitosan from the requirement of a tolerance when used in or on wheat.

DATE: Effective on September 15, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP-30273] and the file symbol (56437-R) to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 23, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, Attn: PM 23, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not market confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, PM-23, (703-557-1830).

SUPPLEMENTARY INFORMATION: Natural Ag, Division of Bentech Laboratories, Inc., 635 Water Ave., NE., Albany, OR 97321, submitted an application to EPA to register the pesticide product "YEA", containing the active ingredient chitosan at 2.50 percent, pursuant to section 3(c)(4) of FIFRA. The application proposed that the product be classified for general use as a biochemical plant growth regulator to be applied to wheat seed before planting. The Agency intends to approve the application in the very near future in accordance with section 3(c)(5) of the FIFRA.

Chitosan is a naturally-occurring substance and is produced from chitin extracts of crustacean shells (e.g., crab, shrimp and lobster). The product is intended for use as a seed treatment of wheat seeds to stimulate plant root growth and enhance the strength of wheat stems. Chitosan also appears to protect emerging wheat roots from fungi which cause root rot that can result in weakened wheat stems. Stronger wheat stems prevent lodging (when the plant falls over because weak stems are unable to support it). Wheat plants which lodge are difficult to harvest and therefore may decrease crop yields.

In support of its request, the applicant noted that chitosan (1) is not toxic, as demonstrated in acute toxicity studies in mice, rats, and rabbits; (2) naturally occurs in the environment in large concentration; (3) is not expected to result in measurable residues in wheat; (4) has been exempted from regulation by the Food and Drug Administration when used as a food or feed additive; and (5) has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the FIFRA.

The Agency has concluded that the information submitted to support the application is addequate to determine the registrability of chitosan and has therefore waived submission of data normally required to evaluate a biochemical pesticide (40 CFR 158.165).

The Agency has also concluded that approving the registration of chitosan would benefit the public because of its low toxicologic potential, its ability to increase crop yields, and its potential for reducing the use of chemical fungicides. The use of crustacean shells to produce chitosan also may alleviate emerging problems associated with disposal of crustacean shell waste.

The Agency invites comments on the decision to register chitosan for use as a wheat seed treatment, and will give such comments appropriate consideration even though they are likely to be received after product registration is approved. All written comments and the information used to support registration, except for material specifically protected by section 10 of the FIFRA, will be available for public inspection in the Program Management and Support Division (PMSD) at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency suggests that persons interested in reviewing the comments or supporting information telephone the PMSD office (703-557-3262) to ensure that the file is available on the date of intended visit.

Requests for the information must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M Street, SW., Washington, DC 20460. Such requests should identify the product name and registration number, and specify the information desired.

In accordance with section 3(c)(2) of the FIFRA, a copy of the approved label will be available for public inspection in the office of the Product Manager.

Authority: 7 U.S.C. 136.

Dated: September 10, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-20913 Filed 9-12-86; 9:25 am]

BILLING CODE 6560-50-M

[PF-468; FRL-3081-1]

Poly-D-Glucosamine; Petition for Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petition by Natural Ag, Division of Bentech Laboratories, Inc., proposing establishing an exemption from the requirements of a tolerance for residues of poly-D-gluscosamine (hereafter referred to as chitosan) in or on the raw agricultural commodity wheat.

ADDRESS: By mail, submit comments identified by the document control number (PF-468) and the petition number 6E3451, to:

Information Services Section, Program Management and Support Division (TS-757C), Attn: Product Manager (PM) 23, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., NW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments may be submitted while the petition is pending before the Agency. Written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard F. Mountfort, Product Manager (PM-23), Registration Division (TS-767C), Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: The Natural Ag, a Division of Bentech Laboratories, Inc., 635 Water Ave., NW., Albany, OR 97321, filed pesticide petition 6E4531 with EPA. The petition proposes that 40 CFR Part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biochemical plant growth regulator chitosan in or on the raw agricultural commodity wheat.

Authority: 21 U.S.C. 346a.

Dated: September 10, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-20914 Filed 9-12-86; 9:26 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1618]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 10, 1986.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: GTE Sprint Communications Corporation, US Telecom, Inc., Allnet Communications Services, Inc., and United States Transmission Systems, Inc. (CC Docket No. 85-348, RM-5057). Number of petitions received: 1.

Subject: Amendment of § 73.202(b) FM Table of Allotments. (Lebanon, Virginia) (MM Docket No. 85-258, RM-5013). Number of petitions received: 1.

Subject: Amendment of § 73.202(b) FM Table of Allotments. (Neptune Beach and Green Cove Springs, Florida). Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-20772 Filed 9-12-86; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it; Main Committee Meeting

September 10, 1986.

The Space WARC Advisory Committee will convene its next meeting on October 1, 1986. The Committee will be reviewing the work of the working groups and will be considering recommendations and advice to the Commission concerning U.S. participation within the intersessional work program of the International Telecommunication Union in preparation for the second session in 1988. Details regarding the date, place and agenda of the meeting are provided below.

CHAIRMAN: Ronald F. Stowe

VICE CHAIRMAN: Stephen E. Doyle

DATE: Wednesday, October 1, 1986

TIME: 9:30 A.M.—1:00 P.M.

LOCATION: Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, DC 20554

Designated Federal Employee: Thomas S. Tycz

AGENDA:

(1) Adoption of Agenda (2) Status of ITU Preparatory Activities (3) Report on U.S. Commercial Launch Program (4) Working Group Reports (5) Date of Next Meeting (6) Other Business (7) Adjournment

For additional information, please contact Thomas S. Tycz (202) 632-3214.

William J. Tricarico,

Secretary.

[FR Doc. 86-20771 Filed 9-12-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-502]

Capital Savings Bank, F.A., Olympia, WA; Final Action; Approval of Conversion Application

Date: August 15, 1986.

Notice is hereby given that on July 25, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Capital Saving Bank, F.A., Olympia, Washington for permission to convert to the stock form of organization. Following the conversion the Association will be known as Capital Savings Bank, F.S.B., Olympia, Washington. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Seattle, 600 Stewart Street, Seattle, Washington 98191.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20731 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-515]

Colonial Savings and Loan Association, Roselle Park, NJ; Final Action Approval of Conversion Application

Dated: September 2, 1986.

Notice is hereby given that on August 13, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Colonial Savings and Loan Association, Roselle Park, New Jersey for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of New York, One World Trade Center, Suite 8830, New York, New York 10048.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20732 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-516]

First Federal Savings and Loan Association of Columbus; Columbus, GA; Final Action Approval of Conversion Application

Dated: September 2, 1986.

Notice is hereby given that on August 13, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Columbus, Columbus, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, 260 Peachtree Street, NW., 10th Floor, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20733 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-517]

Home Savings and Loan Assocation; Durham, NC; Final Action Approval of Conversion Application

Dated: September 2, 1986.

Notice is hereby given that on May 1, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Savings and Loan Association, Durham, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20734 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-514]

King City Federal Savings and Loan Association; Mt. Vernon, IL; Final Action Approval of Conversion Application

Dated: August 28, 1986.

Notice is hereby given that on August 13, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of King City Federal Savings and Loan Association, Mt. Vernon, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20735 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-499]

Milford Co-Operative Bank; Milford, NH; Final Action Approval of Conversion Application

Dated: August 11, 1986.

Notice is hereby given that on August 5, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Milford Co-operative Bank, Milford, New Hampshire for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Boston, P.O. Box 9106, Boston, Massachusetts 02110.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20736 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-500]

Pulawski Savings and Loan Association South River, NJ; Final Action Approval of Conversion Application

Dated: August 11, 1986.

Notice is hereby given that on August 5, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pulawski Savings and Loan Association, South River, New Jersey for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20737 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-501]

San Francisco Savings and Loan Association of San Francisco San Francisco, CA; Final Action, Approval of Conversion Application

Dated: August 11, 1986.

Notice is hereby given that on August 5, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of San Francisco Federal Savings and Loan Association of San Francisco, San Francisco, California for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of San Francisco, 600 California Street, Post Office Box 7948, San Francisco, California 94120.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20738 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-518]

Second Federal Savings Bank, Boston, MA; Final Action, Approval of Conversion Application

Dated: September 3, 1986

Notice is hereby given that on August 13, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Second Federal Savings Bank, Boston, Massachusetts, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW, Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Boston, Post Office Box 9106, Boston, Massachusetts 02205-9106.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20739 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-504]

United Savings Bank, FA, Great Falls, MT; Final Action, Approval of Conversion Application

Dated: August 15, 1986.

Notice is hereby given that on July 25, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of United Savings Bank, FA, Great Falls, Montana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Seattle, 600 Stewart Street, Seattle, Washington 98101.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20740 Filed 9-12-86; 8:45 am]
BILLING CODE 6702-01-M

[No. AC-503]

Valdosta Federal Savings and Loan Association, Valdosta, GA; Final Action, Approval of Conversion Application

Dated: August 15, 1986.

Notice is hereby given that on July 25, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Valdosta Federal Savings and Loan Association, Valdosta, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-20741 Filed 9-12-86; 8:45 am]
BILLING CODE 6720-01-M

[No. 86-941]

FSLIC Insurance Premium

September 2, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: 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 June 31, 1986.

EFFECTIVE DATE: September 11, 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) 377-7051, 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, by Resolution No. 86-213, dated March 6, 1986, and by Resolution No. 86-582, dated June 10, 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, 1986, for the third, as of September 30, 1985 for the fourth and as of December 31, 1985 for the fifth, and as of March 31, 1986 for the sixth; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85–142, expressed its intention 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, and Resolution No. 86–582, dated June 10, 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 incured substantial losses during calendar years 1981 through 1985 and the first two quarters 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, No. 86–213, and No. 85–582, 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 third 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 June 30, 1986; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about September 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 September 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. 86–20730 Filed 9–12–86; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 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.: 224–004098–002.

Title: Oakland Terminal Agreement.

Parties:

City of Oakland

Atlas Shipping Ltd. (Atlas)

Synopsis: The proposed amendment would extend the term of the agreement to October 31, 1986, and would allow Atlas to make further month-to-month extensions through March 31, 1987.

Agreement No.: 213–010879–002.

Title: Evergreen Marine Corporation-Japan Line Space Charter Agreement.

Parties:

Japan Line, Ltd. (Japan Line)

Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen)

Synopsis: The proposed amendment would permit Japan Line to charter space on Evergreen's vessels operating between U.S. Atlantic Coast ports and ports in the Far East.

Agreement No.: 224–010993.

Title: Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (MPA)

Ramsay, Scarlett & Co., Inc. (Ramsay)

Synopsis: The proposed agreement would allow the MPA to lease space in the Pier 3 Shed to Ramsay for a period of three years. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 9, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–20717 Filed 9–12–86; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License; J.B. Fong and Co.

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
2413	A&A International dba J.B. Fong & Co., 4200 N. 29th Terrace, Hollywood, FL 33020–1083.	Aug. 14, 1986.

Eugene P. Stakem,

Deputy Director Bureau of Tariffs.

[FR Doc. 86–20773 Filed 9–12–86; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants; Philip and Pines Forwarders, Inc.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. App. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

Philip & Pines Forwardes, Inc., 59 Mt. Vernon Street, Ridgefield Park, NJ 07660, Officers: Rene R. Santos, President, Josephine D. Santos, Secretary/Treasurer.

By the Federal Maritime Commission.

Dated: September 10, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-20774 Filed 9-12-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Financial National Bancshares, Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies; Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 1, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Financial National Bancshares, Co.*, Elgin, Illinois; to merge with Northwest Suburban Bancorp, Inc., Mount Prospect, Illinois, and thereby acquire First National Bank of Lake Zurich, Lake Zurich, Illinois; Countryside Bank, Mount Prospect, Illinois, and First National Bank of Mount Prospect, Mount Prospect, Illinois. Applicant, as the surviving entity in the merger, intends to change its name to "FNW Bancorp, Inc.".

In connection with this application, Applicant has also applied to acquire NSB Finance, Inc., Mount Prospect, Illinois, and thereby engage in making and servicing loans and leasing personal or real property to § 225.25(b) (1) and (5) respectively.

Board of Governors of the Federal Reserve System, September 9, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-20696 Filed 9-12-86; 8:45 am]

BILLING CODE 6210-01-M

First NH Banks, Inc., et al.; Formations of; Acquisitions by; Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 6, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.*, Manchester, New Hampshire; to acquire up to 100 percent of the voting shares of The Cheshire National Bank, Keene, New Hampshire.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Lunenburg Community Bankshares, Inc.*, Kenbridge, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Lunenburg County Bank, Kenbridge, Virginia.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Illini Bancorp, Inc.*, Galesburg, Illinois; to acquire at least 80 percent of the voting shares of Community Bank and Trust Company, Canton, Illinois, and thereby indirectly acquire Community Bancshares of Canton, Inc., Canton, Illinois.

2. *Tripoli Bancshares, Inc.*, Saint Paul, Minnesota; to become a bank holding company by acquiring 93.6 percent of the voting shares of American Savings Bank, Tripoli, Iowa.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Valley Bancorp, Inc.*, and its subsidiary, Valley Bancorp, Inc. Employees Stock Ownership Plan and Trust, both of Brighton, Colorado; to acquire 61.8 percent of the voting shares of Lyons Bancorp, Inc., Lyons, Colorado.

and thereby indirectly acquire Valley Bank of Lyons, Lyons, Colorado.

In connection with this application, Valley Bancorp, Inc. Employees Stock Ownership Plan and Trust, Brighton, Colorado, has applied to become a bank holding company by acquiring Lyons Bancorp, Inc., Lyons, Colorado.

E. Federal Reserve Bank of Dallas (Anthony J. Monetelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Goliad Bancshares, Inc.*, Goliad, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Goliad, Goliad, Texas. Comments on this application must be received by October 8, 1986.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Heritage Bancorp, Inc.*, Mesa, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Mesa, Arizona, a *de novo* bank.

Board of Governors of the Federal Reserve System, September 9, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-20697 Filed 9-12-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Establishment of Advisory Consortium of Federal, Academic and Industry Logistics Experts

Establishment of Advisory Consortium. This notice is published in accordance with the provisions of Section 14(b)(1) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of the Consortium of Federal, Academic and Industry Logistics Experts. The Administrator of General Services has determined that establishment of this Consortium is in the public interest.

Designation. Consortium of Federal, Academic and Industry Logistics Experts.

Purpose. The fundamental purpose of the Consortium is to: (1) Reduce costs, (2) improve efficiency and effectiveness, and (3) increase productivity in Federal logistics operations. It will seek opportunities for savings through warehouse consolidation and cross-servicing, increased automation, system and process improvements and enhanced professional standards and training in the field of logistics science.

Contact for Information. The Federal Supply Service (FSS) is the organization within the General Services Administration (GSA) which is sponsoring this Consortium. For additional information, contact William B. Foote, Assistant Commissioner for Policy and Agency Liaison, FSS, GSA, Washington, DC 20406, telephone (703) 557-7970.

Dated: September 2, 1986.

Terence C. Golden,

Administrator.

[FR Doc. 86-20780 Filed 9-12-86; 8:45 am]

BILLING CODE 6820-34-M

Reestablishment of the GSA Advisory Board

Reestablishment of Advisory Committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the reestablishment of the General Services Administration (GSA) Advisory Board. The Administrator of General Services has determined that reestablishment of this committee is in the public interest.

Designation. General Services Administration Advisory Board.

Purpose. The purpose of the committee will be to advise the Administrator of General Services on GSA's key organizational, operational, and management policy issues.

Contact for Information. GSA's Office of Administration is the organization within the agency sponsoring this committee. For additional information, contact Mr. Jon Halsall, Special Assistant to the Associate Administrator for Administration on (202) 566-0945, 18th and F Streets, NW., Washington, DC 20405.

Dated: September 2, 1986.

Terence C. Golden,

Administrator of General Services.

[FR Doc. 86-20779 Filed 9-12-86; 8:45 am]

BILLING CODE 6820-34-M

Information Resources Management Service, Federal Telecommunications Standards; Glossary of Telecommunications Terms

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunications Standard, Federal Standard (FED-STD) 1037A, entitled "Telecommunications: Glossary of Telecommunications Terms". This standard is approved by the General Services Administration and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Edward P. Greene, Office of Technology and Standards, National Communications System (NCS), Washington, DC 20305-2010, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Servics Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for NCS interoperability and the computer-communication interface.

2. On March 26, 1983, a notice was published in the **Federal Register** (50 FR 11946) that a proposed Federal Standard entitled "Telecommunications: Glossary of Telecommunications Terms" was being proposed for Federal use.

3. The justification package as approved by the Director for National Security Telecommunications, National Security Council (NSC), was forwarded by the NSC with a recommendation for adoption of the standard. This data is a part of the public record and is available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

4. The approved standard contains 7 sections: section 1 describes the purpose of this standard; section 2 describes the scope; section 3 gives the applicability statement and specifies that this standard supercedes FED-STD 1037, July 1980; section 4 identifies the requirements; section 5 provides a guide for the use of the glossary; section 6 describes the change process for the future update of this glossary; and section 7 is the glossary itself containing 323 pages of terms, definitions, abbreviations and acronyms.

5. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies will be for sale, after publication, at the GSA Specifications Unit (WFSIS), Room 6039, 7th and D Streets, SW., Washington, DC 20407; telephone (202) 472-2205.

Dated: June 26, 1986.

Frank J. Carr,

Commissioner, Information Resources Management Service.

[FR Doc. 86-20790 Filed 9-12-86; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0251]

Public Workshop; Bioequivalence of Solid Oral Dosage Forms; Change of Meeting Location and Time and Preregistration Address

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Admininstration (FDA) is announcing a change of location and time for the upcoming public workshop to discuss the bioequivalence of solid oral dosage forms. A new address is given for those persons interested in attending the workshop who have not previously preregistered with FDA.

DATES: The workshop will be held September 29 through October 1, 1986, 8 a.m. to 4:15 p.m.

ADDRESSES: The workshop will be held in the J.W. Marriott Hotel, 131 Pennsylvania Ave. NW., Washington, DC. Individuals interested in attending but who have not previously registered with FDA should send their name, affiliation, and address to FDA Bioequivalence Workshop, P.O. Box 100, Maple Glen, PA 19002.

FOR FURTHER INFORMATION CONTACT: Donald B. Hare or Edwin V. Dutra, Jr., Center for Drugs and Biologics (HFN-203), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2784.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 17, 1986 (51 FR 2574), and June 27, 1986 (51 FR 23476), FDA issued notices announcing a public workshop to provide a forum to discuss the bioequivalence of conventional release solid oral drug dosage forms. The June 27, 1986, notice invited written requests from individuals intersted in making presentations at the workshop or who wanted to attend the workshop as observers.

Because of a greater than anticipated response for attending the workshop, FDA is announcing in this notice a new location and time.

The new location will be the J.W. Marriott Hotel, 1331 Pennsylvania Ave. NW., Washington, DC. The new time will be 8 a.m. to 4:15 p.m.

The new location can only accommodate 800 individuals. Therefore, it is important to preregister to be assured admittance to the workshop. Individuals interested in attending but who have not previously registered with FDA to attend the workshop should send their name, affiliation, and address to FDA Bioequivalence Workshop, P.O. Box 100, Maple Glen, PA 19002.

Name badges will be provided at the meeting.

Dated: September 8, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-20692 Filed 9-10-86; 10:22 am]

BILLING CODE 4160-01-M

[Docket No. 77N-0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators—Nitroglycerin Ointment; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions

Correction

In FR Doc. 86-19797 beginning on page 31371 in the issue of Wednesday, September 3, 1986, make the following corrections:

On page 31374, first column, last line, "June 29, 1987" should read "November 3, 1986". In the second column, first complete paragraph, sixteenth line, "June 29, 1987" should read "March 2, 1987".

BILLING CODE 1505-01-M

Veterinary Medicine Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. October 7 and 8, 8:15 a.m., Conference Rm. I, Parklawn Bldg, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, October 7, 8:15 a.m. to 9:45 a.m.; open public hearing, 9:45 a.m. to 10:15 a.m., open committee discussion, 10:15 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 4 p.m.; open committee discussion, October 8, 8:15 a.m. to 9 a.m.; open public hearing, 9 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 11:30 a.m.; Max L. Crandall, Center for Veterinary Medicine (HFV-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3450.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the commitee contact person.

Open committee discussion. The committee will discuss on July 7: (1) Off-label (extra-label) use of veterinary drugs, and (2) classification and labeling of prescription and over-the-counter veterinary drugs. On July 8 the committee will discuss. Administration of animal drugs to food animals via animal feeds.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the voter three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations.

to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 9, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–20695 Filed 9–12–86; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[OACT–008–N]

Medicare Program; Inpatient Hospital Deductible and Coinsurance Amounts for 1987

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

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and coinsurance amounts for calendar year 1987 under Medicare's hospital insurance program. The Medicare statute specifies the formula to be used to determine these amounts. The inpatient hospital deductible will be $572. The daily coinsurance amounts will be: (a) $143 for the 61st through the 90th day of hospitalization; (b) $286 for lifetime reserve days; and (c) $71.50 for the 21st through 100th day of extended care services in a skilled nursing facility. Each figure represents an increase of about 16 percent over the corresponding 1986 figure.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Solomon Mussey (301) 594–2829.

SUPPLEMENTARY INFORMATION: Section 1813 of the Social Security Act (Act) (42 U.S.C. 1395e(b)(2)) provides for an inpatient hospital deductible and certain coinsurance amounts to be deducted from the amount payable by Medicare for inpatient hospital services and extended care services furnished an individual. Section 1813(b)(2) of the Act as amended by section 9125 the Consolidated Omnibus Budget Reconciliation Act (COBRA), Pub. L. 99–272, requires the Secretary of Health and Human Services (HHS) to determine and publish, between July 1 and September 15 of the year, the amount of the inpatient hospital deductible applicable for the following calendar year.

The 1987 inpatient hospital deductible and coinsurance amounts discussed below have been computed in the same manner as in previous years, as required by section 1813 of the Act. The costs associated with this notice are the result of legislative requirements implemented by this notice. Although Congress recently has been considering legislative proposals that would limit the amount of deductible, the Secretary currently has no discretion in computing the inpatient hospital deductible and coinsurance amounts. The amount of the deductible for 1987 under the formula has been determined to be $572. This represents a 16 percent increase over the deductible for 1986, which was $492. The 1986 deductible had increased 23 percent over that for 1985.

Because the coinsurance amounts in section 1813 of the Act are fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year, the increase in the deductible has the effect of also increasing the amount of coinsurance the Medicare beneficiary must pay. Thus, for inpatient hospital services or extended care services furnished in 1987, the daily coinsurance for the 61st through 90th days of hospitalization (¼ of the inpatient hospital deductible) will be $143; the daily coinsurance for lifetime reserve days (½ of the inpatient hospital deductible) will be $286; and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility (⅛ of the inpatient hospital deductible) will be $71.50.

Under the formula in the law, the deductible for calendar year 1987 must be equal to $45 multiplied by the ratio of (1) the current average per diem rate for inpatient hospital services for calendar year 1985 to (2) the average per diem rate for such services in 1966. The amount so determined is rounded to the nearest multiple of $4. The average per diem rates are based on the amounts paid to participating hospitals by Medicare for inpatient services to insured individuals, plus the deductible and coinsurance amounts.

The average per diem rate for a calendar year is computed from the inpatient hospital bills for all beneficiaries. Each bill shows the number of inpatient days of care and the interim cost (the sum of interim reimbursement, deductible, and coinsurance). The data are summarized for each year, and an average interim per diem rate computed that accurately reflects interim payments on an accrual basis.

In order to reflect the change in the average per diem hospital rate under the program properly, the average interim rate must be adjusted to show the effect of final settlements made with each participating hospital after the end of its accounting year. The final settlements adjust the interim payment to the hospital to the actual full payment for providing covered services to beneficiaries. To the extent that the ratio of final payments to interim payments for 1985 differs from the ratio of final cost to interim cost for 1966, the increase in average interim per diem rates will not coincide with the increase in actual final payments that has occurred.

The current average interim per diem rate for inpatient hospital services for calendar year 1985, based on tabulated interim payments, is $500.99; the corresponding amount for 1966 is $37.92. The averages are based on approximately 79 million days of hospitalization in 1985 and 30 million days in 1966 (last 6 months of the year). The ratio of final payments to interim payments is approximately 1.014 for 1985 and 1.055 for 1966. Thus, the inpatient hospital deductible is $45×(500.99×1.014)/(37.92×1.055)=$571.42 which is rounded to $572.

The inpatient hospital deductible and coinsurance amounts for calendar year 1987 will be about 16 percent higher than the 1986 amounts. The inpatient

hospital deductible increased from $492 to $572; the daily coninsurance for the 61st through 90th day of hospitalization increased from $123 to $143; the daily coinsurance for lifetime reserve days increased from $246 to $286; and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility increased from $61.50 to $71.50.

The 16 percent increase in the inpatient hospital deductible is due to the increase in the average per diem hospital rate for 1985 as compared to the average per diem rate for 1984. Although the increase in the average per admission hospital payment for 1985 as compared to the average per admission hospital payment for 1984 is about 12 percent, the law specifies using the average per diem rate, not the average per admission rate. The substantial difference between the average per diem increase and the average per admission increase is due to the significant reduction in average length of stay for a hospital admission. Since 1983, the average length of stay has been declining at a much faster rate than in prior years. Thus, the fixed payment per admission is spread over fewer days causing the average per diem to increase and to be higher than the average per admission increase. The drop in length-of-stay has slowed somewhat and future increases would be expected to be lower.

The estimated cost to beneficiaries due to these increases is $800 million. This amount is based on an estimated 7.2 million beneficiaries who will have 7.8 million benefit periods and use 2.8 million hospital coinsurance days, 1.1 million lifetime reserve days, and 4.9 million skilled nursing facility coinsurance days in 1987.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 8, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 10, 1986.

Don M. Newman,

Acting Secretary.

[FR Doc. 20775 Filed 9-12-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14880-A]

Alaska Native Claims Selection; Kikiktagruk Inupiat Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Kikiktagruk Inupiat Corporation for 0.36 acre. The lands involved are in the vicinity of Kotzebue, Alaska.

U.S. Survey No. 2407, Block 2, Lot 1.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until October 15, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-20681 Filed 9-12-86; 8:45 am]

BILLING CODE 4310-JA-M

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council; Public Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council. The meeting begins on Tuesday, October 28, 1986, at 1 p.m. and reconvenes on Wednesday, October 29, 1986, following the Colorado River Basin Salinity Control Forum meetng at the Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, California 92109.

Purpose of Meeting

Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report.

Proposed Agenda

The Department of the Interior, Department of Agriculture, and Environmental Protection Agency will each present a progress report and schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and the content of their annual report.

Public Participation

The meeting of the Advisory Council is open to the public.

Any member of the public may file a written statement with the Council before, during, or after the meeting in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

All communications regarding this meeting, including requests for time to make statements, should be addressed to Mr. Al R. Jonez, Chief, Colorado River Quality Office, Bureau of Reclamation, D-1000, Engineering and Research Center, P.O. Box 25007, Denver, Colorado 80225.

Dated: September 9, 1986.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 86-20679 Filed 9-12-86; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On June 18, 1986, a notice was published in the **Federal Register** (Vol.

51, No. 177) that an application had been filed with the Fish and Wildlife Service by the Alaska Office of Fish and Wildlife Research, Anchorage, AK, (PRT-708155) for a permit to take (capture, tag, release) up to 200 Alaska sea otters, 70 of which would be surgically implanted with radio transmitters and monitored.

Notice is hereby given that on August 27, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 USC 1361-1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: September 10, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-20698 Filed 9-12-86; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Application Notice Establishing a Tentative Closing Date for Transmittal of Proposals Under the Water Resources Research Grant Program for Fiscal Year (FY) 1987

Proposals are invited for water research projects under the Water Resources Research Grant Program.

Authority for this program is contained in section 105 of Pub. L. 98-242, Water Resources Research Act of 1984. (42 U.S.C. 10301-10309)

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Proposals may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Proposals: Proposals are tentatively due on or before January 9, 1987. The program announcement will state the actual due date for receipt of the proposals.

Program Information: This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems.

Proposal Forms: The program announcement is expected to be available on or about October 27, 1986, and may be obtained by writing to the U.S. Geological Survey, Attn: Marolyn Jensen, MS 205C, Branch of Procurement and Contracts, 12201 Sunrise Valley Drive, Reston, VA 22092 and requesting a copy of announcement 7217. All organizations that applied for a FY 1986 award, all Historically Black Colleges and Universities, and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the program announcement. The program announcement will be sent to the Office of Sponsored Research of the colleges and universities on our mailing list.

Further Information: For further information contact Frank Coley, Branch of Research, Grants, and Contracts, Water Resources Division, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703-648-6810.

(Catalog of Federal Domestic Assistance Number 15.806)

Dated: September 5, 1986.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 86-20699 Filed 9-12-86; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Conoco Inc., Unit Operator of the Grand Isle/CATCO Federal Unit Agreement No. 14-08-001-2012, submitted on September 3, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Grand Isle/CATCO Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Parkway, New Orleans, Louisiana 70123.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 114, open weekdays 9:00 a.m. to 3:30 p.m., 1420 South Clearview Parkway, New Orleans, Louisiana 70123, phone (504) 736-2519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operators coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 8, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-20777 Filed 9-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Mobil Oil Exploration & Producing Southeast, Inc.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Mobil Oil Exploration & Producing Southeast Inc., Unit Operator of the Main Pass Block 73 Federal Unit Agreement No. 14-08-0001-20233, submitted on September 4, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Main Pass Block 73 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Parkway, New Orleans, Louisiana 70123.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 114, open

weekdays 9:00 a.m. to 3:30 p.m., 1420 South Clearview Parkway, New Orleans, Louisiana 70123, phone (504) 736–2519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 8, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–20778 Filed 9–12–86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Capital Region, Public Meeting on the 1986 Christmas Pageant of Peace

The National Park Service is seeking public comments and suggestions on the planning of the 1986 Christmas Pageant of Peace, which opens December 11 on the Ellipse, south of the White House.

A public meeting will be held at the Park Service's National Capital Region Building in East Potomac Park at 1100 Ohio Drive, SW., Room 234, at 10 a.m., October 3, 1986.

Interested persons who would like to comment at the meeting should notify the National Park Service by September 25, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at 426–6700. Persons who cannot attend the meeting may send written comments to Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242. Written comments will be accepted until September 25, 1986.

Dated: September 8, 1986.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 86–20812 Filed 9–12–86; 8:45 am]

BILLING CODE 4310-70-M

Overmountain Victory National Historic Trail Advisory Council Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Overmountain Victory National Historic Trail Advisory Council will be held at 3:00 p.m. on Friday, September 26, 1986, at Roan Mountain State Park, Roan Mountain, Tennessee.

The purpose of the Overmountain Victory National Historic Trail Advisory Council is to consult and advise with the Secretary of the Interior on all matters of planning, management and trial development of the Overmountain Victory National Historic Trail. The agenda will include a discussion of the progress on implementing the Comprehensive Management Plan, and the signing program.

The members of the Advisory Council are as follows:

Mr. Frank Robinson, Chairman, Elizabethton, Tennessee
Mr. Roy A. Taylor, Black Mountain, North Carolina
Mr. Walter H. Schrader, Columbia, South Carolina
Mr. Dennis Kline, Rogersville, Tennessee
Mrs. Jean Hawkins, Hilton Head, South Carolina
Mr. David O. Thomas, Abingdon, Virginia
Mr. Fred L. Burgin, Jr., Rutherfordton, North Carolina
Mr. Hugh Atkins, Spartanburg, South Carolina
Mr. David Lloyd Thomas, Greenville, South Carolina
Mr. Hubert Hendrix, Spartanburg, South Carolina
Mr. Jack D. Stansbury, Hampton, Tennessee
Dr. J. N. Lipscomb, Gaffney, South Carolina
Mrs. Grace Vance, Plumtree, North Carolina
Mr. George Olson, Asheville, North Carolina
Mr. Andrew Duncan, Jr., Wilkesboro, North Carolina
Mr. Terry Chilcoat, Norris, Tennessee.

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the council a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Paul Swartz, Chief, Planning and Compliance Division, National Park Service, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, Telephone 404/331–5465. Minutes of the meeting will be available for public inspection at the above address approximately 4 weeks after the meeting.

Dated: August 28, 1986.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 86–20811 Filed 9–12–86; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggests on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 395–7313.

Title: 30 CFR Part 774—Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

Abstract: This information is needed by the regulatory authority to determine if the applicant meets the requirements for renewal, revision, transfer, assignment, or sale of permit rights in accordance with the Act.

Bureau Form Number: None
Frequency: On Occasion
Description of Respondents: Coal Mine Operators
Annual Responses: 3300
Annual Burden Hours: 38,400
Bureau Clearance Officer: Darlene Grose Boyd 343–5447

Dated: August 27, 1986.

Donald Hinderliter,

Acting, Assistant Director, Budget and Administration.

[FR Doc. 86–20680 Filed 9–12–86; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Decision-Notice—V-369]

Motor Carriers Control, Purchase, and Tariff Filing Exemption; Swing Transport, Inc.

The following applications seek approval to consolidate, purlchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 9, 1986.

Swing Transport, Inc.; Purchase Exemption; Clifford J. Moore, d/b/a Clifford J. Moore Trucking

[No. MC-F-17688]

ADDRESSES: Send Comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and,

(2) Petitioners' representative: David E. Wishney, Esq., P.O. Box 837, Boise, ID 83701

Comments should refer to No. MC-F-17688.

Decided: September 9, 1986.

Under 49 U.S.C. 11343(e), the Commission has exempted, subject to public comment, the acquisition, by Swing Transport, Inc. (Swing Transport) (No. MC-115176), of all of the operating authority now held by Clifford J. Moore, an individual doing business as Clifford J. Moore Trucking (Moore) (No. MC-189061), namely, Moore's Permit No. MC-189061, issued March 19, 1986.

Moore's permit authorizes operation as a contract carrier, by motor vehicle, in interstate of foreign commerce, over irregular routes, transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States, under continuing contract(s) with commercial shippers or receivers of such commodities.

An application for temporary authority to lease Moore's operating authority was granted on August 18, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-20714 Filed 9-12-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Application for Class Exemption Relating to Certain Employee Benefit Plan Foreign Exchange Transactions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Solicitation of comments.

SUMMARY: This document requests comments from interested persons on issues which the Department is considering in deciding whether to propose a class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from the taxes imposed by the Internal Revenue Code of 1954 for foreign exchange transactions effected between employee benefit plans and certain banks and their affiliates. The Department anticipates that additional information provided by plans, business organizations, governmental agencies, individuals and other interested persons will help it to determine whether exemptive relief for such transactions is needed and, if so, upon what standards and safeguards relief should be conditioned. The information provided to the Department in response to this notice will also be important in determining whether any exemptive relief would satisfy the statutory criteria necessary for such relief.

DATE: Comments should be submitted on or before January 15, 1987.

ADDRESS: Comments (preferably, at least six copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, Washington, DC 20210. Attention: Foreign Exchange Class Exemption Application. All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-4677, 200 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S.

Department of Labor, (202) 523–8671. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Labor (the Department) has under consideration an application (Application No. D–5700) submitted by the American Bankers Association (ABA) for a class exemption from the restrictions of section 406 of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code by reason of certain transactions which are described in section 4975(c)(1)(A) through (F) of the Code. The transactions involve the acquisition and disposition by employee benefit plans of foreign exchange through ABA member banks and their affiliates. The application (referred to herein as the ABA application) was filed under section 408(a) of ERISA and in accordance with the procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975) by a letter to the Department dated July 18, 1984. In a letter to the ABA dated December 28, 1984, the Department tentatively denied the application, and in a letter dated June 21, 1985, the ABA modified its application in resposne to the Department's tentative denial, explaining that it was no longer seeking exemptive relief for foreign exchange transactions between banks and plans where the banks or their affiliates have investment management discretion over the plan assets involved in the transactions.[1]

Summary of the ABA Application

The ABA's application for exemption and the representations of the applicant are summarized below. However, interested persons are referred to the application on file with the Department for the complete representations of the applicant.

A. Background

U.S. employee benefit plan assets are being increasingly invested in foreign securities in order to increase diversification and to take advantage of opportunities for higher returns. It is estimated in the ABA application that by the end of 1983 approximately $11 billion of U.S. employee benefit plan assets were so invested.[2] For the most part, these investments consist of securities issued by foreign issuers which are denominated and traded in currencies other than the United States dollar. U.S. plans require access to facilities for the purchase and sale of foreign currencies, because the ability to buy and sell foreign currencies is vital to their participation in international securities markets and to the acquisition, holding and disposition of foreign assets. U.S. banks which are members of the ABA are the predominant source of foreign currencies for U.S. investors, including employee benefit plans, which invest in foreign securities. In many cases, these same banks, either directly or through their agents, serve as trustees, custodians or subcustodians with respect to the safekeeping of such assets abroad in accordance with the Department's regulations under ERISA section 404(b).

The foreign exchange market[3] is maintained primarily among larger banks, as well as money market brokers and dealers, located in major financial centers around the world. Such banks, dealing generally as principals and from inventories maintained by them in one or more foreign currencies, are a major factor in the global market within which international investors and businesses obtain needed foreign currencies. Transactions among those entities (referred to in the ABA application as "interbank transactions") typically determine, in the aggregate, the market for particular foreign currencies and generally occur in relatively large amounts, e.g. in excess of $2,000,000 (or its foreign currency equivalent). There is no single established market price for a given currency at any point in time, and the bid and asked prices of each bank for currencies are subject to constant fluctuation in response to changing conditions of supply and demand.

U.S. banks and their affiliates which participate in the interbank market for foreign exchange may also have any one or more of a variety of relationships to U.S. plans effecting foreign exchange transactions with those banks or their affiliates. These possible relationships may include the following:

(1) Trustee or investment manager with investment discretion over the plan assets which are invested in foreign securities.

(2) Trustee or master trustee with respect to the plan assets invested in foreign securities (but without any investment responsibility for such assets).

(3) Custodian or subcustodian for the plan assets invested in foreign securities.

(4) Other fiduciary or service provider relationships with respect to the plan or to plan assets other than those which are invested in foreign securities.

(5) Sponsor (or a relationship to a sponsor) of a plan which invests in foreign securities.

The ABA believes that, to date, investments in foreign securities have been made primarily by larger employee benefit plans, which typically allocate only a small portion of their total assets (generally not more than 5%) to such investments and which often appoint a trustee or investment manager (as defined in ERISA section 3(38)) with full investment discretion with respect to such assets. The ABA also believes that, in the large majority of cases, the U.S. bank effecting a foreign exchange transaction for a U.S. plan serves as a directed trustee or custodian with respect to the foreign securities maintained abroad for the plan. Such foreign exchange transactions are generally incident to, or result from, a transaction involving a foreign security effected by a plan fiduciary, such as an investment manager or named fiduciary, which is totally independent of the plan's trustee or custodian bank. The tendency of plans to centralize their custodial and foreign exchange functions at a single bank is reflected by the fact that, according to the ABA, approximately 90% of the foreign exchange transactions conducted for plans by independent non-bank investment fiduciaries are effected with the bank at or through which the plan's assets are maintained abroad.

Plan-related foreign exchange transactions only infrequently attain the size of interbank transactions (i.e. approximately $2,000,000 or more). The ABA understands that such transactions are substantially less than $150,000 on the average and, in the case of dividend payments, interest and other income distributions, frequently involve less than $20,000. Moreover, the ABA estimates that substantially more than 70% of the foreign exchange transactions effected for employee benefit plans are "split" transactions.[4] To effect a split

[1] The Department also has under consideration an application (Application No. D–4940) submitted by Continental Illinois Bank (CIB) on October 28, 1983 for an individual exemption from the restrictions of section 406 of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of certain transactions which are described in section 4975(c)(1) (A) through (F) of the Code and which involve the acquisition and disposition by employee benefit plans of foreign exchange through CIB. Interested persons are referred to the CIB application on file with the Department for further details.

[2] In a recent survey, seventy-seven international investment adivsers reported investing a total of $32.6 billion abroad for U.S. tax-exempt clients as of March 31, 1986. See *Pensions and Investment Age*, August 4, 1986.

[3] The term "foreign exchange" is used in the ABA application to describe non-U.S. currencies in which foreign assets are denominated.

[4] Foreign exchange transactions generally are either "spot," "forward," or "split," depending on

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transaction other than from inventory, it is necessary for a bank to obtain a market counterparty having equivalent currency and maturity needs but conducting the transaction in the opposite direction. Since this is generally difficult to do and even impossible in some cases, most split transactions must be effected out of a bank's own foreign exchange inventory.

An independent plan fiduciary has a number of choices as to how it will effect the foreign exchange conversions which may be required to handle a given investment transaction. For example, the fiduciary may decide to contact directly the foreign exchange trading facility in the plan's trustee or custodian bank and arrange the necessary foreign exchange transactions. Or the independent plan fiduciary may decide to effect the transaction directly through the foreign exchange trading desk of a bank which has no party in interest relationship to the plan, within the meaning of ERISA section 3(14). Alternatively, the independent fiduciary might have an arrangement with the trustee or custodian bank (or another bank) under which the bank's administrative or trust personnel will obtain the necessary foreign currency from the bank's own trading desk. Instead of directing the foreign exchange transactions itself, the independent plan fiduciary may arrange for plan-related foreign exchange transactions to be effected by the trustee or custodian bank under various types of written standing instructions. Such instructions might, for example, authorize the bank to accumulate dividends, interest and other distributions on the plan's foreign securities until a certain minimum level is reached, before converting such amounts into U.S. dollars without any further instructions from the independent plan fiduciary.

Most plan-related foreign exchange transactions are effected out of a bank's own inventory of foreign currencies. The rates at which transactions for institutional customers such as plans are effected are generally arrived at through adjustments to the bank's interbank rates to reflect various factors, such as the size of the transaction, prevailing market conditions, the position of the bank in a particular currency, and the present and anticipated volume of transactions from the customer. Very small transactions, for example, are typically effected at exchange rates which are substantially less favorable to the bank's customers than interbank rates.

The foreign exchange market is essentially an auction market in which the prices at which a given institution will purchase or sell currencies often vary from minute to minute or even more frequently. The interbank bid and asked prices of a particular bank are generally immediately available through Reuters and other subscription services using computerized data processing facilities. In addition, certain publications, such as the *Wall Street Journal* and the *New York Times*, publish the interbank foreign exchange rates for certain banks at selected times each day. While each bank engaging in foreign exchange transactions maintaines some records of the transactions which it effects with its customers, no continuous hard copy is maintained of the aggregate transactions or prevailing prices of the institutions which are the primary dealers in foreign currencies. Moreover, it is unlikely that there will be precisely equivalent transactions to which a plan's foreign exchange transactions can be compared at any point in time. Nonetheless, the ABA believes that the best opportunity for effective oversight and evaluation by independent fiduciaries with respect to plan foreign exchange transactions is at the point in time when the transaction is effected. Such oversight, the ABA asserts, is provided in cases where an independent plan fiduciary directly effects a foreign exchange transaction through a bank's foreign exchange trading desk. Where a bank is authorized by a plan to enter into a foreign exchange transaction for the plan on the basis of standing instructions, the ABA believes that reference to published interbank rates, together with timely monitoring of specific transactions before and after the trades in question, provide an adequate basis for supervision of the transactions by independent plan fiduciaries.

B. Possible Violations of the Prohibited Transaction Provisions for Which an Exemption Is Requested

A foreign exchange transaction between a bank or its affiliate and an employee benefit plan could result in a prohibited transaction under one or more of the provisions of section 406(a) or 406(b) of ERISA,[5] depending upon the relationship of the bank or affiliate to the plan. For example, where the bank or affiliate is a party in interest with respect to the plan by reason of being a person described in ERISA section 3(14)(A) (e.g. a fiduciary) of 3(14)(B) (a service provider), the transaction could result in a prohibited sale or exchange of an asset between a plan and a party in interest under ERISA section 406(a)(1)(A) or a transfer of plan assets to, or use of plan assets for the benefit of, such party in interest under ERISA section 406(a)(1)(D).

If the bank or affiliate executing a foreign exchange transaction with the plan were to be a fiduciary (as defined in ERISA section 3(21)(A)) with respect to the plan assets involved in the transaction, the transaction might result in a violation of one or more of the prohibitions of section 406(b) of ERISA. ERISA section 406(b) prohibits a fiduciary from (1) dealing with the assets of the plan in its own interest or for its own account, (2) acting in any transaction involving the plan on behalf of a party (or representing a party) with interests adverse to those of the plan or its participants or beneficiaries, and (3) receiving consideration for its own personal account from any party dealing with the plan in connection with a transaction involving the assets of the plan. Since foreign exchange transactions are generally effected from inventory, the ABA does not believe that any such transactions should result in a prohibited transaction under section 406(b)(3) of ERISA.

C. Description of the Requested Exemption

1. *Scope.* The ABA requests a retroactive and prospective class exemption from the restrictions of ERISA section 406(a) and 406(b) (and from the taxes imposed by sections 4975(a) and (b) of the Code) for all foreign exchange transactions effected by any bank, or any affiliate [6] thereof

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the settlement date of the transaction. A "spot" transaction is settled on the second business day after the transaction date. A "forward" transaction is an agreement to exchange the currencies at a certain rate on a specified future settlement date fitting a recognized maturity cycle (typically involving a period of 30, 60, 90 and 180 days). A "split" transaction is any transaction involving a settlement date which does not conform with the settlement dates for spot and standard forward foreign exchange transactions. For example, a foreign exchange transaction having a settlement date twenty-three days in the future would be a "split" transaction.

[5] Under Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Therefore, the references in this notice to specific sections of ERISA refer also to the corresponding sections of the Code.

[6] The term "affiliate" is defined in the requested exemption to include—

(i) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(ii) Any officer, director, employee, relative of, agent of, or partner in any such person; and

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(domestic of foreign), if the conditions described below are met. As modified by the ABA's June 21, 1985 letter to the Department, the requested exemption is not intended to cover retroactive or prospective transactions where the bank or its affiliate has investment management discretion over the plan assets involved. For example, the requested exemption would not apply to foreign exchange transactions which relate to the purchase, holding or disposition by a plan of investments denominated in foreign currencies (including investments in foreign exchange or contracts for the purchase and sale of foreign exchange) if the bank effecting those foreign exchange transactions (or an affiliate thereof) is an investment manager, as defined in section 3(38) of ERISA, with respect to the assets of the plan which are involved either in the foreign exchange transactions themselves or in the underlying plan investments to which the foreign exchange transactions relate.

2. Retroactive Exemption. The requested exemption would apply to transactions occurring from January 1, 1975 to the date ninety days after the **Federal Register** publication date of the final exemption, provided that (1) the "general arms' length test" described below is met and (2) an independent plan fiduciary has either effected the transaction on behalf of the plan by dealing directly with the bank's foreign exchange trading department or has authorized the bank to enter into foreign exchange transactions on behalf of the plan.

3. Prospective Exemption. For covered transactions occurring on or after the date which is ninety days after publication of the final exemption in the **Federal Register**, the conditions which must be met would depend on whether (1) the transaction is effected directly by a plan fiduciary independent of the bank, or (2) the transaction is entered into by the bank on behalf of the plan pursuant to standing instructions from an independent fiduciary.

Prospectively, all covered transactions must meet both a "general" arm's length test and a "particular" arm's length test, which are described below. In addition, in order for any transaction to qualify for the exemption, the bank must maintain at all times written policies and procedures regarding the handling of foreign exchange transactions with plans with respect to which the bank is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank knows that he or she is dealing with a plan. Finally, all covered prospective transactions must meet general conditions relating to recordkeeping and disclosure which are described below.

Where a plan fiduciary which is independent of a bank does not directly effect the transaction through the bank's foreign exchange desk but instead authorizes the bank to enter into the transaction pursuant to standing instructions, the following conditions must also be satisfied:

(A) The bank must be authorized in writing to enter into the transaction (the authorization can be without limit of time).

(B) The bank must have provided the authorizing fiduciary with a written statement indicating that the foreign exchange transactions in question can be effected by parties other than the bank, that the exchange rates are not fixed and that the bank has discretion to set the rates within the limits of the applicable arm's-length tests.

(C) If the written authorization is a continuing one, it must specify the events which could trigger a foreign exchange transaction covered by the authorization, and provide for terminability of the authorization without penalty with 10 days notice to the bank.

(D) The bank must furnish the authorizing fiduciary with information within at least 45 days after the end of each quarter, specifying:

(1) Each transaction covered by the exemption in the period;

(2) The foreign exchange rate for each transaction.

4. Arm's Length Tests. The "general" arm's length test of the requested exemption requires that, at the time the transaction is entered into, the terms of the transaction be not less favorable to the plan than the terms generally available in arm's length transactions between unrelated parties. The "particular" arm's length test of the requested exemption requires that the exchange rates afforded to the plan be not less favorable to the plan than rates afforded by the bank in comparable foreign exchange transactions involving unrelated parties.

5. Recordkeeping and Disclosure. The bank must maintain for a period of six years from the date of each plan foreign exchange transaction the records necessary to allow authorized persons to determine whether the conditions of the exemption have been met. However, if the records are lost or destroyed due to circumstances beyond the bank's control, a prohibited transaction will not be considered to have occurred. Moreover, no party in interest would be subject to civil penalties under section 502(i) of ERISA or to the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code if the records are not maintained or available for examination.

Authorized persons would generally be permitted to review the bank's foreign exchange transaction records at their customary location during normal business hours. If the records are maintained outside the United States, the bank would have thirty days to make them available at its U.S. headquarters or such other place as the bank and the requesting party may agree upon.

Persons authorized to examine the bank's records would be as follows: Any duly authorized employee of the Department of Labor or the Internal Revenue Service; any plan fiduciary (or employee thereof) authorized to require or dispose of the plan assets involved in the foreign exchange transaction; and any contributing employer (or authorized employee thereof) with respect to the plan involved in the foreign exchange transaction. The latter two categories of persons would not be authorized to examine a bank's trade secrets or commercial or financial information which is privileged or confidential

D. Additional Representations by the Applicant

The ABA believes that U.S. plans which invest in foreign securities will incur higher costs in obtaining needed foreign currencies and will be subject to a greater potential for loss if they are not permitted to effect foreign exchange transactions with banks which are parties in interest with respect to those plans. For example, the ABA states that, in the case of foreign exchange transactions involving small and/or odd amounts or split maturity cycles, plans may have to pay a substantial premium if they have no alternative to effecting such transactions in the open market with unrelated banks. The ABA also believes that it may not always be possible for a plan to effect transactions involving split maturity cycles with an unrelated bank.

The ABA represents that the requested exemption satisfies the requirements of section 408(a) of ERISA. In this connection, the ABA emphasizes

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(iii) Any corporation or partnership of which such person is an officer, director, partner or employee.

The term "control" is defined in the requested exemption to mean the power to exercise a controlling influence over the management or policies of a person other than an individual.

that, in order to qualify for the requested exemption, a foreign exchange transaction would either have to be directly effected by an independent fiduciary through a party in interest bank, or authorized and monitored by an independent plan fiduciary, and the transaction would in any event have to satisfy both arm's-length tests specified in the exemption.

Issues Under Consideration

Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan(s) and of the plan participants and beneficiaries, and protective of the rights of the plan participants and beneficiaries.

In its letter of December 28, 1984 to the ABA, the Department explained that, in tentatively denying the ABA's application for a foreign exchange class exemption, it had considered the following factors, among others:

(1) the inherent conflict of interest in the proposed transactions, creating the potential for abuse;

(2) the failure to demonstrate that the proposed transactions are in the best interests of and protective of the rights of the participants and beneficiaries of the plans involved; and

(3) the lack of independent safeguards to protect the interests of the participants and beneficiaries of the plans.

In the letter, the Department expressed particular concern that the requested exemption would as a practical matter afford inadequate protection in situations where banks having management discretion over plan assets effect foreign exchange transactions involving those assets while acting as dealers. The Department also expressed its view that the application does not satisfactorily explain how plans could, in the fast-moving world of foreign exchange trading, effectively monitor the operation of the "arm's-length" tests described in the requested exemption.

Although the ABA subsequently modified the requested exemption to eliminate coverage of foreign exchange transactions executed for plans by banks having investment discretion with respect to the assets involved in the transactions, the Department nevertheless believes that the ABA application and the submissions supplementary thereto contain insufficient information concerning plan foreign exchange activities on which to base a proposed exemption or make the findings reqired under section 408(a) of ERISA. Specifically, while the ABA application provides relevant information concerning the participation by banks in foreign exchange markets generally, the application provides no data or information generated by plans or other independent sources concerning the practices of plans engaged in foreign exchange activities, the extent of the need for exemptive relief or the standards and safeguards upon which exemptive relief for the transactions in question should be conditioned. Moreover, the Department continues to be concerned that the various conditions to exemptive relief proposed by the ABA, including the "arms'-length" tests and the review of completed transactions by an independent plan fiduciary, would not effectively and consistently prevent the abuse of discretion by fiduciary banks in setting exchange rates for transactions involving plan assets, in the absence of a completely objective pricing standard that all plan foreign exchange transactions effected by such banks would be required to meet without the need for any subjective interpolation.

The Department believes that it is particularly important that the standards and safeguards incorporated in any foreign exchange class exemption be feasible, effective and genuinely protective of plans, participants and beneficiaries, because the foreign exchange market in the United States is entirely unregulated and subject to no official rules issued by any governmental authorities relating to market participation, types of transactions or market practices.[7]

Accordingly, this notice is being published in order to provide interested persons with an opportunity to submit written comments which will be considered by the Department in deciding whether to propose a class exemption relating to the execution of foreign exchange transactions by banks and their affiliates for employee benefit plans.

As a general framework for comments, the following is a list of some of the issues under consideration by the Department. The list does not describe all issues relevant to the development of a class exemption relating to foreign exchange transactions, and comments on other matters raised by the ABA application are also invited.

[7] See *Foreign Exchange Markets in the United States*, Roger M. Kubarych, Federal Reserve Bank of New York, 1983, page 9.

A. Need for Exemptive Relief

1. What costs or hardships for plans, if any, would result from complete denial of the requested exemption?

2. What costs or hardships for plans, if any, would result if the exemption is denied only with respect to foreign exchange transactions which are not effected by an independent plan fiduciary dealing directly with the foreign exchange trading desk of a bank or its affiliate?

3. What costs or hardships for plans, if any, would result if the exemption is denied with respect to foreign exchange transactions effected for U.S. plans through foreign affiliates of U.S. banks?

B. Foreign Exchange Activities of Domestic Employee Benefit Plans

1. What size and other characteristics typify plans which engage in foreign exchange transactions? For example, is plan foreign exchange activity generally confined to plans of relatively large size? To what extent are smaller plans likely to increase their participation in the foreign exchange markets in the future?

2. What is the average size (in dollar terms) and frequency of plan foreign exchange transactions? To what extent do plans aggregate and centralize their foreign exchange transactions in order to take advantage of more favorable exchange rates which may be available for large volume transactions?

3. To what extent do plans use the services of investment managers or other fiduciaries with expertise in foreign exchange markets to direct or monitor plan foreign exchange transactions with banks or their affiliates?

4. What methods do plan fiduciaries responsible for directing or monitoring foreign exchange transactions with banks or their affiliates generally use to obtain foreign exchange market data for pricing purposes (e.g., by means of on-line computerized market-data services or comparable facilities; publications; direct contact with competing foreign exchange dealers; other methods)?

C. Standards and Safeguards

1. What procedures would independent plan fiduciaries use to determine whether foreign exchange transactions effected through party in interest banks or their affiliates meet the "general" arm's length test of the requested exemption (i.e., whether the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties)? For example, would independent plan

fiduciaries normally obtain current quotes of foreign exchange rates for purposes of comparison from sources other than party in interest banks or their affiliates immediately prior to and after effecting a foreign exchange transaction directly through a bank's foreign exchange trading department? Where foreign exchange transactions are effected by banks pursuant to standing authorizations, what procedures would independent plan fiduciaries use (upon receipt of the related confirmations) to apply the "general" arm's length test to transactions completed several days earlier?

2. What procedures would independent plan fiduciaries use to determine whether foreign exchange transactions effected through party in interest banks or their affiliates satisfy the "particular" arm's length test of the requested exemption (i.e., whether the exchange rates afforded to the plan are at least as favorable to the plan as rates afforded by the bank in comparable foreign exchange transactions involving unrelated parties)?

3. What standards and safeguards, if any, should be included in a foreign exchange class exemption in addition to or in lieu of the "arm's length" tests contained in the requested exemption? For example, should the exemption be available with respect to all or certain types of plan foreign exchange transactions (e.g., those not directed by a plan fiduciary independent of the bank and its affiliates) only if the price to the plan is as favorable or more favorable to the plan than the price of the bank's prevailing spot or forward interbank transactions in the identical currencies?

4. What information should a foreign exchange class exemption require plans to be provided in confirmation statements by party in interest banks and their affiliates? For example, should the exemption require that the time of day of foreign exchange transactions be included in such confirmation statements? How soon after each transaction should banks be required to provide plans with confirmation statements?

5. In cases where plans authorize party in interest banks or their affiliates to effect foreign exchange transactions pursuant to standing instructions, what limitations or guidelines, if any, should a foreign exchange class exemption require to be included by an independent plan fiduciary in those instructions in order to reduce the potential for abuse of discretionary authority? For example, what limitations, if any, should be included with respect to:

(i) The prices at which the transactions are to be executed (e.g., a price range within which a particular currency is to be purchased or sold)?

(ii) The types of events which trigger the transactions (e.g., only with respect to conversion of dividends, interest payments and other distributions of income)?

(iii) The time span within which a transaction must be executed after the occurrence of a triggering event?

(iv) The reporting or confirmation of trades?

(v) Payment or settlement instructions?

Written Comments

All interested persons are invited to submit written comments on the subject matter of this notice to the address and within the time period set forth above. All comments will be made a part of the record of the proceeding referred to herein and will be available for public inspection.

Dated: September 10, 1986.

Alan D. Lebowitz,

Deputy Administrator for Program Operations, Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 86-20742 Filed 9-12-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Administration Presidential Historical Materials; Opening of Files

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of files.

SUMMARY: Opening of selected subject categories of the Nixon White House Central Files (WHCF) and selected Staff Member and Office Files of the Nixon Administration. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access selected integral file segments of materials among the Nixon Presidential materials in the custody of the National Archives and Records Administration.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning December 1, 1986.

Any person who believes it necessary to file a claim or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before December 1, 1986.

ADDRESSES: The file segments will be made available to the public at the National Archives' Alexandria facility, located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records Administration (N), Washington, DC. 20408.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Deputy Director, Nixon Presidential Materials Project Staff, 703-756-6498.

SUPPLEMENTARY INFORMATION: The integral file segments that have been prepared for public access consist of 559.6 cubic feet of textual materials that were under the administrative custody and control of the White House Central Files Unit during the Presidency of Richard M. Nixon. The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. White House staff members and offices, except those offices which function as permanent housekeeping operations, use the Central Files as a repository for documents that are generated or received by the President and his staff during the normal course of business.

The materials designated for opening to the public were selected from two portions of the Central Files: the Subject Files, and the Staff Member and Office Files. In subject content and document type, these files reflect the diverse activities of the President and his staff and include considerable correspondence with the general public and Government officials, policy-making and policy-implementation documents of the Administration, routine administrative documents of the White House organization, and materials relating to social events and ceremonial aspects of the Nixon Presidency.

The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories, which are further divided into numerous sub-categories. The National Archives has prepared 32 of these primary subject categories for public access.

Materials in the Subject Files were segregated into two major divisions, "Executive" and "General," with no cross-references between them. "Executive" material consists of correspondence and other documents of

particular importance based on the item's source or nature. These include letters and other documents received from and sent to Federal agencies, Members of Congress, State Governors and local officials, foreign heads of state, and other prominent correspondents. It also includes official documents that were acted upon by the President or one of his staff assistants. "General" material comprises those items received from the general public and other sources, which usually were not handled at as high a level as "Executive" material.

Listed below are the 32 primary subject categories of the WHCF that have been processed and will be made available to the public.

Primary subject category	Volume (cubic feet)
Agriculture (AG)	5
Arts (AR)	3
Atomic Energy (AT)	1.3
Business-Economics (BE)	33
Civil Aviation (CA)	12
Commodities (CM)	9
Disasters (DI)	7
Education (ED)	5
Federal Government (FE)	9.6
Federal Government-Organizations (FG)	
National Aeronautics and Space Council (FG 6-4)	.3
Office of Science and Technology (FG 6-9)	.3
Department of the Treasury (FG 12)	6
Department of Health Education and Welfare (FG 23)	5
Legislative Branch (FG 30-FG 46)	13
Supreme Court of the United States (FG 51)	2
Federal Council for Science and Technology (FG 119)	.3
National Academy of Sciences (FG 152)	.3
NASA (FG 164)	.3
National Science Foundation (FG 182)	.6
President's Science Advisory Committee (FG 209)	.3
Presidential Task Forces (FG 221)	3
Task Force: Space Task Group (FG 221-18)	.3
Cabinet Committee on Economic Policy (FG 238)	.3
President's Advisory Council on Executive Organization (FG 250)	.3
Health (HE)	15
Highways—Bridges (HI)	1
Holidays (HO)	15.6
Housing (HS)	2.6
Human Rights (HU)	18
Immigration-Naturalization (IM)	3.3
Indian Affairs (IN)	2.3
Judicial-Legal Matters (JL)	16
Labor-Management Relations (LA)	8
Legislation (LE)	8
Local Governments (LG)	13
Natural Resources (NR)	9
Outer Space (OS)	4.3
Parks-Monuments (PA)	7
Peace (PC)	1
Recreation-Sports (RE)	3
Religious Matters (RM)	9
Safety-Accident Prevention (SA)	2
Science (SC)	
Trade (TA)	23
Transportation (TN)	3.6
Utilities (UT)	9.3

In addition to the subject categories, six file groups from the Staff Member and Office Files will be made available to the public. These consist of materials that were transferred to Central Files, but were not incorporated into the Subject Files. Although Central Files placed individual documents and folders it received whereas possible in an appropriate subject category for the White House staff member or office of origin, there were times when this practice was impractical. If the quantity of material was voluminous from a retiring staff member or disbanded office, Centeral Files simply placed the materials under the name of the staff member or office. Materials filed in this manner are referred to as Staff Member and Office Files.

The documents in these files vary greatly in both content and filing arrangement, and reflect the activities and responsibilities of the particular staff member or office. In general, the files consist of incoming and outgoing correspondence, reports, memoranda, research and printed materials, notes, drafts of speeches, photographs, administrative records, and other types of records. Selection of the six file groups for public access was on the basis of previous inquiries received or anticipated high reference potential.

Listed below are the selected Staff Member and Office Files that will be made available to the public.

File group	Volume (cubic feet)
John Whitaker and Richard Fairbanks	55
Dr. Edward David, Office of Science and Technology	50
Task Forces-Charles Clapp	30
President's Advisory Council on Executive Organization (Ash Council)	49
Press Release Office	56
Daily Diary, Office of Presidential Papers and Archives	26

Public access to some of the items in these integral file segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations.)

Dated: September 9, 1986.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 86-20715 Filed 9-12-86; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL ENDOWMENT ON THE ARTS AND HUMANITIES

Literature Advisory Panel; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing Fellowships/Poetry Section) to the National Council on the Arts will be held on October 2-3, 1986 from 9:00 a..-6:00 p.m. and on October 4, 1986 from 10:00 a.m.-3:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 4, from 2:00 p.m.-3:00 p.m. to review guidelines and discuss policy issues.

The remaining sessions of this meeting on October 2-3, from 9:00 a.m.-6:00 p.m. and on October 4, 10:00 a.m.-2:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants, in accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

September 9, 1986.

[FR Doc. 86-20781 Filed 9-12-86; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing Fellowship/Prose Section) to the National Council on the Acts will be held on October 9-10, 1986 from 9:00 a.m.-6:00 p.m. and on October 11, 1986 from 10:00 a.m.-3:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 11, from 2:00 p.m.-3:00 p.m. to review guidelines and discuss policy issues.

The remaining sessions of this meeting on October 9-10, from 9:00 a.m.-6:00 p.m. and on October 11, 10:00 a.m.-2:00 p.m. are for the purpose of Panel review, discussion, evaluation and

recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/862-5433.

John H. Clark,

Director, Council and Panel Operations National Endowment for the Arts.

September 9, 1986.

[FR Doc. 86-20782 Filed 9-12-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for the Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for the Mathematical Sciences

Date & Time: October 2, 1986—9:00 a.m. to 5:30 p.m., October 3, 1986—8:30 a.m. to 3:30 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Open

Contact person: Dr. Judith S. Sunley, Deputy Division Director, Division of Mathematical Sciences, Room 339, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9669. Anyone planning to attend this meeting should notify Dr. Sunley no later than September 29, 1986.

Purpose of Committee: To provide advise and recommendations concerning support for research in the mathematical sciences.

Agenda: *Thursday, October 2, 1986—9:00 a.m. to 4:00 p.m.*

Introductory remarks
FY 1987 Budget context
Status of the Division
Mathematical Sciences at other agencies
Computational mathematics
University/industry interaction in the mathematical sciences
Related NSF activities EPSCOR
Women, minorities and handicapped Science and Engineering Education Activities aimed at undergraduates
Concerns of the Committee on priorities for the future and current needs

Friday, October 3, 1986—8:30 a.m. to 3:00 p.m.

Staff hiring and organization
Possible initiatives for FY 1989
Priorities for the future
Summarizing the committee consensus
Other business

M. Rebecca Winkler,

Committee Management Officer.

September 10, 1986.

[FR Doc. 86-20763 Filed 9-12-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and Time: October 2 & 3, 1986—8:30 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Patrick W. Flanagan, Program Director, Ecology (202) 357-9734, Room 215, National Science Foundation, Washington, DC 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 10, 1986.

[FR Doc. 86-20761 Filed 9-12-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecosystem Studies; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Date and Time: October 2 & 3, 1986—8:30 a.m. to 5:00 p.m. each day.

Place: Room 212, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Jerry M. Melillo, Program Director, Ecosystem Studies (202) 357-9596, Room 215, National Science Foundation, Washington, DC 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 10, 1986.

[FR Doc. 86-20762 Filed 9-12-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Regulatory Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Regulatory Biology.

Date and time: October 1, 2, and 3, 1986 8:30 a.m. to 6:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Stephen Bishop, Program Director, Regulatory Biology Program, Room 332, National Science Foundation, Washington, DC 20550 Telephone 202/357–7975.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 10, 1986.

[FR Doc. 86–20764 Filed 9–12–86; 8:45 am]

BILLING CODE 7555–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of Information Collection Request

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) has requested approval by the Office of Management and Budget (OMB) for an extension of the expiration date of a currently approved information collection request (1212–0036) without any change in the substance or in the method of collection. Current approval of the information collection is scheduled to expire on October 31, 1986. The information collection covers the information that must be submitted to the PBGC to effect either a standard or distress termination under the Single-Employer Pension Plan Amendments Act of 1986, as set forth in the PBGC's Notice of Interim Procedures 51 FR 12491 (April 10, 1986). The effect of this notice is to advise the public of the PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC, 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC, 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC, 20006, 202–956–5050 (202–956–5059 for TTY and TDD). (These are not toll-free numbers).

Issued at Washington, DC, this 9th day of September 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86–20689 Filed 9–12–86; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–15292(812–6343)]

Suncoast Finance Corp.; Application for Exemption From All Provisions of the Act for Issuer of Collateralized Mortgage Obligations

September 9, 1986.

Notice is hereby given that Suncoast Finance Corporation (formerly Suncoast Mortgage Finance Corporation, "Applicant"), 4350 Sheridan Street, Hollywood, Florida 33021, filed an application on April 8, 1986, and amendments thereto on May 28 and August 15, 1986, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant and certain trusts created by Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the relevant provisions thereof.

Applicant states that it is a newly-formed Delaware corporation, and that it is wholly-owned by Suncoast Savings and Loan Association ("Suncoast"), a state-chartered capital stock savings and loan association headquartered in Hollywood, Florida. Applicant further states that it is a limited purpose finance corporation organized to facilitate the financing of long-term residential mortgages on one-to-four family residences through the issuance of one or more series of bonds secured by such mortgages and that it will not engage in any business or investment activities unrelated to such purpose.

According to the application, Applicant contemplates creating one or more separate trusts, each of which will issue one or more series of collateralized mortgage obligations ("Bonds"). Each trust ("Issuer Trust") will be created pursuant to an agreement ("Trust Agreement") between Applicant, acting as depositor, and a bank, trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Each Issuer Trust will issue one or more series ("Series") of Bonds pursuant to an indenture ("Indenture") between such Issuer Trust and an independent trustee ("Trustee").

Applicant states that the Bonds will be directly secured by "fully-modified pass-through" mortgage-backed certificates fully guaranteed as to principal and interest by the Government National Mortgage Corporation ("GNMA Certificates"); Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"); Guaranteed Mortgage Pass-Through Certificates issued by the Federal National Mortgage Association ("FNMA Certificates", collectively, "Mortgage Certificates") and reinvestment earnings and distributions on such Certificates. In addition to the Mortgage Certificates directly securing the Bonds, a Series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture.

Applicant represents that in the case of each Series of Bonds, (a) payments on the mortgage loans underlying the Mortgage Certificates securing the Bonds will be the primary source of funds for payments of principal and

interest due on such Bonds; (b) the Bonds will be secured by collateral consisting primarily of Mortgage Certificates with an aggregate outstanding principal amount at least equal to the initial principal amount of such Bonds; (c) scheduled available principal and interest payments on the Mortgage Certificates securing the Bonds (together with any required payments from any reserve funds with respect to the Bonds) plus income received thereon will be sufficient to make the interest payments on and amortize the principal of such bonds by their stated maturities; and (d) the Mortgage Certificates will be pledged in their entirety by each Issuer Trust to the Trustee and will be subject to the lien of the related Indenture.

Applicant requests an order pursuant to section 6(c) of the Act exemptiing Applicant and each Issuer Trust from all provisions of the Act in connection with the sale of the Bonds. Applicant submits that the requested order is necessary and appropriate in the public interest because: (1) Applicant is not the type of entity to which the provisions of the Act were intended to apply; (2) Applicant may be unable to proceed with its proposed business if the uncertainties concerning the applicability of the Act are not removed; (3) Applicant's proposed business is intended to serve a recognized and critical public need; and (4) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act of 1933 ("1933 Act") and thereafter by the Trustee representing their interest under the Indenture.

Applicant expressly consents to the following conditions with respect to the requested order:

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates or FHLMC Certificates.

(3) If new mortgage collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the collateral replaced; (ii) Have similar payment terms and cash flow as the collateral replaced;' (iii) Be insured or guaranteed to the same extent as the collateral replaced; and (iv) Meet the conditions set forth in paragraphs (2) and (4). In addition, new collateral may not substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

(4) All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least on nationally recongnized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act.

(6) No less often than annually, an independent public accountant will audit the books and records of each Issuer Trust and in addition will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

In addition to the issue and sale of the Bonds, Applicant intends to sell equity certificates representing the beneficial ownership interest in each Issuer Trust to one or more banks, savings and loan associations, pension funds, insurance companies, or other institutions which customarily engage in the purchase of mortgages or other mortgage collateral ("Eligible Institutions") in transactions not constituting a public offering within the meaning of section 4(2) of the 1933 Act. Initially, Applicant does not intend to sell such equity certificates to more the twenty-five Eligible Institutions. Moreover, Applicant represents that each Eligible Institution will be required to represent that it is purchasing the equity certificate for investment purposes, and that the Trust Agreement relating to each Issuer Trust will further prohibit the transfer of any equity certificates if there would be more than one hundred beneficial owners of such certificates at any time.

Applicant states that neither the holders of the equity certificates of any of the Issuer Trusts nor the Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds ("Bondholders"). In this regard, Applicant represents that, without the consent of each Bondholder to be affected, neither the holders of the equity certificates of any of the Issuer Trusts nor the Trustee will be able to (1) change the stated maturity on any Bonds; (2) reduce the principal amount, or the rate of interest on any Bond; (3) change the priority of repayment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture. Applicant also states that the sale of equity certificates representing beneficial interests in each Issuer Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture to support payments of principal and interest of the Bonds. Further, Applicant represents that none of the owners of the equity certificates will be affiliated with the Trustee under the Indenture for the Bonds. Applicant also represents that no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) equity interest will be affiliated with either the custodian or the statistical rating agency rating the Bonds.

Applicant states that the interests of the bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Issuer Trust, and that there will not be a conflict of interest between the Bondholders and the holders of the equity certificates for several reasons: (a) The collateral that will initially be deposited into each Issuer Trust will not be speculative in nature because it will consist solely of GNMA certificates, FNMA Certificates or FHLMC Certificates, which Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) The Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories, which by definition means that the capacity of the issuer to repay principal and interest on the Bonds is extremely strong; and (c) The Indenture under which the Bonds have been issued subjects the collateral pledged to secure the Bonds, all income

distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders;[1] and (d) the owners of the equity certificates are entitled to receive current distributions representing the residual payments on the collateral from each Issuer Trust in accordance with the terms of the applicable Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Further, the equity owners are liable for the expenses, taxes and other liabilities of the Issuer Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The choice of the form of issuer for the collateralized mortgage obligations and the identity of the owners of the equity interests in such issuer, according to Applicant, does not alter in any respect the payments made to the holders of such collateralized mortgage obligations, which are payments governed by an indenture meeting the requirements of the Trust Indenture Act of 1939.

Applicant also states that the aggregate interests of the owners of the equity certificates in the collateral and the expected returns earned by the owners of the equity certificates will be far less than the payments made to Bondholders. According to the application, there is a strong regulatory incentive to Suncoast to ensure that the Bonds to be issued by each Issuer Trust are not collateralized by "excess" collateral which may produce cash flow that greatly exceeds the amounts needed to pay principal and interest on the Bonds. Specifically, in order to comply with applicable federal regulation covering the operations of its parent savings and loan association, Applicant states that it does not intend to deposit collateral the market value of which exceeds 110 percent of the gross proceeds of the Bonds.

Applicant further states that except to the extent permitted by the limited right to substitute collateral described in the application, it will not be possible for the owners of the equity certificates to alter the collateral initially deposited into an Issuer Trust, and, in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Applicant asserts that, although it is possible that any collateral substituted for collateral initially deposited into an Issuer Trust may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the equity certificates, which market conditions are likely to affect all mortgage certificates of similar payment terms and maturities in a similar fashion; (b) The interests of the owners of the equity certificates are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience; and (c) To the extent that it may be possible for the owners of the equity certificates to cause the substitution of collateral which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary. Applicant asserts that, do to the fact that there will be more than one owner of the issuing entity, it appears less likely that the owners will be able to agree on any desired substitution of collateral than if there were a single owner that could unilaterally decide on the timing and execution of the substitution.

To alleviate any potential conflict of interest between the Bondholders and the holders of the equity interests, Applicant further agrees that the above representations regarding the equity interests may be made express conditions to the requested order.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 2, 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 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.

Shirly E. Hollis,

Assistant Secretary.

[FR Doc. 86-20728 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

[1] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the Issuer Trust (and any holder of equity certificates thereof) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, (iii) the firm of independent accountants has received all fees owed to it for services rendered under the Indenture, and (iv) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds. Once amounts have been released from the lien of the Indenture, the Trust Agreement for each Issuer Trust provides that the bank, trust company or other fiduciary acting as Owner Trustee under the Trust Agreement has a lien superior to that of the owners of the equity certificates of the Issuer Trusts to the remaining cash flow.

[File No. 1-8852]

Issuer Delisting; Application To Withdraw From Listing and Registration; ERC International, Inc., Common Stock, Par Value $.05

September 9, 1986.

ERC International, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw its common stock from listing and registration on the American Stock Exchange ("Amex"). The Company's common stock is also listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reason stated in the application for withdrawing this security from listing and registration includes the following:

The Company is withdrawing its common stock from listing and registration on the Amex because it does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock. The Company's common stock will continue to be listed and registered on the NYSE.

Any interested person may, on or before September 30, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the

Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20799 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 5, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-l thereunder, for unlisted trading privileges in the following securities:

Anderson, Clayton & Co., Common Stock, $1.00 Par Value (File No. 7-9156)
Borman's Incorporated, Common Stock, $1.00 Par Value (File No. 7-9157)
Decision Industries Corporation, Common Stock, $0.10 Par Value (File No. 7-9158)
Eastern Airlines, Inc., $3.20 Cumulative Preferred Stock, $1.00 Par Value (File No. 7-9159)
The France Fund, Inc., Common Stock, $0.01 Par Value (File No. 7-9160)
Hazeltine Corporation, Common Stock, No Par Value (File No. 7-9161)
IE Industries, Inc., Common Stock, $2.50 Par Value (File No. 7-9162)
The Italy Fund, Inc., Common Stock, $0.01 Par Value (File No. 7-9163)
Jamesway Corporation, Common Stock, $1.00 Par Value (File No. 7-9164)
Mauna Loa Macadamia Partners, L.P., Class A Depositary Units, Class B Depositary Units (File No. 7-9165)
McDonald & Company Investments, Inc., Common Stock, $1.00 Par Value (File No. 7-9166)
Mesa Limited Partnershipds, $1.50 Cumulative "A" Preference Unit (NC) Voting (File No. 7-9167)
NL Industries, Inc., Depositary 1/100 share Cumulative "C" Preferred (File No. 7-9168)
National Presto Industries, Inc., Common Stock, $1.00 Par Value (File No. 7-9169)
Newmont Gold Company, Common Stock, $0.01 Par Value (File No. 7-9170)
Pier 1 Inc., Common Stock, $1.00 Par Value (File No. 7-9171)
Snyder Oil Partners (DE), Units of Limited Partnership (File No. 7-9172)
Southern New England Telecommunications Corporation, Common Stock, $12.50 Par Value (File No. 7-9173)
Union Carbide Corporation, Rights (File No. 7-9174)
USX Corporation, Common Stock, $1.00 Par Value (File No. 7-9175)
Curtice-Burns, Inc., Class A Common Stock, $2.22 Par Value (File No. 7-9176)
Power Test Corporation, Common Stock, $0.10 Par Value (File No. 7-9177)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 26, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20726 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23604; File No. SR-MSRB-86-12]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Customer Account Transfers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1986, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to rule G-26 on customer account transfers (hereafter referred to as the "proposed rule change"). The proposed rule change conforms rule G-26 to certain of the provisions of parallel NYSE and NASD requirements adopted subsequent to the effective date of rule G-26 that have application to municipal securities.

II. Self-Regulatory Organization's Statement of the Purpose of, the Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, the Statutory Basis for, the Proposed Rule Change

(a) Rule G-26 is designed to ensure that customer account transfers are accomplished in a timely and efficient manner by municipal securities dealers. The rule parallels rules adopted by the New York Exchange (NYSE) and the Natioanl Association of Securities Dealers (NASD) and ensures that a uniform account transfer standard applies to all municipal securities dealers. In order for the Board's account transfer procedure to remain similar to that required by the NYSE and the NASD rules, the Board determined to amend rule G-26 to conform to certain of the provisions of the NYSE and NASD requirements adopted subsequent to the effective date of rule G-26 that have application to municipal securities. The proposed rule change would provide that if an account includes a "nontransferable" asset, the dealer carrying the account must request, in writing, instructions from the customer as to the disposition of the asset, which includes liquidation of the asset or retention by the carrying dealer. In addition, the proposed rule change would allow the carrying dealer to take exception to a transfer instruction only if: (1) It has no record of the account on its books; (2) the transfer instruction is incomplete; or (3) the transfer instruction contains an improper signature. The proposed rule change also designates a transfer instruction form, Form G-26, for use for transfers of customers' municipal securities accounts. Finally, the proposed rule change provides for other technical amendemnts to rule G-26, including the type of information regarding the securities in the customer account which the carrying dealer must deliver to the receiving dealer.

(b) The proposed rule change is adopted pursuant to section 15B(2)(C) of the Securities Exchange Act of 1934, as amended, which requires the Board to adopt rules:

> Designed . . . to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest. . . .

The Board believes that the proposed rule change will promote fairness and provide greater efficiency in the transfer of customer accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change applies uniformly to all broker, dealers, or municipal securities dealers that are engaged in municipal securities activities and is generally technical in nature. The Board, therefore, believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has neither asked for nor received any comments concerning the proposed rule change.

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 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 6, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 9, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20800 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23601; File SR-OCC-86-12]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change

On May 28, 1986, the Options Clearing Corporation ("OCC") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), a proposed rule change that converts all OCC money settlements to same-day funds. The Commission published notice of the proposal on July 14, 1986.[1] On August 22, 1986, OCC amended its proposal concerning requests for margin withdrawals. No comments were received. This Order approves the proposal.

I. Description

The proposal provides, that, except where expressly indicated otherwise, all cash payments between OCC and its Clearing Members shall be made in immediately available funds (or "same-day funds"). Currently, OCC settles several specified transactions in same-day funds, *e.g.*, Treasury option exercises and assignments, and foreign currency option settlements.[2] Most OCC money settlements, such as option premium, margin and index option exercise settlements, have been settled in next-day or clearing-house funds. The proposal provides for uniform, same-day funds settlements for all such cash payments.

Money settlements between OCC and a Clearing Member are effected through OCC-approved Clearing Banks, which maintain accounts for Both OCC and Clearing Member. OCC delivers daily settlement instructions to the Clearing Bank, which at settlement time, makes appropriate debits and credits to the respective accounts of OCC and its Clearing Member.[3] Physical checks generally are not used for OCC money settlements. Under the proposal, the same procedures will be followed except that payments currenlty made in next-day funds will now be drafted in same-day funds.

The proposal also amends OCC's Rules [4] applicable to requests for cash margin withdrawals by requiring such requests to be made earlier in the day.[5] OCC Rules allow Clearing Members to deposit cash as one form of margin and also provide that OCC can invest that cash for its own account. Any interest or gain on such investments belongs to OCC. If an OCC Clearing Member has deposited margin in excess of the required margin for that day, OCC Rules allow the Clearing Member to withdraw the excess by submitting to OCC a margin withdrawal request.[6] The proposal would require Clearing Members to submit cash margin withdrawal requests between 8:00 a.m. and 9:00 a.m. (Central Time) for same-day release.[7]

II. OCC's Rationale

OCC states in its filing that the proposal will reduce significantly the financial exposure to OCC in the event of failure of an OCC Clearing Bank. OCC states that next-day funds settlement prevents OCC from obtaining irrevocable credits against which it can pay Clearing Members. Under next-day funds settlement, interbank payments are made by the exchange of depository transfer checks, which are subject to reversal if the transferor bank fails ("transfer risk"). OCC believes that the proposal will reduce its transfer risk by enabling OCC, through its Clearing Banks, to send and receive money tranfers over the Federal Reserve's wire transfer system, which are final when credited.[8]

OCC believes that although transfer risk is common to all financial institutions, OCC's central role as issuer and guarantor of all options traded on its participating exchanges requires OCC to be particularly attentive to financial exposure. OCC also believes that its obligations under section 17A of the Act, including its obligation to safeguard securities and funds, make it

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[1] Securities Exchange Act Release No. 23399 (July 7, 1986), 51 FR 25414 (July 14, 1986).

[2] *See* Securities Exchange Act Release No. 23353 (June 20, 1986), 51 FR 23868 (July 1, 1986).

[3] OCC Rules 1606 and 1606A provide different procedures for settlement of foreign currency option exercises. Under those procedures, foreign currency payments and U.S. dollar payment flow between Clearing Member's agent banks and OCC's correspondent bank in the country of origin of the foreign currency.

[4] *See* Chapter VI of OCC's Rules.

[5] OCC originally proposed a charge to Clearing Members that request a cash margin withdrawal, but fail to make the withdrawal. OCC amended its filing to delete that aspect of the proposal.

[6] margin withdrawal requests currently must be submitted between 10:00 a.m. and 1:00 p.m. (Central Time) for same-day release.

[7] OCC plans to study this time frame and, if feasible, may extend the 9:00 a.m. deadline.

[8] *See* CFR 210.36 (1986).

incumbent upon OCC to take this step to minimize interbank funds transfer risk.

The switch to same-day funds settlement, according to OCC, will cause OCC to change its cash management policies and for that reason OCC has amended its margin withdrawal procedures. OCC states that investment decisions regarding cash margin and balances in OCC's bank accounts, under same-day funds settlement, would be made by 10:30 a.m. on the day of collection, rather than on the following day, as is currently the case for next-day funds. For that reason, OCC has changed the time period during which Clearing Members can submit margin withdrawal requests.

OCC states in its filing that it has consulted OCC Clearing Banks about the proposal and has been advised that any impact on credit availability to OCC Clearing Members and bank operations would be minimal. OCC also surveyed its Clearing Members, who indicated that they would not be materially affected by the proposal and generally supported same-day funds settlement. For all of the above reasons, OCC believes the proposal is consistent with the Act and should be approved.

III. Statutory Standards

Under section 19(b)(2) of the Act, the Commission must approve OCC's proposed rule change if it finds OCC's proposal is consistent with the Act and Commission rules applicable to registered clearing agencies. The Commission may not approve OCC's proposal if it is unable to make such a finding.

Section 17A sets out the standards the Commission must use in reviewing proposed rule changes of registered clearing agencies. Section 17A(b)(3) provides, among other things, that a clearing agency shall not be registered by the Commission unless the Commission determines that the rules of the clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. That subsection also provides that the clearing agency's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. Furthermore, section 17A(b)(3)(I) provides that the rules of a clearing agency must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Section 17A also directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, in accordance with the following Congressional findings:

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

Section 17A(a)(2) directs the Commission in using its authority under the Act to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers, dealers, clearing agencies and transfer agents.

IV. Discussion

The Commission believes that OCC's conversion to same-day funds settlement is consistent with the Act and should be approved. OCC's proposal is the first conversion to same-day funds settlement by a registered clearing agency for all routine money settlements. Traditionally, money settlements for transactions in private equity and debt securities, municipal securities, and exchange-listed options have been made in next-day funds.[9] The Financial Industry Securities Council Same Day Funds Task Force, however, concluded that same-day funds settlement for all securities transactions is desirable in the long term.[10]

The proposal will reduce financial exposure to OCC resulting from the risk of Clearing Bank failures. OCC faces several types of bank risk under next-day funds settlement because bank payments are not final until the day after payment. First, OCC is exposed to the risk that a next-day funds payment by an OCC Clearing Bank to OCC, on behalf of an OCC Clearing Member, would be unavailable for OCC use if the Clearing Bank fails. Second, and perhaps more significant, is the risk of Clearing Bank failure relative to next-day funds movements by OCC among its amounts at OCC Clearing Banks, i.e., concentration movements. For example, OCC may receive significant credits of next-day funds from Clearing Members at one Clearing Bank and move those next-day funds to a concentration account at another Clearing Bank for, among other reasons, payment of Clearing Member credit balances through other Clearing Banks and to receive financial advantages a bank may offer for concentration of funds at that bank. Because of the concentration of money settlement payments at one Clearing Bank, exposure from that Clearing Bank's failure becomes significant. Under the proposal, these interbank payments would be made via irrevocable Federal wire transfers that are final when credited. Thus, the exposure between payment and final collection is eliminated.

The reduction in OCC's financial exposure also benefits OCC's Clearing Members. Clearing Members contribute to OCC's clearing fund, which could be used to satisfy OCC's payment obligations in the event of a Clearing Bank default. Because clearing fund deposits qualify as assets in computing broker-dealer net capital requirements, OCC's use of clearing fund contributions could jeopardize the financial solvency of its Clearing Members. Accordingly, the proposal benefits Clearing Members because it reduces the risk of OCC's use of clearing fund assets. Furthermore, the Commission agrees with OCC that any effect on Clearing Member financing costs resulting from same-day funds settlement should be minimal because the advantages of same-day funds credits to Clearing Members should offset the costs of same-day funds debit payments.

OCC's proposal also will establish a uniform payment practice in settling standardized securities options contracts and standardized futures contracts. OCC and its futures clearing subsidiary, the Intermarket Clearing Corporation ("ICC"), are working on several intermarket clearing enhancements to promote efficiency and cost savings. OCC has filed with the Commission a proposal that would enable single net money settlement for certain combined options and futures

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[9] Same-day funds settlement, however, is common for transactions in U.S. government securities, futures contracts, and short-term money market instruments.

[10] *See, Same Day Funds Settlement for Securities Transacitons: A Research Report*, Prepared for the Financial Industry Securities Council Same Day Funds Settlement Task Force, Under the Sponsorship of American Bankers Association and Securities Industry Association (July 1985).

transactions.[11] OCC also has proposed a "cross-margining" system that could reduce overall margin requirements by recognizing reduced risks from certain cross-market hedges in options and futures positions.[12] Uniformity in payments will facilitate implementation of these initiatives.

The Commission also believes that OCC's modification of its margin withdrawal procedures is consistent with the Act and should be approved. As noted above, those modifications provide for earlier deadlines for cash margin withdrawal requests. The earlier deadlines for cash margin withdrawal requests appear to the Commission to be necessitated by the switch to same-day funds settlement and resulting changes in OCC's cash management policy.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change (SR–OCC–86–12) is consistent with the Act. In particular, the Commission finds that the proposal is consistent with section 17A and the rules and regulations applicable to registered clearing agencies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 5, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20797 Filed 9–12–86; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 5, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

FMC Corporation

Common Stock, $0.10 Par Value (File No. 7–9178)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 26, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20727 Filed 9–12–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23590; File Nos. SR–CBOE–86–14, SR–CBOE–86–28 and SR–CBOE–86–29]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Changes Relating to a Retail Automatic Execution System and Granting Accelerated Approval of Proposed Rule Changes

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Commission on June 5, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to implement its Retail Automatic Execution System ("RAES") in the Standard and Poor's 500 Index options class ("SPX") for six months. Comments on this rule proposal were solicited in Securities Exchange Act Release No. 23330 (June 17, 1986), 51 FR 23289. None were received.

RAES is a program which permits firms participating in the Exchange's Order Routing System to route electronically certain size customer orders to the Exchange for an automatic execution at the best bid or offer displayed in the System at the time of order entry. Customer RAES orders are executed against market makers who participate in the System. RAES had been operating as a pilot in selected options series in the Standard and Poor's 100 index option ("OEX") since February 1985, and recently has been granted permanent approval by the Commission.[1]

Because RAES in OEX does not integrate the customer limit order book with the automatic execution system, that System operates as an exception to CBOE priority rules.[2] The Commission also has approved implementation of a RAES pilot program in six equity options classes. In all but one of the options classes in the pilot program (IBM) and except under unusual market conditions, the RAES equity options pilot will protect limit order book priority.[3]

The CBOE proposes to operate RAES in SPX in the same manner as the equity options pilot (with the exception of IBM). All incoming RAES orders will be executed automatically against participating market makers who will be assigned a RAES execution on a rotating basis. If a RAES transaction occurs at the price of an order on the limit order book the market maker on the contra side of the trade will be required to trade with the booked limit order up to the number of contracts assigned to him on RAES.[4] The Exchange may suspend book participation in RAES, however, if the Exchange's Vice Chairman and President (or their designees) find that it is impossible to maintain normal trading operations and protect book priority.[5]

RAES will generate a confirmation for the firm which sent the customer order at the place of order entry. Market makers will be informed of their RAES participation by delivery of trade acknowledgement tickets. A log of all RAES transactions will be available for review by participants throughout the day, and audit reports will be produced for Exchange surveillance purposes.

The CBOE proposes that both market and marketable[6] limit orders of up to

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[11] *See* Securities Exchange Act Release No. 23452 (July 22, 1986), 51 FR 26965 (July 28, 1986). This proposal would apply to certain foreign currency options and futures contracts.

[12] *See* File No. SR–OCC–86–17. This proposal would apply initially to foreign currency options and futures, and to options and futures on certain index products.

[1] *See* Securities Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788 (File Nos. SR–CBOE–85–32 and 85–16) ("RAES Approval Order").

[2] CBOE Rule 6.45 provides that orders of public customers on the book have time priority over other orders in the trading crowd at the same price.

[3] *See* RAES Approval Order, *supra* note 1, for a more complete description of the RAES equity pilot.

[4] This pilot design will generate two trades, one between the RAES order and the market maker, and the other between the market maker and customer limit order. The second trade will be reported for clearing purposes but will not be publicly disseminated as part of the day's trading volume.

[5] *See* RAES Approval Order, *supra* note 1, for a more complete description of the limitations on this exception.

[6] The Exchange's SPX pilot proposal omits reference to marketable limit order eligibility for RAES. The Exchange in a subsequent rule change filing proposes to redefine SPX RAES order

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ten contracts will be eligible for RAES in SPX. The Exchange reserves the discretion to restrict RAES order size and type eligibility, and to select the particular options series for placement on the System. Daily announcements will be made concerning which options series are RAES eligible. If no market makers sign on the System on a particular day its operation will be suspended for that day.

The CBOE further proposes to impose eligibility requirements on market makers wishing to participate in the RAES SPX pilot.[7] These eligibility criteria are identical to those proposed for the RAES equity options pilot.[8] In brief, this proposal provides that all registered market makers are eligible for RAES participation. However, a market maker must log onto RAES in person and may remain on the System only so lond as he is in the trading crowd.[9] A market maker must sign off the System whenever he leaves the trading crowd, except for a "brief interval." Failure to comply with these requirements could result in disciplinary action or in remedial action by the Exchange's Market Performance Committee. The Exchange also proposes to exempt market makers from these requirements in unusual market conditions.

The CBOE states in its proposal that SPX is becoming a successful product with substantial institutional participation which would benefit from the operational efficiencies of the RAES program. For these reasons, the Exchange believes that the SPX RAES pilot proposal is consistent with the Act. The CBOE further believes that SPX RAES eligibility requirements are designed to increase market dept and liquidity, and therefore, are consistent with the Act.

The Commission recognizes that RAES should bring greater efficiencies in the execution and reporting of eligible customer orders in SPX. Moreover, because the SPX pilot is designed to preserve customer limit order book priority it is consistent with the statutory requirements to protect investors and the public interest. The Commission finds that the eligibility requirements are consistent with the Act because they are designed to ensure adequate participation in the SPX pilot without imposing unreasonable burdens on market makers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be, and hereby, are approved.[10]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 4, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20720 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

eligibility as market or marketable limit orders of up to ninety-nine contracts in an options series placed on the system. File No. SR-CBOE-86-29 noticed in Securities Exchange Act Release No 23545 (August 21, 1986), 51 FR 30602. In this filing, the CBOE requests accelerated approval of the aspect of the proposal which permits inclusion of marketable limit orders on RAES in SPX. The CBOE believes accelerated approval is appropriate to conform the RAES SPX pilot to the other RAES programs previously approved by the Commission.

[7] The Exchange filed copies of this proposal, SR-CBOE-86-28, with the Commission on August 19, 1986.

[8] Proposed RAES equity options eligibility criteria were published for comment in Securities Exchange Act Release No. 23474 (July 29, 1986), 51 FR 28148.

[9] Market makers may participate as individuals or through joint accounts. Only one joint account participant, however, may trade in SPX at one time. The CBOE prohibits two or more joint account members from trading in an options class simultaneously to avoid placing other trading crowd members at a competitive disadvantage. *See* CBOE Floor Procedure Committee memorandum, dated November 3, 1982. The CBOE exempts OEX from this prohibition because of its liquidity. Moreover, the Exchange requires all joint account participants to participate in RAES in OEX. *See* Securities Exchange Act Release No. 23313 (June 10, 1986), 51 FR 22368 (File No. SR-CBOE-86-10), approving six-month pilot for RAES OEX eligibility.

[10] The proposal on market maker eligibility requirements for the SPX pilot have not been published for notice and comment. The Commission finds good cause to approve this rule change before the thirtieth day after the date of publication of notice of filing thereof because identical eligibility requirements for the RAES equity options pilot were published for notice and comment. *See supra* note 8. No adverse comments have been received and the Commission also is approving that proposal in Securities Exchange Act Release No. 34-23591 (September 4, 1986) (File No. SR-CBOE-86-22). Moreover, the CBOE discussed the proposal with SPX market makers who did not raise any objections, and the proposal was approved by the OEX Floor Procedure Committee. The Commission further finds good cause to accelerate approval of SR-CBOE-86-29 to the extent it includes in the definition of eligible SPX RAES orders marketable limit orders because it will conform the RAES SPX pilot with other RAES programs previously approved by the Commission. *See supra* note 6.

[Release No. 34-23591; File No. SR-CBOE-86-22]

Self-Regulatory Organizations; Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Retail Automatic Execution System Eligibility for Market Markers

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted on July 17, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, which establishes eligibility criteria for market makers who elect to participate in the Exchange's Retail Automatic Execution System ("RAES") six-month pilot for equity options.[1] The Exchange proposal was noticed in Securities Exchange Act Release No. 23474 (July 29, 1986), 51 FR 28148. No comments on the filing were received.

According to the CBOE proposal all registered market makers are eligible to participate in the RAES equity options pilot under the following conditions. The market maker must use his own trading acronym and password to log onto the System, and all trades in which he participates will clear into his designated account. A market maker may designate either his individual or joint account for RAES trades. If he designates his joint account, however, only one joint account participant may use the account at one time in accordance with exchange rules and interpretations.[2]

A market maker must sign onto RAES in person, and may stay on the system only when present in the trading crowd. The market maker must sign off the System when leaving the trading crowd, except when absent for a "brief interval." [3] The CBOE proposal states that failure to comply with these requirements will result in disciplinary action,[4] and also possibly remedial

[1] The Commission recently approved a CBOE proposal to operate RAES in six equity options classes on a six-month pilot basis in Securities Exchange Act Release 23490 (August 1, 1986), 51 FR 28788 (File No. SR-CBOE-85-16). RAES automatically executes public customer market and marketable limit orders against participating CBOE market makers at the best bid or offer displayed at the time the customer order enters the System. In five of the six options classes in the pilot, RAES will protect public customer limit order book priority in the event the best displayed bid or offer is represented by a customer limit order on the book. In one options class, IBM, and under unusual market conditions in the other five options classes, RAES would operate as an exception to the CBOE rule that customer limit orders on the book have time priority over all other bids or offers in the market at that price (CBOE Rule 6.45). In the same approval order the Commission authorized permanent approval of the use of RAES in selected options series of the Standard and Poor's 100 Index ("OEX") (File No. SR-CBOE-85-32). RAES in OEX also operates as an exception to the CBOE's priority rule.

[2] The CBOE prohibits two or more members of a joint account from trading in the same options class simultaneously in order to avoid competitively disadvantaging other trading crowd members. *See* CBOE Floor Procedure Committee memorandum, dated November 3, 1982.

[3] Although the Exchange does not define the phrase "brief interval," the Commission understands that it is envisioned that it will cover those instances during the trading day where for matters of personal convenience a market maker must leave the trading floor.

[4] The proposal specifies that a market maker may be disciplined under (1) CBOE Rule 6.20 which

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action by the Exchange's Market Performance Committee, which may include a suspension of eligibility from RAES. The proposal further provides that in the case of unusual market conditions relief from these eligibility requirements may be granted.

The CBOE states that this proposal is an accommodation between "in-person participation in the system and the eligibility of all competing market makers to be on the system." [5] The Exchange believes authority to grant relief from the in-person requirement is appropriate because of uncertainty about whether there will be sufficient interest by market makers in the trading crowd to sustain RAES operation in a particular options class. Finally, the CBOE believes that this proposal is consistent with the Act because of its design to improve market quality and the efficiency of customer order execution.

The Commission believes that the proposed rule change, by attempting to ensure sufficient market maker participation both in the RAES equity options pilot and in the trading crowds in which RAES will operate, is consistent with the requirements of the Act applicable to a national securities exchange, in particular sections 6(b)(5) and 11A of the Act.[6]

provides for a fine upon a finding by two Floor Officials that a member's conduct has impaired maintenance of a fair and orderly market or public confidence in the operations of the Exchange; and (2) Chapter XVII of the rules, the CBOE's general disciplinary jurisdiction.

[5] File No. SR-CBOE-86-22 at 3.

[6] The Commission also has approved different eligibility requirements for market makers participating in RAES in OEX as a six-month pilot in Securities Exchange Act Release No. 23313 (June 10, 1986), 51 FR 22368 (File No. SR-CBOE-86-10). The RAES OEX eligibility pilot permits both individual and groups of market makers to participate in RAES, with different obligations imposed on each category. Participating individual market makers must remain on the System whenever they are in the OEX trading crowd for the duration of the week they sign on to the System, and for the next expiration Friday. Joint account members and market maker nominee groups must remain on RAES for the entire week they sign on the System even if absent from the trading crowd. Market maker group participation is also mandated for expiration Friday of any month they sign on the System. Because of OEX liquidity, joint account RAES OEX participants are exempted from the exchange prohibition on joint account members trading in the same options class during the day. The OEX RAES eligibility requirements are designed to encourage sufficient RAES participation and capital to handle the high volume in OEX, whereas the in-person SPX requirements appear to be designed to ensure adequacy of the SPX trading crowd by market makers wishing to participate in RAES.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 4, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20721 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23586; File No. SR-MSE-86-6]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Specialists Assuming Full Responsibility From Trade Date (T) up to the Opening of Business on the Next Day (T + 1) for Erroneous ITS Comparisons

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 18, 1986, the Midwest Stock Exchange, Inc. ("MSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, a specialist assumes full responsibility for a trade in the case of erroneous comparisons reflected on ITS reports. The one exception to this general statement involves the ITS obvious error rule. Essentially, this ITS rule states that a specialist has 15 minutes in which to either cancel an erroneous trade or correct it.

The proposed change would provide that the specialist assumes full responsibility from trade date (T) up to the opening of business on the next day (T+1). The responsibility, however, between the opening of business on T+1 and settlement date would shift. During this period of time the floor broker would have responsibility for ⅔ and the specialist's responsibility would be limited to ⅓. This allocation of responsibility would occur only where the specialists had attached a copy of the ITS confirmation to the trade ticket at the time the order was reported on trade date. The specialist, however, would continue to have no responsibility for erroneous comparisons presented after settlement date as is currently the case. In addition, responsibility for certain errors which present unusual circumstances would still need to be determined by the Committee on Floor Procedures.

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to require that responsibility for an erroneously compared trade processed through ITS be shared by both the floor broker and the specialist. The floor broker has more safeguards available to him/her for the detection of such errors than does the Specialist. This factor, in addition to the frequency with which such errors occur in high volume periods, warrants a specific rule to limit a specialist's reponsibility.

The proposed rule change is consistent with section 6 of the Act in that by allocating the responsibility for erroneously compared trades to the floor broker, as well as the specialist, the rule change will foster cooperation and coordination with persons facilitating transactions on securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the MSE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicition of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be sumbitted by October 6, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 2, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20722 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23589; File No. SR-OCC-86-15]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change

On July 16, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). Under the proposal, Clearing Members may gain access to OCC's Clearing Member Accounting and Control System ("C/MACS")[1] by direct dial-up from a personal computer using security features embedded in the hardware, in place of the call-back feature which OCC recently proposed and the Commission approved.[2] The Commission published notice of the proposal in Securities Exchange Act Release No. 23459.[3] No comment letters were received. This Order approves the proposal.

I. Description of the Proposal

The proposed rule change modifies OCC procedures to provide for access to C/MACS through the use of a personal computer ("PC") with a synchronous modem operating at 2400 baud,[4] a synchronous data link control transmission protocol and a system security board resident in the PC. Currently, Clearing Members can access C/MACS only through dedicated leased lines; OCC never implemented the call-back feature. In essence, the proposed rule change enables C/MACS access by direct dial-up using multiple internal security features instead of the callback feature. The proposal does not change OCC's other "log on" procedures that help to ensure system security.[5]

The dial-up system, the "OCC-Packet Switched Network" ("OCC-PSN"), is configured as a private closed network. That is, the network's Packet Assemblers and Disassemblers ("PADS") and switches are interconnected by private lines leased and controlled by OCC. Access to OCC-PSN would be allowed only through dial-in ports located in OCC-controlled access facilities and only when in compliance with strict security parameters.

Network access generally would be accomplished under the following protocol. All access to the network will be initiated by an OCC developed program, which will auto-dial the closest network node (initially Chicago or New York). The answering modem at that node will be synchronous and will operate at 2400 baud. The switch located at the called node will request a password from the calling device. If the password provided is valid, *i.e.*, if the network node identifies the unique serial number on the security board in the PC, the call will be passed through the network to the processing location. The processing node then will establish a session with the PC and will identify an address on an emulator board in the PC which, if valid, will be translated into a logical terminal name and passed to the application. On the other hand, if the processing node fails to identify the address, the connection will fail.

Once the session is established, the user must surmount other C/MACS security features that remain unchanged by the proposal, *e.g.*, the user must provide his C-MACS user identification ("logon-id") and password. Not only must these match each other, but they must also match the terminal from which the call is made. Only after all these conditions are met will the user obtain access to the data and individual functions authorized by the user's logon-id and password.[6]

II. OCC's Rationale for the Proposal

OCC states in its filing that the proposed rule change is consistent with the requirements of Section 17A of the Act because it will promote use of C-MACS while maintaining an adequate level of system security. OCC states that the proposed access procedure will reduce Clearing Members' C/MACS costs substantially, especially for Members outside Chicago or other U.S. cities where OCC has branch offices,[7] and, at the same time, will promote a more widespread use of C/MACS with its advantages over hard-copy and machine-readable input. OCC also believes that the proposal assures the safeguarding of securities and funds in OCC's possession or for which it is responsible. OCC states that the security inherent in the proposed access procedure is superior to that offered by dial-up with call-back, in particular because the security features are embedded in the hardware.

III. Discussion

On February 24, 1986, the Commission approved an OCC proposal that gave C/MACS users the choice of accessing the system by dial-up.[8] At that time, the

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[1] C/MACS is a computerized communication system linking OCC's Clearing Members to OCC. Through C/MACS, Clearing Members can: (1) Retrieve daily activity and position reports, (2) inquire about current positions and activity, and (3) enter instructions for same-day security and cash movements.

[2] *See* Securities Exchange Act Release No. 22939 (February 24, 1986), 51 FR 7172 (February 28, 1986), approving File No. SR-OCC-85-20.

[3] (July 22, 1986), 51 FR 27105 (July 29, 1986).

[4] Due to compatability requirements, OCC will specify the brand of modem required by the network.

[5] *See* File No. SR-OCC-83-15 and the Commission's related approval order (Securities Exchange Act Release No. 20983 (May 22, 1984), 49 FR 22427 (May 29, 1984)) for a detailed description of those procedures.

[6] Through the use of multiple passwords, a Clearing Member can allow its personnel to have access to some of all of the three basic activities. *See* note 1, *supra.*

[7] New York, Philadelphia and San Francisco.

[8] *See* note 2, *supra.*

Commission considered the call-back feature an important factor in its decision to approve the proposal. Moreover, the Commission directed OCC to monitor the adequacy of dial-up safeguards closely and to implement necessary system improvements expeditiously. OCC is now proposing such an improvement.

The Commission believes that the proposal is consistent with section 17a of the Act and for the following reasons is approving it. The Commission agrees with OCC that the proposed access procedure would promote the prompt and accurate clearance and settlement of securities transactions. While the proposal does not change C/MACS on-line communications services, the proposal promotes prompt and accurate securities processing because it should make those services available to more Clearing Members. OCC's smaller volume Clearing Members and Members outside OCC clearing cities will be able to enjoy the benefits of high speed automated communications at reasonable costs. OCC represents that the proposal should provide OCC Clearing Members with an access method substantially more economical than that based on dedicated telephone lines. OCC states that start-up costs to Clearing Members for dedicated line access can be as high as $18,000, compared with a maximum cost under the proposal of $5,500.[9] In fact in most cases the costs will be substantially less because the businesses have already purchased the required hardware, *i.e.*, a PC, for other business purposes.

The Commission also believes that the proposal will continue to assure the safeguarding of securities and funds in OCC's possession or control or for which it is responsible. The Commission believes that OCC's proposal contains elaborate safeguards that improve on the level of system security. Security featurs embedded in system hardware, together with special OCC-developed software that will identify a security board in the PC and the placement of a unique address on an emulator board in the PC, should ensure only authorized access to the system. While the Commission recognizes that no system can guarantee total security from unauthorized access, the Commission believes that OCC's proposal employs sufficient safeguard to minimize that risk.[10]

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

Accordingly, it is therefore ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–85–15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 3, 1986

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20723 Filed 9–12–86; 8:45 am]

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[9] The cost to Clearing Members of implementing dial-up access with call-back is in the same range as the proposed access procedure; however, OCC believes that, because of the advanced security features and relatively low costs, more Clearing Members will use C/MACS and economies of scale will result.

[10] The Commission emphasizes thats "safeguarding" under section 17A of the Act does not require a clearing agency to adopt any single method of protection against unauthorized system access. The Commission analyzes each method on a case-by-case basis to determine if it will provide sufficient protection in light of several factors, including users' needs, system services, and types of system data.

[Release No. 34–23588; File No. SR–PCC–86–05]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Clearing Corporation Amending its Schedule of Fees and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 21, 1986, the Pacific Clearing Corporation ("PCC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PCC's proposed rule change revises its schedule of fees and charges with respect to PCC dues, trade comparison for OTC trades and reorganization services. The changes to the schedule will be as follows (Italics indicates language to be added; brackets indicate language to be deleted.)

PCC Dues

Each full service PCC symbol [$150.00] *$175.00* per month.

Each SCD only symbol $50.00 per month.

Each post [$150.00] *$175.00* per month.

Comparison

$0.05 per 100 shares for each side of individual stock, warrant or right, submitted for comparison (minimum $0.05, maximum $10.00) for listed, interface or offboard.

$0.05 per 100 shares for each side of individual stock, warrant or right, submitted for comparison (minimum $0.50, maximum $1.75) for OTC.

$0.03 per $1,000 bond face value for each side of individual bond trade submitted for comparison (minimum $0.03, maximum $3.00).

Miscellaneous

$1.00 per CUSIP for each dividend debited or credited.

$0.15 for each item keypunched.

[$10.00] $30.00 for each reorganization.

A $5.00 charge per item will apply to any input document prepared by PCC for a member. The $5.00 charge per item does not include normal processing fees.

PCC states that its dues and fees for Over The Counter trade comparisons are being increased to bring PCC fees more in line with competitors' rates. Reorganization fees are being raised to offset increasing costs resulting from extraordinarily high volume of called bonds and the lack of uniform call notification.

Furthermore, PCC states that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, 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 St., NW., Washington 20549. Copies of the filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to the file

number in the caption above and should be submitted by October 6, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 3, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20724 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23587; File No. SR-PSDTC-86-06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Company Amending its Schedule of Fees and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 21, 1986, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC's proposed rule change revises its schedule of fees and charges with respect to PSDTC dues and reorganization services. The changes to the schedule will be as follows (Italics indicate language to be added; brackets indicate language to be deleted.)

PSDTC Dues

- [$250.00] *$320.00* per month for the first account. Each additional account [$75.00] *$150.00* per month.
- [$100.00] *$150.00* per month for the first pledgee account. Each additional pledge account [$50.00] *$100.00* per month.

Miscellaneous

$30.00 for each reorganization.

A $5.00 charge per item will apply to any input document prepared by PSDTC for a participant. The $5.00 charge per item does not include normal processing fees.

PSDTC states that its dues and fees for Over The Counter trade comparisons are being increased to bring PSDTC fees more in line with competitor's rates. Reorganization fees are being raised to offset increasing costs resulting from extraordinarily high volume of called bonds and the lack of uniform call notification.

Furthermore, PSDTC states that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, 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 St., NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to the file number in the caption above and should be submitted by October 6, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: *September 3, 1986.*

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20725 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 9, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Macgregor Sporting Goods, Inc.
Common Stock, $.10 Par Value (File No. 7-9179)

United Asset Management Corporation
Common Stock, $.01 Par Value (File No. 7-9180)

Comdata Network, Inc.
Common Stock, $.02 Par Value (File No. 7-9181)

J.P. Industries, Inc.
Common Stock, $10 Par Value (File No. 7-9182)

Matthews & Wright Group, Inc.
Common Stock, $.10 Par Value (File No. 7-9183)

Gabelli Equity Trust, Inc. (The)
Common Stock, $.001 Par Value (File No. 7-9184)

EOK Green Acres, L.P.
Units, Without Par Value (File No. 7-9185)

Worldwide Value Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-9186)

Pall Corporation
Common Stock, $.001 Par Value (File No. 7-9187)

These securities are lsited and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 30, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20798 Filed 9-12-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 38571]

United Air Lines Employee Protection Program Investigation; Hearing

Served September 10, 1986.

Notice is hereby given that the hearing in the above-titled proceeding will commence on September 23, 1986,

at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC, before the undersigned administrative law judge.

Dated at Washington, DC, September 10, 1986.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 86-20806 Filed 9-12-86; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 86-054]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; 5 U.S.C. App. I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, October 28, 1986, in the 29th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, LA. The meeting is scheduled to begin at 9:00 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the June 24, 1986, meeting.
3. Coast Guard response to the report of the subcommittee on communications and vessel safety.
4. Discussion.
5. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at this meeting.

Additional information may be obtained from Commander D. F. Withee, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District Room 1342, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: September 4, 1986.

E.B. Acklin,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 86-20759 Filed 9-12-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 9, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0220.

Form Number: ATF F 5170.4.

Type of Review: Extension.

Title: Application for Importers and/or Wholesaler's Basic Permit Under Federal Alcohol Administration Act.

Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennslyvania 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.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-20805 Filed 9-12-86; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Meeting of VOA Broadcast Advisory Committee

The first meeting of the reorganized USIA VOA Broadcast Advisory Committee will be held on September 23, 1986.

It will be a meeting and working lunch from 11:00 a.m. to 1:00 p.m., in Room 800, USIA Building, 301 Fourth Street SW., Washington, DC.

Please call Ms. Patricia Gribben on (202) 485-8889 for further information.

Dated: September 8, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-20786 Filed 9-12-86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Lease of New Construction Outpatient Clinic, Oakland, CA; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the leasing of space that will be constructed to meet VA requirements, and has determined that the potential environmental impacts of the contemplated action will be minimal.

The VA is interested in leasing a minimum of 25,250 to a maximum of 26,430 net square feet of building space as an outpatient clinic. The clinic space utilization would include various services for medical treatment of qualified veterans. The space would be on two contiguous floors within the building. Onsite parking for 103 vehicles is required. The VA will not own the building or land on which the facility is constructed.

Construction of this project will have minor temporary impacts related to construction noise and dust. No significant impacts are expected during operation of the outpatient clinic.

Findings conclude that proposed action will not cause a significant effect on the physical and human environment and, therefore, does not require preparation of an Environmental Impact Statement. An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.13 and 1508.9, Title 40 CFR. A "Finding of No Significant Impact" has been concluded based on the information presented in the Assessment.

The Environmental Assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Director, Office of Environmental Affairs (088B), Room 423, Veterans Administration, 811 Vermont Avenue NW., Washington, DC 20420; (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: August 28, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86-20754 Filed 9-12-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 178
Monday, September 15, 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).

Contents

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, September 17, 1986, 10:00 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report. The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.
September 10, 1986.

[FR Doc. 86–20873 Filed 9–11–86; 12:18 pm]
BILLING CODE 6355–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 18, 1986, 10:00 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: 1. *General Policy Statement.*—The Commission will discuss a proposed Statement of General Policy concerning the structure and workings of the Commission staff and the flow of information within the Agency.

2. *Commission Structure.*—The Commission will discuss certain Agency structural realignments initiated by the Chairman.

3. *FOIA Fees: Options.*—The staff will brief the Commission on proposed amendments to the sections of the Freedom of Information Act regulations pertaining to fees.

For a recorded message containing the latest agenda information call: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.
September 10, 1986.

[FR Doc. 86–20874 Filed 9–11–86; 12:18 pm]
BILLING CODE 6355–01–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 172–31880, dated September 5, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Monday, September 15, 1986.

CHANGE IN THE MEETING: The following matter has been postponed from the closed portion of the meeting and will be rescheduled at a later date: Proposed Commission Decision.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated and issued: September 9, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.
[FR Doc. 86–20852 Filed 9–11–86; 11:23 am]
BILLING CODE 6750–06–M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 172—31880, dated September 5, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Monday, September 15, 1986.

CORRECTION: The following item was incorrectly announced.

Item #3 of the Open Meeting should read as follows: "Proposed Compliance Manual Section I, Providing Assistance to the Public".

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated and issued: September 9, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.
[FR Doc. 86–20853 Filed 9–11–86; 11:23 am]
BILLING CODE 6750–06–M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time), September 22, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

CLOSED

1. Litigation Authorization; General Counsel Recommendations.
2. Discussion of Certain Commissioners' Charges.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued: September 10, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.
[FR Doc. 86–20854 Filed 9–11–86; 11:23 am]
BILLING CODE 6750–06–M

6

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 51, No. 173, Page 32000, Monday, September 8, 1986.

PLACE: Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G St., NW., Washington, DC 20552.

STATUS: Federal Savings and Loan Advisory Council Meeting.

CONTACT PERSON FOR MORE INFORMATION: John M. Buckley, Jr. (202/377–6577); Debra J. Ahearn (202/377–6924).

CHANGES IN THE MEETING: The location of the meeting was previously listed as being held at the Quality Inn Pentagon City, 300 Army/Navy Drive, Arlington, Virginia. The actual location of the FSLAC meeting is the Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G. St., NW., Washington, DC.

Jeff Sconyers,

Secretary.

September 9, 1986.

[FR Doc. 86–20807 Filed 9–10–86; 4:26 pm]

BILLING CODE 6720–01–M

7

FEDERAL HOME LOAN BANK BOARD

Correction

In FR Doc. 86–20283 appearing on page 32000 in the issue of Monday, September 8, 1986, make the following correction in the third column: In the file line at the end of the document, "8:45 am" should read "3:58 pm".

BILLING CODE 1505–01–M

Federal Register

Monday
September 15, 1986

Part II

Environmental Protection Agency

40 CFR Part 716

Health and Safety Data Reporting; Submission of Lists and Copies; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84014A; FRL-3053-8]

Health and Safety Data Reporting; Submission of Lists and Copies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the Toxic Substances Control Act (TSCA) section 8(d) Health and Safety Data Reporting Rule by: lengthening the rule's sunset provision, adding a provision for biennial review, limiting three reporting exemptions and adding an express exemption, clarifying the rule's confidentiality provisions, and making technical revisions. EPA believes that these amendments will increase the number and usefulness of the health and safety data reports submitted to EPA, and will provide these reports during the same time period that EPA performs its risk identification, assessment, and management activities. This document promulgates the final version of regulations proposed on September 30, 1985 (50 FR 39715).

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on September 29, 1986. This rule is effective on October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 8(d) of TSCA, EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) model rule requires manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances EPA with very useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9. Since promulgation of the model rule, EPA has amended the rule 12 times to list approximately 159 substances.

Whenever EPA lists a substance in the model rule, the model rule's reporting requirements are triggered, and a person is required to submit unpublished health and safety studies. Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are the reporting exemptions. Listed below are the general reporting requirements of the section 8(d) model rule.

1. A person who, in the 10 years preceding the date a substance is listed, either had proposed to manufacture, import, or process or had manufactured, imported, or processed the listed substance must submit to EPA: A copy of each health and safety study which is in their possession at the time the substance is listed.

2. A person who, at the time a substance is listed, proposes to manufacture, import, or process or is manufacturing, importing, or processing the listed substance must submit the following to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of unpublished health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. A person who, after the time a substance is listed, proposes to manufacture, import, or process the listed substance must submit the following to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of unpublished health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

The bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, specifically categories 2(d), 2(e), and 3, continue prospectively. All but 1 of these prospective reporting requirements are terminated by the 10-year sunset provision. The only reporting requirement not terminated by the sunset provision applies to those manufacturers, importers, and processors who initiated a study on a listed substance before the reporting period terminated. These studies must be submitted upon their completion regardless of the study's completion date.

The section 8(d) model rule also contains exemptions to the above reporting requirements and provisions that instruct submitters on asserting claims of confidentiality.

II. Summary

This rule lengthens the sunset provision of the section 8(d) model rule from 3 years to 10 years, thereby allowing the prospective section 8(d) reporting requirements to remain in effect for a longer period of time. In order to offset any unnecessary reporting burden, EPA will biennially review all of the substances listed in the model rule and remove those substances for which additional health and safety data are no longer needed. This rule amends the model rule by: limiting three reporting exemptions; adding an express exemption; replacing the term "designated mixture" with the term "listed mixture"; specifying that importation activities are covered by the rule; and revising the "overview of subpart requirements" to provide greater clarity by dividing it into three separate sections: "persons who must report," "studies to be reported," and "adequate file search." This rule also provides clarification of: the confidentiality claims provisions; the definition of "manufacture for commercial purposes"; and the requirements for the submission of lists of studies. This rule reorders sections to follow a logical sequence, to allow the list of substances to follow the regulatory text, and to place the list of substances in 40 CFR 716.17 (now

redesignated as 40 CFR 716.120) by alphabetical and Chemical Abstract Service Registry (CAS) numerical order.

The following sections discuss these amendments in greater detail, focusing on the public comments received by EPA when these amendments were proposed. The subjects that received fewer comments are individually discussed in a document entitled "The Toxic Substances Control Act, section 8(d) Health and Safety Data Reporting Rule: Response to Comments" which is part of the public record.

III. Lengthening the Sunset Provision

As described in Unit I, the sunset provision terminates all but 1 of the prospective reporting requirements in the section 8(d) model rule. After a reporting period has terminated, manufacturers, importers, and processors of a once listed substance are no longer required to notify EPA when they initiate a health and safety study on the substance, or to submit that study whenever it is completed; persons who propose to manufacture, import, or process the once listed substance would no longer be required to initiate a file search for or submit unpublished health and safety data studies on the substance.

In order to keep the health and safety data bases current and comprehensive for the substances listed in the section 8(d) model rule, EPA has extended the reporting period. EPA is replacing the 3-year sunset provision with a 10-year sunset provision combined with a biennial review of all the listed substances. Every 2 years, EPA will review all of the substances listed in the model rule and remove those substances for which additional health and safety data are no longer needed.

Several commenters argued that extension of the sunset provision will impose needless burdens on industry which are not justified by the incremental returns in additional information. EPA disagrees. Extension of the sunset period is not based upon an expected number of health and safety studies to be submitted during the prospective reporting period. Even if only one study were received, it may contain critical information relevant to risk assessment and regulatory action on a particular chemical. The amount and value of the information that EPA receives under short or long sunset periods will essentially be the same. The real value of the extended sunset provision to EPA and industry is cost-effectiveness from an administrative standpoint.

Extension of the sunset provision, coupled with EPA's biennial review, should result in only a minor change in the reporting burden. This change may be either an increase or a decrease in reporting burden depending on the specific case. The major burden of reporting costs occur at the time the chemical is listed. These costs are unaffected by the length of the sunset period. The sunset provision places manufacturers, importers, and processors of listed substances under a prospective reporting obligation; they must notify EPA whenever they initiate a health and safety study and must submit that study when it is completed. Extension of the sunset provision increases the duration of that prospective reporting obligation but biennial review may decrease it in some cases. EPA's economic analysis determined that the expected prospective reporting burden under a 10-year sunset provision, although not possible to estimate directly, is likely to be quite low.

An extended sunset provision may also affect additional new manufacturers, importers, or processors ("producers") of a listed substance. A new producer is one proposing to manufacture, import, or process a substance after the date the substance is listed. EPA's economic analysis determined that, although it was not possible to estimate the probabilities explicitly, historical data suggest that the probability of new producers or new studies occurring after a listing is also generally quite low. The actual costs of meeting the reporting requirements are also estimated to be very modest. Additionally, the total costs associated with industry's internal chemical tracking system, although uncertain, also appear to be minimal. Thus, although difficult to calculate precisely, the burden to industry represented by an extended sunset provision is expected to be minimal.

The alternative to lengthening the sunset provision is to relist those substances for which EPA requires continued reporting for longer than 3 years. Relisting triggers the requirement that a company repeat an extensive file search in accordance with 40 CFR 716.25. This represents a higher burden on industry than the management notification and tracking costs during an extended sunset period.

Several commenters argued that the extended sunset provision was unnecessary in light of section 8(e) and voluntary reporting because all of the information on toxic chemical hazards comes in through section 8(e) reporting of study results indicating new significant adverse effects, and extended section 8(d) reporting will only marginally increase negative ("no risk") data. The commenters suggested that any later information can be submitted via other mechanisms, e.g.: reporting of substantial risk under section 8(e); reporting as required by section 4 test rules; reporting as part of a negotiated testing agreement; extending the reporting requirements under section 8(d) on an as-needed basis; and voluntary reporting.

The Agency disagrees. TSCA section 8(e) complements, but does not supplant the need for section 8(d). TSCA section 8(e) requires reporting only if a person finds evidence that reasonably supports the conclusion that a chemical substance or mixture presents a substantial risk of injury to health or the environment. Section 8(d) is much broader in scope. Data from section 8(d) submissions are used in formulating testing requirements under section 4. Information submitted under 8(d) could obviate the need for testing, and result in resource savings benefitting both the public and private sector. Data from 8(d) submissions are also used in regulatory activities under sections 5, 6, 8, and 9 of TSCA.

Section 8(d) requires all pertinent studies on a chemical to be submitted and is not limited to reports of substantial risk. The Agency's policy is to examine all risks associated with a chemical substance in order to make an adequate assessment of it. Studies with both positive and negative results are utilized in risk assessment. Therefore, even if extented 8(d) reporting only brings in a limited amount of new information, it will provide a more complete data base for risk assessment. Additionally, while industry does voluntarily submit reports of studies via "for your information" or "FYI" submissions, FYI and section 8(e) reporting alone would not ensure a complete health and safety data base.

The Agency received 2 comments stating that it is EPA's obligation to review and renew the justification for reporting after 3 years. One commenter argued that EPA is avoiding prioritization and action, and should go through the expense and effort of relisting in order to extend the sunset dates on section 8(d) reporting requirements.

EPA disagrees with these comments. By establishing a 10-year sunset period and a biennial review, EPA will be able to make more efficient use of its resources, enabling it to better prioritize its risk identification, assessment, and management activities. The 3-year sunset provision, based upon EPA's review of all of the listed substances,

requires EPA to relist almost every substance at least once. This would result in, at a minimum, 2 notice and comment rulemakings for almost each substance and a 6-year reporting period.

To reduce the potential for unnecessary reporting and to reshoulder any burden for requiring prospective section 8(d) reporting, EPA will conduct a biennial review of all of the listed substances. Every 2 years, EPA will review all of the substances listed in the model rule and remove those substances for which additional health and safety data are no longer needed. The burden will fall upon each program office within the Agency to justify retaining a chemical upon the 8(d) list. The justification for extension of the sunset date on a chemical must be based upon a reasonable need for continued health and safety information. EPA will then remove all substances for which EPA's health and safety data needs cannot reasonably justify continued reporting, or for which no justification to retain the substance was received.

By utilizing an internal biennial review process, EPA will be conducting a review process similar to that used to justify the relisting of a chemical. The extended sunset provision, however, eliminates the expense of annual rulemakings to relist substances. EPA's objectives in promulgating an extended sunset provision are to: reduce the costs of keeping a data base current and comprehensive by reducing the potential for an annual rulemaking to relist substances; leave the burden on EPA for articulating a need for continuing reporting; and minimize the potential for unnecessary reporting.

EPA received two comments that EPA should commit itself in the text of the regulation to conduct the promised biennial review and to use results of the review to remove substances from the 8(d) list. The Agency has adopted this suggestion, and incorporated a provision for biennial review in § 716.65(b). EPA has already established an internal procedure to review each substance on the section 8(d) list. During this review process, each office within EPA which wants a substance retained on the section 8(d) list, must provide reasonable justification for retaining the substance or the substance will be removed. EPA has used this process to review the substances listed in 40 CFR 716.17(a) (1) through (10). Following the review, six chemicals were removed from the 8(d) model rule. See the **Federal Register** of September 30, 1985 (50 FR 39667), and January 9, 1986 (51 FR 1233).

Several of the commenters suggested various alternatives to an extended sunset provision. One commenter suggested retaining the 3-year sunset date, with the Office of Pesticides and Toxic Substances Assistant Administrator holding the authority to remove a substance or mixture. The commenter supported the four reasons justifying extension of reporting periods as stated in the proposed rule: (1) EPA is actively considering the substance for a rulemaking or a rulemaking is in progress; (2) The substance is undergoing testing, the results of which may require an intermediate tier testing decision or subsequent chemical assessment; (3) A chemical evaluation/risk assessment is planned or in progress; and (4) The substance is used in structure activity relationship analysis of other chemical substances. Upon a finding that one of the four reasons for extended reporting is present, the Assistant Administrator could extend the reporting period for an additional 3 years by publication of a notice in the **Federal Register**, the amendment to be effective no earlier than 90 days after its publication.

Another suggestion was to retain a 3-year sunset period. Prior to expiration of the period, EPA should evaluate the regulatory status of each chemical. If one of three reasons for extended reporting was present (all of the above stated reasons with the exception of use of the substance in a structure-activity relationship analysis of other chemical substances), the sunset date could be extended by publication of a **Federal Register** notice with the reason for the extension.

The Agency believes that retention of the 3-year sunset date, along with any of the number of suggested approaches to extend the reporting periods on a chemical-specific basis, would not effectively diminish any of the current difficulties which have arisen with the 3-year sunset date. A 3-year sunset provision will routinely cut short reporting periods on most of the listed substances before EPA has completed its risk identification, assessment, and management activities. Extension of reporting periods on a chemical-specific basis, whether by relisting or by a **Federal Register** notice without the opportunity for comment, has the same drawbacks: it is expensive, time-consuming, increases the likelihood of reporting gaps between the reporting period termination date and the effective date of the notice extending the period, and requires EPA to expend its limited resources to keep an important health and safety data base current and comprehensive.

IV. Reporting Exemptions

Section 716.11 of the section 8(d) model rule exempted certain health and safety studies from the submission and listing requirements of the model rule. EPA has determined that exemptions under paragraphs (b) and (c), now redesignated as § 716.20(a) (2) and (3), are too broad and should be limited. This rule amends those exemptions and also amends a listing exemption for newly initiated studies. It also adds an express exemption whereby trade associations who conduct health and safety studies for their members could submit copies of such studies and thus exempt the member companies from the obligation to submit lists or copies of the studies.

The exemption in § 716.11(b) provided that a study (nonconfidential or confidential) previously submitted to EPA was exempt from the reporting (submission and listing) requirements of the section 8(d) model rule. This rule limits this exemption by specifying in § 716.20(a)(2) those types of submissions for which this exemption applies. It exempts from the reporting requirements those studies previously submitted to the EPA Office of Toxic Substances (OTS). This exemption only applies to section 8(e) submissions, studies submitted during section 4 proceedings, studies submitted with premanufacture notices or significant new use notices, and studies submitted "for your information" (FYI submissions).

All other studies which were previously submitted to EPA are subject to either the submission or listing requirements. Nonconfidential studies fall under the exemption in § 716.20(a)(3) (i.e., a study previously submitted to a Federal agency without claims of confidentiality) and therefore are subject only to the listing requirements of the section 8(d) model rule.

Confidential studies will need to be resubmitted. EPA is requiring the resubmission of confidential studies rather than simply requiring notification because of the different confidentiality provisions in EPA's statutory authorities. Section 14(b) of TSCA states generally that health and safety studies "submitted under this Act" are not protected as confidential information. Therefore, studies submitted under statutes (e.g., the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) without a resubmission requirement would keep their claims of confidentiality made under that environmental statute. For instance, TSCA does not provide confidential treatment for testing methods and

certain chemical identities, whereas FIFRA does. These differences in confidentiality treatment for health and safety data hinders EPA's use of data and limits EPA's support to regional and State offices on toxic chemical substances.

The exemption in § 716.11(c) provided that a nonconfidential study previously submitted to any Federal agency was exempt from the submission and listing requirements of the section 8(d) model rule. This rule amends this exemption by subjecting nonconfidential studies previously submitted to Federal agencies other than EPA to the listing requirements of the model rule. See § 716.20(a)(3).

This rule also amends the exemption in § 716.7(a)(1), redesignated as § 716.35(a)(1). This section exempted from the listing requirements all newly initiated studies except chronic tests; long- and short-term tests for mutagenicity, carcinogenicity, or teratogenicity; and the biological and environmental fate tests listed in § 716.10 (h) through (j) of the section 8(d) model rule. Section 716.10 is redesignated as § 716.50. Therefore, non-chronic, newly initiated studies on neurotoxicity, metabolism, reproductive effects, and ecotoxicity were excluded from the listing requirement. Also excluded were the biological and environmental fate tests listed in § 716.10 (a) through (g). Based on EPA's experience with the model rule, EPA believes that notification of studies of the types previously exempted would assist the Agency in performing its risk identification, assessment, and management activities by providing the Agency with a more complete data base. Therefore, EPA is amending the model rule by removing the listing exemption in § 716.7(a)(1). Persons now must list the studies noted above.

The comments received generally opposed restricting the exemption for studies already provided to EPA. The commenters stated that EPA was unfairly requiring costly and duplicative reporting by manufacturers and processors when section 10(b) of TSCA requires the Agency to maintain an efficient and effective data management system. One commenter stated that the proposal to limit exemptions, as it affects prospective submissions, would result in significantly less burden to industry but still opposed it as against the intent of section 10(b). Another stated that since the proposed changes would not widen the scope of their file search, only a slight burden, i.e., the cost of either listing or reviewing, indexing and preparing for submission of an additional number of reports, would be imposed by the changes. However, the commenter felt that even a small additional burden is unjustified in light of the requirements of section 10 of the Act. Another commenter stated that a reasonable interpretation of TSCA is that a balanced effort is required and that EPA is unduly burdening industry. One commenter stated that the limitation on the exemption of studies submitted to other agencies should be adopted only as an interim measure until government-wide data bases are established.

EPA agrees that a balanced effort is required. The limitations on the exemption of studies submitted to other EPA offices and on the exemption of studies submitted to other agencies are both intended as interim measures until centralized data bases are established. The Agency believes that the limitations on exemptions for materials previously submitted to EPA and to other agencies will effectively keep the Agency's data bases current and comprehensive, while imposing only a slight additional reporting burden. Under the existing exemptions, manufacturers, importers, and processors had to search their files to identify which studies were exempt from reporting requirements. Under the amended exemptions, those required to report will have to search their files to identify nonconfidential studies previously submitted to a Federal agency, and studies previously submitted to EPA, other than to the OTS. Those studies, once identified, would be subject to either submission or listing requirements.

Currently, many EPA programs have separate data bases for storage of information reported to EPA. Unfortunately, there is no centralized Agency data base which catalogs data submissions to all program, regional, and field offices. Nor is there a centralized system of cataloging submissions: submissions may be identified by reference to specific sites, or processes, rather than by chemical name. Until EPA has a centralized information data base and cataloging system, it is necessary to subject studies previously submitted to EPA to either submission or listing requirements.

Centralization of its information management systems is one of the highest priorities within the Agency. One example of the Agency's current initiatives in this area is the ongoing development of the TSCA section 8(a) Comprehensive Assessment Information Rule (CAIR). Included within the development of the CAIR are plans for the formation of a comprehensive data base to store information reported under that rule. Efforts to improve Agency data sharing under CAIR will assist in the development of a centralized health and safety information data base.

One commenter was concerned that the limitation of exemptions for studies previously submitted to EPA or to other Federal agencies is very troublesome for chemicals now on the list because the company would have to conduct a very extensive file search to identify studies previously submitted to other agencies or other EPA offices, review the studies for confidentiality, and submit either lists or copies of the studies to EPA, as appropriate.

The comment misinterprets the effects of § 716.11, redesignated as § 716.20. Persons who have already reported on chemicals currently on the 8(d) list, do not have to conduct a file search and identify studies which have been previously submitted. However, persons who propose to manufacture, import, or process, or who begin manufacturing, importing or processing substances currently listed at § 716.120, as well as persons who propose to manufacture, import, or process, or who are manufacturing, importing, or processing substances subsequently added to the list, will be subject to the limitation of the reporting exemptions for previously submitted studies.

One commenter suggested that if EPA removes the exemptions for nonconfidential reports already submitted to the Federal government, the Agency should permit copies of studies to be submitted in lieu of the listing requirement, at the submitter's discretion. The commenter stated that this option would relieve a company of the burden of the listing requirements of § 716.35(a)(4), as amended, where its records are incomplete. EPA has adopted this suggestion, and changed the final rule accordingly. Submitters will have the option to submit copies of studies previously submitted either to other EPA offices or to other Federal agencies. See § 716.35(a)(4).

EPA received a comment which requested an exemption whereby trade associations who conduct health and safety studies for their members could submit copies of such studies and thus exempt the member companies of the copy and list submission requirements.

The section 8(d) model rule provided for such an exemption. Section 716.11(d) in the section 8(d) model rule exempted studies conducted or initiated by or for another person who is subject to the rule's reporting requirements. If a trade association who conducted or initiated health or safety studies for its members

submitted copies of the studies, the member companies would have been exempted from reporting requirements pursuant to § 716.11(d). However, because this exemption did not explicitly refer to trade associations, and in response to the comment received, EPA has decided to make an express exemption for studies submitted by trade associations on behalf of their member companies. See § 716.20(b). Trade associations must submit such studies within 60 days of the date the substance is listed, and in accordance with the provisions of § 716.30, as amended. Member companies of the trade association on whose behalf the submission was made, will be exempt from both the copy and list submission requirements of §§ 716.30 and 716.35, as amended.

V. Clarifying the Confidentiality Provisions

Section 716.16(a) of the model rule provided that a person who submits a health and safety study as required by the section 8(d) model rule may assert a claim of confidentiality covering all or part of the study. Because this statement conflicts with EPA's interpretation of section 14(b) of TSCA and may promote the unfounded assertion of confidentiality claims, EPA is deleting § 716.16(a) and reordering the remaining sections. Section 716.16 is redesignated as § 716.55. EPA's interpretation of section 14(b) is codified at 40 CFR 2.306(g) and states that "health and safety data are not eligible for confidential treatment." Read alone, § 716.16(a) conflicts with this interpretation of section 14(b), and persons have improperly invoked § 716.16(a) to claim all of a health and safety study as confidential. Only in certain instances is the use of a broad confidentiality claim on a health and safety study submission permitted. The guidance for this designation is found in 40 CFR 2.306.

Section 14(b) protects from disclosure certain types of information that may be part of a health and safety study. This type of information was specified in § 716.16(c), now redesignated as § 716.55(a)(2). This paragraph had also allowed submitters to claim "irrelevant information" as confidential, a term not found in section 14(b) of TSCA or in 40 CFR 2.306. Submitters have excessively used and abused the irrelevant information exception. For example, submitters have claimed the species of animals tested and the chemical identity of the tested substances as "irrelevant information." EPA, therefore, is removing the irrelevant information exception. The amendment to § 716.16 will permit confidentiality claims for company name or address, financial statistics, and product codes used by a company. The remaining paragraphs in § 716.55 properly describe the information which is eligible for confidentiality treatment and the manner in which to claim such treatment.

One commenter supported changes which modify the confidentiality provisions and the removal of the irrelevant information exception, but did not support the Agency's justification for the changes in the confidentiality provisions based upon abuses in assertions that material submitted was confidential business information (CBI). The commenter questioned whether abuses in CBI assertions are widespread.

The initial 8(d) submissions contained many improper CBI assertions. In 1983 and 1984, an EPA contractor analyzed 8(d) submissions. In 1983, 3,972 studies received by EPA were sent to the contractor for review and categorization of the types of studies received, the responding companies, and the usefulness of the studies. Included within the contractor's findings, in 1983, of the 3,972 studies, 1,573 or 40 percent were designated as CBI. In 1984, out of 550 studies received, 197 or 35.8 percent were designated as CBI. There were no trends in the categories of information claimed confidential: some companies designated their entire submission as CBI, others designated a percentage of their submissions as CBI, and some companies did not classify anything as CBI.

VI. Technical Amendments

A. Renaming the Term Designated Mixture and Defining Listed Mixture

Section 716.9 of the model rule uses the term "designated mixture." A designated mixture is a mixture that EPA lists in the model rule. Persons subject to the reporting requirements must submit health and safety data on the listed mixture and on any mixture known to contain the listed mixture. Unfortunately, some potential submitters are confused by the term. They are confusing section 8(d) designated mixtures with those substances and mixtures designated by the Interagency Testing Committee to EPA for priority consideration in the promulgation of a test rule. Therefore, EPA is changing the term "designated mixture" to "listed mixture," and adding definition for "listed mixture." See §§ 716.3 and 716.45, as amended.

B. Specifying Import

Following Congress's lead, EPA in the section 8(d) model rule regulated importers by definition. Both in the TSCA statute and the section 8(d) model rule, importation is included in the definition of manufacture. Therefore, whenever EPA uses the terms "manufacture," "manufacturing," and "manufacturer," EPA is including by definition importation, importing, and importer. EPA believes that for purposes of clarity and to assist compliance efforts it is better to set out the terms import, importation, importing, and importer where these terms are now included by definition.

C. Revising the Overview of Subpart Requirements Section

EPA believes that the "overview of subpart requirements" section, § 716.4 of the model rule, is difficult to understand. Therefore, this section has been revised by dividing it into three separate sections: "persons who must report," "studies to be reported," and "adequate file search" to provide greater clarity.

D. Reordering Sections and Substances

EPA believes that a reordering of some of the sections in Part 716 and the list of substances would assist respondents in understanding and complying with the section 8(d) model rule. This rule therefore amends the section 8(d) model rule by reordering sections to follow a more logical sequence. EPA has also removed duplicative language which may have been potentially confusing to respondents. For example, the model rule contained two sections pertaining to the requirements of an adequate file search. These sections were consolidated.

EPA has consolidated the reporting provisions by placing the list of substances at the end of the section 8(d) model rule. EPA has also reordered the list of substances. In the past, EPA had listed substances in the section 8(d) model rule by order of amendment rather than alphabetically or by CAS number. This has created some difficulty for potential respondents in determining whether a substance is listed in the section 8(d) model rule. In order to assist potential section 8(d) submitters, EPA has revised the list by reordering the substances alphabetically and by CAS number.

E. Clarifying the Submission of Lists of Studies Section

Section 716.35(a)(3), as amended, requires a person to submit a list of unpublished health and safety studies

known to them, but of which they do not have copies. EPA received a comment which interpreted this requirement, along with the 10-year sunset provision in § 716.65, as requiring the monitoring of files and correspondence of all employees "whose assigned duty is to advise the company on health or environmental effects of chemicals" for the entire reporting period. The commenter argued that to require this over a 10-year period places a significant burden on industry and would yield very little information, and requested that EPA exempt persons subject to the listing requirement in § 716.35(a)(3) from reporting requirements after the initial 60-day reporting period.

This comment indicates confusion over the requirements of § 716.35(a)(3). The listing requirement of § 716.35(a)(3), requiring persons to submit a list of unpublished studies known to them of which they do not have copies, is subject to a 60-day reporting period. Section 716.60 sets forth the reporting schedules: submissions under § 716.35 must be postmarked on or before 60 days after the effective date of the listing of a substance or listed mixture in § 716.120 or within 60 days of proposing to manufacture, import, or process a substance or listed mixture if first done after the effective date of the substance's or listed mixture's listing in § 716.120. EPA has clarified the reporting schedule in the final rule by revising the language of § 716.35(a)(3).

EPA received another comment requesting clarification that § 716.35(a)(4) applies only to substances or listed mixtures in § 716.120 which respondents have manufactured, imported, or processed; are manufacturing, importing, or processing; or propose to manufacture, import, or process. The commenter felt that this section is too broadly worded, and would seem to require the submission of all studies which have been sent to a Federal agency by anyone.

EPA agrees, and has clarified the applicability of this section by adding a reference to § 716.35(a)(4) in paragraph (a) of § 716.35, which describes the general list submission requirements. Section 716.35(a)(4) applies only to respondents who, at the time a substance or mixture is added to the 8(d) list, propose to manufacture, import, or process, or are manufacturing, importing, or processing; and respondents who, after the time a substance or mixture is added to the 8(d) list, propose to manufacture, import, or process the substance or mixture. However, § 716.35(a)(4) does not apply to persons who, in the 10 years preceding the effective date that a substance or mixture is added, either had proposed to manufacture, import, or process, or had manufactured, imported, or processed the substance or listed mixture. They are subject only to copy submission requirements. See § 716.30(a)(1).

F. Clarifying the Definition of Manufacture for Commercial Purposes

Consistent with the specification of the terms import, importation, importing, and importer where these terms are now included by definition, EPA has amended the definition of "manufacture for commercial purposes" by subdividing it into two definitions: "import for commercial purposes" and "manufacture for commercial purposes." See § 716.3.

VII. Economic Analysis

The economic analysis examines only the expected changes in reporting burden caused by lengthening the sunset provision in the section 8(d) model rule. The remaining revisions are relatively minor and are expected to result in little or no significant additional costs.

This rule extends the reporting period on all of the substances listed in the model rule by lengthening the sunset provision from 3 to 10 years. By lengthening the sunset provision, the potential added reporting burden consists of: (1) Two reporting requirements that apply to current manufacturers, importers, and processors of listed substances, and (2) all of the reporting requirements on prospective manufacturers, importers, and processors. For an additional 7 years, current manufacturers, importers, and processors of listed substances are under a continuing obligation to notify EPA when they initiate a health and safety study and to submit that study whenever it is completed. Prospective manufacturers, importers, and processors of listed substances are required to submit health and safety studies at the time they propose to commence such an activity, to notify EPA of studies initiated during the remainder of the 10-year period, and to submit such studies whenever they are completed.

The alternatives to a 10-year sunset period that are discussed in the economic analysis are 3-year and 6-year sunset periods. Due to the nature of EPA's information needs for its chemical assessment and regulatory development processes, the practical result of these alternatives is that EPA relists chemicals for which reporting requirements are about to expire. As a result of relisting, the regulatory requirements are extended for another 3-year period. Based on EPA's experience with the section 8(d) model rule and the biennial review, the Agency believes that almost every substance will need to be relisted at least once in a second rule prior to expiration and, following that, it is likely that some percentage of the chemicals may be listed again, extending reporting requirements for up to approximately 9 years. Therefore, for any given chemical, there is a high probability that the industry will be subject to reporting requirements for more than 6 years, regardless of whether the extension of reporting requirements is due to relisting, or to extension of the sunset provision.

The net potential increase in reporting burden of a 10-year sunset period is a function of both the probability that EPA would have otherwise relisted a substance and the probability that firms will initiate a study or commence the manufacture, import, or processing of a listed substance after the sunset provision has terminated the reporting period (either the initial reporting period or a subsequent reporting period). If the probability that EPA would relist is high, then the net added burden of a 10-year sunset period is low. Assuming a low probability of relisting (thus, higher potential net costs of a longer sunset period), the actual costs that would be incurred under the 10-year sunset period would depend on the probability of persons commencing the manufacture, importation, or processing of a substance or the initiation of a study of the substance.

Although it is not possible to estimate the probability of the latter events, the available data suggest that the probability associated with relisting is high. If EPA does not lengthen the sunset provision, EPA will relist all (in excess of 100) of the substances listed in 40 CFR 716.120(a)(1). EPA has also reviewed all of the substances listed in 40 CFR 716.120(a) (2) through (10) and, at the present time, would relist all but six of these substances in the model rule. Therefore, lengthening the sunset provision is not likely to result in a reporting burden greater than the reporting burden caused by relisting substances.

Many of the commenters argued that EPA has not considered all of the costs to industry of extending the sunset provision, and has only considered the costs of actually reporting. The commenters emphasized that EPA does not consider the costs of establishing management systems and oversight

procedures throughout the reporting period.

EPA addresses the issue of management notification and tracking costs during an extended sunset period in the economic analysis. Most reporting costs are incurred at the time a chemical is listed. After a firm has complied with the initial reporting requirements, the firm is still subject to the prospective reporting requirements of notification of study initiation and submission of results.

Firms affected by the initial listing are likely to add the chemical to some type of internal notification and tracking system regardless of whether a future study is planned or initiated. It is also likely that a firm that either commissions or conducts a study would have established a system of internal tracking or monitoring of that study for its own management purposes. Therefore, most of the fixed costs associated with notification and tracking are incurred at the time a chemical is listed. Although it is very difficult to estimate the increased variable costs associated with management notification and tracking under a 10-year sunset period, several factors suggest that these costs are likely to be quite low. The primary consideration is that the cost of an initial file search is estimated at approximately $450. This should represent an upper bound of the yearly costs associated with internal tracking, since the file search conducted is designed to meet the broader requirements of the initial listing. In contrast, management tracking needs would require only that a firm "search" for studies which the company has initiated during the sunset period. Therefore, the actual variable costs of internal notification of study initiation and tracking to study completion should generally be very low.

VIII. Public Record

EPA has established a public record for this rulemaking (docket control number OPTS-84014A) which is available for inspection in Rm. NE.-G004, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The following is the list of those documents.

1. Section 8(d) Model Health and Safety Rule (47 FR 38780).
2. Economic analysis.
3. Final Report on Information Rules and Design Support Services (August 17, 1983).
4. Final Report on Information Rules and Design Support Services (January 23, 1984).
5. Public comments received on the proposed 8(d) amendments.
6. The Toxic Substances Control Act, Section 8(d) Health and Safety Data Reporting Rule: Response to Comments.

IX. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not a major rule, because it will not have an effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

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

B. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in annual sales. EPA does not expect these amendments to affect this distribution. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 95-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting.

Dated: September 3, 1986.

A. James Barnes,

Acting Administrator.

PART 716—[AMENDED]

Therefore, 40 CFR Part 716 is amended to read as follows:

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. Subpart A is revised to read as follows.

Subpart A—General Provisions

Subpart—General Provisions

§ 716.1 Scope and compliance.

(a) This subpart sets forth requirements for the submission of lists and copies of health and safety studies on chemical substances and mixtures selected for priority consideration for testing rules under section 4(a) of the Toxic Substances Control Act (TSCA) and on other chemical substances and mixtures for which EPA requires health and safety information in fulfilling the purposes of TSCA.

(b) Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under this subpart. Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 716.3 Definitions.

The definitions in section 3 of TSCA apply to this subpart. In addition, the following definitions are provided for the purposes of this subpart:

"Byproduct" means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

"Co-product" means a chemical substance produced for a commercial purpose during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

"Copy of study" means the written presentation of the purpose and methodology of a study and its results.

"EPA" means the United States Environmental Protection Agency.

"Health and safety study" or "study" means any study of any effect of a

chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological or other studies of a chemical substance or mixture, and any test performed under TSCA.

(1) It is intended that the term "health and safety study" be interpreted broadly. Not only is information which arises as a result of a formal, disciplined study included, but other information relating to the effects of a chemical substance or mixture on health or the environment is also included. Any data that bear on the effects of a chemical substance on health or the environment would be included. Chemical identity is part of, or underlying data to, a health and safety study.

(2) Examples are:

(i) Long- and short-term tests of mutagenicity, carcinogenicity, or teratogenicity; data on behavioral disorders; dermatoxicity; pharmacological effects; mammalian absorption, distribution, metabolism, and excretion; cumulative, additive, and synergistic effects; and acute, subchronic, and chronic effects.

(ii) Tests for ecological or other environmental effects on invertebrates, fish, or other animals, and plants, including: acute toxicity tests, chronic toxicity tests, critical life-stage tests, behavioral tests, algal growth tests, seed germination tests, plant growth or damage tests, microbial function tests, bioconcentration or bioaccumulation tests, and model ecosystem (microcosm) studies.

(iii) Assessments of human and environmental exposure, including workplace exposure, and impacts of a particular chemical substance or mixture on the environment, including surveys, tests, and studies of: biological, photochemical, and chemical degradation; structure/activity relationships; air, water, and soil transport; biomagnification and bioconcentration; and chemical and physical properties, e.g., boiling point, vapor pressure, evaporation rates from soil and water, octanol/water partition coefficient, and water solubility.

(iv) Monitoring data, when they have been aggregated and analyzed to measure the exposure of humans or the environment to a chemical substance or mixture.

"Import" means to import for commercial purposes.

"Import for commercial purposes" means to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer, and includes the importation of any amount of a chemical substance or mixture. If a chemical substance or mixture containing impurities is imported for commercial purposes, then those impurities are also imported for commercial purposes.

"Importer" means any person who imports a chemical substance, including a chemical substance as a part of a mixture or article, into the customs territory of the United States and includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his behalf (as defined in 19 CFR 1.11). Importer also includes, as appropriate:

(1) The consignee.

(2) The importer of record.

(3) The actual owner, if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition, the customs territory of the United States consists of the 50 States, Puerto Rico, and the District of Columbia.

"Impurity" means a chemical substance which is unintentionally present with another chemical substance.

"Listed mixture" means any mixture listed in § 716.120.

"Manufacture" means to manufacture for commercial purposes.

"Manufacture for commercial purposes" means: (1) To produce, with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes among other things such "manufacture" of any amount of a chemical substance or mixture:

(i) For commercial distribution, including for test marketing.

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) Manufacture for commercial purposes also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including byproducts and impurities. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

"Manufacturer" means a person who produces or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance.

"Person" includes any individual, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, and any department, agency, or instrumentality of the Federal government.

"Process" means to process for commercial purposes.

"Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

"Propose to manufacture, import, or process" means that a person has made a management decision to commit financial resources toward the manufacture, importation, or processing of a substance or mixture.

"Substance" means "chemical substance" as defined at section 3(2)(A) of TSCA, 15 U.S.C. 2602(2)(A).

"TSCA" means the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

§ 716.5 Persons who must report.

(a)(1) A person who, in the 10 years preceding the effective date that a substance or mixture is added to § 716.120, either had proposed to manufacture, import, or process, or had manufactured, imported, or processed the substance or listed mixture.

(2) A person who, at the effective date that a substance or mixture is added to § 716.120, proposes to manufacture, import, or process, or is manufacturing, importing, or processing the substance or listed mixture.

(3) A person who, after the effective date that a substance or mixture is added to § 716.120, proposes to manufacture, import, or process the substance or listed mixture.

(b) [Reserved]

§ 716.10 Studies to be reported.

(a) In general, health and safety studies, as defined in § 716.3, on any substance or listed mixture listed in § 716.120, that are unpublished are

reportable, i.e., must be submitted or listed. However, this requirement has limitations according to the nature of the material studied, so that:

(1) All studies of substances and listed mixtures are reportable. However, in the case of physical and chemical properties, only those studies listed in § 716.50 must be submitted.

(2) Studies of mixtures known to contain substances or listed mixtures listed in § 716.120 are reportable except for studies of physical and chemical properties and the studies exempted at § 716.20(a)(6) (i) through (vi).

(3) Studies of substances or listed mixtures that a person who is reporting has manufactured, imported, or processed or proposed to manufacture, import, or process only as impurities are not generally reportable under § 716.20(a)(9).

(4) Underlying data, such as medical or health records, individual files, lab notebooks, and daily monitoring records supporting studies do not have to be submitted initially. EPA may request underlying data later under § 716.40.

(b) [Reserved]

§ 716.20 Studies not subject to the reporting requirements.

(a) Excluding paragraph (a)(3) of this section, the following types of studies are exempt from the copy and list submission requirements of §§ 716.30 and 716.35.

(1) Studies which have been published in the scientific literature.

(2) Studies previously submitted to the EPA Office of Toxic Substances. These studies are limited to section 8(e) submissions, studies submitted during section 4 proceedings, studies submitted with premanufacture notices or significant new use notices, and studies submitted "for your information" (FYI submissions) in support of EPA's TSCA Existing Chemicals Program. Studies which have been initiated pursuant to a TSCA section 4(a) test rule, for which the person has submitted a letter of intent to conduct testing in accordance with the provisions of § 790.25 of Part 790 of this chapter, are exempt from the list submission requirements of § 716.35.

(3) Except for those studies described in paragraph (a)(2) of this section, studies previously submitted to any Federal agency with no claims of confidentiality are exempt only from the copy submission requirements of § 716.30, and must be listed in accordance with the provisions of § 716.35.

(4) Studies conducted or initiated by or for another person who is subject to, and who will report the studies under §§ 716.30 and 716.35.

(5) Studies of chemical substances which are not on the TSCA Chemical Substances Inventory. This exemption applies only to those substances within categories listed under § 716.120(c).

(6) The following types of studies when the subject of the study is a mixture known to contain a substance or listed mixture listed under § 716.120.

(i) Acute oral toxicity studies.

(ii) Acute dermal toxicity studies.

(iii) Acute inhalation toxicity studies.

(iv) Primary eye irritation studies.

(v) Primary dermal irritation studies.

(vi) Dermal sensitization studies.

(vii) Physical and chemical properties.

If the substance or listed mixture is an impurity, no reporting is required (see paragraph (a)(9) of this section).

(7) Analyzed aggregations of monitoring data based on monitoring data acquired more than 5 years preceding the date the substance or listed mixture was added to the list under § 716.120.

(8) Analyzed aggregations of monitoring data on mixtures known to contain one or more substances or listed mixtures listed in § 716.120, when the monitoring data are not analyzed to determine the exposure or concentration levels of the substances or listed mixture listed under § 716.120.

(9) Studies on a substance or listed mixture listed under § 716.120 that the person who is reporting has manufactured, imported, or processed or proposed to manufacture, import, or process only as an impurity. When reporting of such studies is to be required, that reporting will be separately proposed in the **Federal Register.**

(10) Studies of chemical substances or listed mixtures previously submitted by trade associations in accordance with the provisions of § 716.30.

(b) The following types of studies on substances or listed mixtures listed under § 716.120 are exempt from the copy and list submission requirements of §§ 716.30 and 716.35.

(1) For the listed ureaformaldehyde resins (CAS Nos. 9011–05–6 and 68611–64–3), studies on agronomic plant growth or damage which demonstrate only that the resins stimulate plant growth or cause plant damage when applied as a fertilizer.

(2) [Reserved]

§ 716.25 Adequate file search.

The scope of a person's responsibility to search records is limited to records where the required information is ordinarily kept, and to records kept by the person's individual employees whose assigned duty is to advise the person on the health and environmental effects of chemicals. Persons are not required to search any records retired prior to December 31, 1979 for information to comply with this subpart.

§ 716.30 Submission of copies of studies.

(a)(1) Except as provided in §§ 716.20 and 716.50, persons must send to EPA copies of any health and safety studies in their possession for the substances or listed mixtures listed in § 716.120. Persons are responsible for submitting copies on only the substances or listed mixtures which they: have manufactured, imported, or processed or proposed to manufacture, import, or process (including as known byproducts) within the 10 years preceding the effective date for reporting on the substances or listed mixtures; manufacture, import, or process on the effective date for reporting on the substances or listed mixtures; and propose to manufacture, import, or process following the effective date for reporting on the substances or listed mixtures. Persons who list studies as ongoing or initiated under § 716.35(a) (1) and (2) must submit them when they are completed.

(2) [Reserved]

(b) Submissions under paragraph (a) of this section must be identified by chemical name, including Chemical Abstract Service Registry number if known, and must be accompanied by a cover letter containing the name, job title, address, and telephone number of the submitting official and the name and address of the manufacturing, importing, or processing establishment on whose behalf the submission is made. In the cover letter, submitters must identify any impurity or additive known to have been present in the substance or listed mixture as studied unless its presence is specifically noted in the study itself. The cover letter accompanying a study submitted by a trade association must also state that the submission is to satisfy reporting requirements under this Part.

(c) Copies of health and safety studies and accompanying cover letters must be submitted, preferably by certified mail, to: Document Control Officer (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room 201 East Tower, 401 M Street SW., Washington, DC 20460. ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting).

§ 716.35 Submission of lists of studies.

(a) Except as provided in §§ 716.20 and 716.50, persons must send the lists described in paragraph (a) of this section to EPA for each of the

substances or listed mixtures in § 716.120 which they are manufacturing, importing, or processing; or propose to manufacture, import, or process (including as known byproducts).

(1) *Ongoing studies.* As of the date a person becomes subject to this Part, a list of ongoing health and safety studies being conducted by or initiated for them, noting for each entry: the beginning date of the study, the purpose of the study, the types of data to be collected, the anticipated date of completion, and the name and address of the laboratory conducting the study.

(2) *Initiated studies.* After the date a person becomes subject to this Part, a list of studies initiated by or for them, noting for each entry: the beginning date of the study, the purpose of the study, the types of data to be collected, the anticipated date of completion, and the name and address of the laboratory conducting the study.

(3) *Studies which are known but without possession of copies.* As of the date a person becomes subject to this Part, a list of unpublished health and safety studies known to them of which they do not have copies. The name and address of any person known to them to possess a copy of the unpublished study must accompany each entry on the list. For purposes of this section only, an unpublished study will be considered to be "known to" a person, if the study can be discovered by a file search in accordance with § 716.25.

(4) *Studies previously sent to Federal agencies without confidentiality claims.* A list of unpublished studies which have been sent to a Federal Agency with no claims of confidentiality. The submission must for each study: identify the study by title, state the name and address to whom the study was sent, and the month and year in which the study was submitted. Any study identified will be treated as if it were submitted under section 8(d) and will be available for public disclosure under section 14(b) of TSCA. Persons subject to this requirement may submit either a list of unpublished health and safety studies previously submitted to any Federal agency without claims of confidentiality in accordance with § 716.35(a)(4), or copies of each such study in accordance with § 716.30.

(b) Submissions under paragraph (a) of this section must be identified by chemical name, including Chemical Abstract Service Registry number if known, and must be accompanied by a cover letter containing the name, job title, address and telephone number of the submitting official, and the name and address of the manufacturing or processing establishment on whose behalf the submission is made.

(c) Lists of health and safety studies should be submitted, preferably by certified mail, to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room 201 East Tower, 401 M Street SW., Washington, DC 20460. ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting).

§ 716.40 EPA requests for submission of further information.

EPA may, by letter, request a person to submit or make available for review the following information after the initial reporting under §§ 716.30 and 716.35. If the requested submissions are not made, EPA may subpoena them under section 11 of TSCA, 15 U.S.C. 2610.

(a) Submission of underlying data of the kind described in § 716.10(a)(4) by persons who submit copies of studies under § 716.30 or list studies under § 716.35(a)(1) or § 716.35(a)(2).

(b) Submission of preliminary reports of ongoing studies by persons who list the studies under § 716.35(a)(1) or § 716.35(a)(2).

(c) Submission of copies of studies by persons listed under § 716.35(a)(3) as possessing them.

§ 716.45 How to report on substances and mixtures.

Section 716.120 lists substances and mixtures, in order by Chemical Abstract Service Registry Number and by alphabetical order. Studies of listed substances and listed mixtures shall be reported as follows:

(a) When a substance is individually listed under § 716.120(a), studies of the substance and studies of mixtures known to contain the substance must be reported as studies of that substance.

(b) When two or more substances are listed as a mixture under § 716.120(b), studies of the listed mixture and studies of any mixture known to contain the listed mixture must be reported as studies of the listed mixture.

(c) Studies of the following preparations of a substance must be reported as studies of the substance itself, not as studies of mixtures known to contain the substance.

(1) The substance in aqueous solution.

(2) The substance containing a small amount of an additive, such as a stabilizer, emulsifier, or other chemical added for purposes of maintaining the integrity or physical form of the substance.

(3) The substance at any grade of purity.

§ 716.50 Reporting physical and chemical properties.

Studies of physical and chemical properties must be reported under this subpart if performed for the purpose of determining the environmental or biological fate of a substance, and only if they investigated one or more of the following properties:

(a) Water solubility.

(b) Adsorption/desorption on particulate surfaces, e.g., soil.

(c) Vapor pressure.

(d) Octanol/water partition coefficient.

(e) Density/relative density (specific gravity).

(f) Particle size distribution for insoluble solids.

(g) Dissociation constant.

(h) Degradation by photochemical mechanisms—aquatic and atmospheric.

(i) Degradation by chemical mechanisms—hydrolytic, reductive, and oxidative.

(j) Degradation by biological mechanisms—aerobic and anaerobic.

§ 716.55 Confidentiality claims.

(a) (1) Section 14(b) of TSCA provides that EPA may not withhold from disclosure, on the grounds that they are confidential business information, health and safety studies of any substance or mixture that has been offered for commercial distribution (including for test marketing purposes and for use in research and development), any substance or mixture for which testing is required under TSCA section 4, or any substance for which notice is required under TSCA section 5, except to the extent that disclosure of data from such studies would reveal—

(i) Processes used in the manufacturing, importing, or processing of the substance or mixture, or

(ii) The portion of a mixture comprised by any of the substances in the mixture.

(2) Any respondent who wishes to assert a claim that part of a study should be withheld from disclosure because disclosure would reveal a confidential process or quantitative mixture composition should briefly state the basis of the claim, e.g., by saying "reveals confidential mixture proportion data," and clearly identify the material subject to the claim.

(3) Any respondent may assert a confidentiality claim for company name or address, financial statistics, and product codes used by a company. This information will not be subject to the disclosure requirements of section 14(b) of TSCA.

(4) Information other than company name or address, financial statistics, and product codes used by a company, which is contained in a study, the disclosure of which would clearly be an unwarranted invasion of personal privacy (such as individual medical records), will be considered confidential by EPA as provided in Title 5, United States Code, section 552(b)(6).

(b) To assert a claim of confidentiality for data contained in a submitted document, the respondent must submit two copies of the document:

(1) One copy must be complete. In that copy, the respondent must indicate what data, if any, are claimed as confidential by bracketing or underlining the specific information. Each page containing data claimed as confidential must also contain a brief statement for the basis of the claim as well as a label such as "confidential," "proprietary," or "trade secret."

(2) The second copy must be complete, except that all information claimed as confidential in the first copy must be deleted. The second copy will be immediately subject to public disclosure.

(3) Failure to furnish a second copy when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the respondent by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The respondent will be given 30 days from the date of his or her receipt of this notification to submit the required second copy. If the respondent fails to submit the second copy within the 30 days, EPA will place the first copy in the public file.

(c) If no claim of confidentiality accompanies a document at the time it is submitted to EPA, the document will be placed in an open file available to the public without further notice to the respondent.

§ 716.60 Reporting schedule.

(a) *General requirements.* Except as provided in paragraphs (b) and (c) of this section, submissions under §§ 716.30 and 716.35 must be postmarked on or before 60 days after the effective date of the listing of a substance or listed mixture in § 716.120 or within 60 days of proposing to manufacture, import, or process a substance or listed mixture if first done after the effective date of the substance's or listed mixture's listing in § 716.120.

(b) (1) *Submission of lists of initiated studies.* Persons subject to the listing requirements of § 716.35(a)(2) must inform EPA of the initiated study within 30 days of its initiation.

(2) *Submission of copies of completed studies.* Persons must submit copies of studies listed as ongoing or initiated under § 716.35(a) (1) and (2) within 30 days of completing the study.

(c) *Requests for extensions of time.* Respondents who cannot meet a deadline under this section may apply for a reasonable extension of time. Requests for extensions must be in writing and addressed to: Director, Office of Toxic Substances (TS–792), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attn: Section 8(d) extension. Extension requests must be postmarked on or before 40 days after the effective date of the listing of a substance or mixture in § 716.120. The Director of EPA's Office of Toxic Substances will grant or deny extension requests.

§ 716.65 Reporting period.

(a) The reporting period on a substance or listed mixture will terminate no later than: 10 years after the effective date on which a substance or listed mixture is added to § 716.120; or on the removal of the substance or listed mixture from § 716.120. The Assistant Administrator for the Office of Pesticides and Toxic Substances has the authority to remove a substance or listed mixture from § 716.120.

(b) The EPA Office of Toxic Substances (OTS) will conduct a biennial review of all of the chemical substances and mixtures listed in § 716.120, and request from other EPA offices and certain Federal agencies, all reasonable justifications for retaining each substance or mixture on, or removing each substance or mixture from, the § 716.120 list. Following each such review, the Assistant Administrator of the Office of Pesticides and Toxic Substances will remove any substance or mixture for which no reasonable justification has been received to retain such substance or mixture on the § 716.120 list. The Assistant Administrator may remove a substance or listed mixture from § 716.120 by publishing, without notice and comment, a final rule to that effect in the **Federal Register.** The rule shall not be effective any earlier than 90 days after its publication. Persons who believe that EPA should not remove a substance or listed mixture from § 716.120 may notify EPA and provide reasons for retaining the substance or listed mixture. If a reasonable justification for retaining a substance or listed mixture on the § 716.120 list is received, EPA will withdraw the substance from the final rule before its effective date.

(c) Notwithstanding the termination by the sunset provision in (a) above, removing a substance or listed mixture from § 716.120 also terminates the applicability of § 716.5(a)(3) to that substance or listed mixture so that persons first proposing to manufacture, import, or process the substance or listed mixture after the effective date of the removal have no reporting obligation under section 8(d) with respect to that substance or listed mixture. The removal also terminates the continuing obligation under § 716.35(a)(2) of persons previously subject to the rule under § 716.5(a) (2) or (3) to notify EPA of any initiation of studies on the removed substance or listed mixture that occur after the effective date of the removal. Only one reporting requirement would remain in effect. Persons who have been subject to the rule under § 716.5(a) (2) or (3) and who have submitted to EPA lists of ongoing or initiated studies under § 716.35(a) (1) or (2) must notify EPA of the completed study and submit the study regardless of the study's completion date.

3. Subpart B is added to read as follows.

Subpart B—Specific Chemical Listings

Sec.

Subpart B—Specific Chemical Listings

§ 716.105 Additions of substances and mixtures to which this subpart applies.

The requirements of this subpart will be extended periodically to cover additional substances and mixtures. Two procedures will be used to add substances and mixtures.

(a) Except as provided in paragraph (b) of this section, substances and mixtures will be added to § 716.120 after publication in the **Federal Register** of a notice of proposed amendment to this subpart. There will be at least a 30-day public comment period on the notice. After consideration of the comments, EPA will amend § 716.120 by final rule to add the substances and listed mixtures.

(b) Except as provided in paragraph (c) of this section, chemical substances, mixtures, and categories of chemical substances that have been added to the TSCA section 4(e) Priority List by the Interagency Testing Committee, established under section 4 of TSCA, will be added to § 716.120 but only to the extent that the total number of

designated and recommended substances, mixtures and categories of chemical substances has not exceeded 50 in any 1 year. The addition of such chemical substances, mixtures, and categories of chemical substances to § 716.120 will be effective 30 days after publication of a notice to that effect in the **Federal Register.**

(c) Prior to the effective date of an amendment under paragraph (b) of this section, the Assistant Administrator for Pesticides and Toxic Substances may for good cause withdraw a chemical substance, mixture, or category of chemical substances from § 716.120. Any information submitted showing why a chemical substance, mixture, or category of chemical substances should be withdrawn from the amendment must be received by EPA within 14 days after the date of publication of the notice under paragraph (b) of this section. If a chemical substance, mixture, or category of chemical substances is withdrawn, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment under paragraph (b) of this section. Persons who wish to submit information that shows why a chemical should be withdrawn must address their comments, in writing, to: Document Control Officer, Office of Pesticides and Toxic Substances, (TS–790), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: 8(d) Auto-ITC.

§ 716.120 Substances and listed mixtures to which this subpart applies.

Substances listed in this section appear in two lists: In order by Chemical Abstract Service Registry Number and by alphabetical order. Chemical mixtures and categories are listed separately and by alphabetical order. Chemical substances listed within a category are provided only as examples of the category, and are not included on the list of substances. When a chemical substance in the substance or category list had been listed previously by a trivial (or common) name, it appears first, followed by the Chemical Abstract Service (CAS) name appearing in the TSCA Chemical Substance Inventory.

(a) *List of substances.* The following chemical substances are subject to all the provisions of Part 716. Manufacturers, importers, and processors of a listed substance are subject to the reporting requirements of Subpart A for that substance.

(1) By Chemical Abstract Service (CAS) Registry Number.

CAS No.	Substance	Special exemptions	Effective date	Sunset date
62-74-8	Acetic acid, fluoro-, sodium salt		03/07/86	03/07/96
71-55-6	1,1,1,-Trichloroethane—Ethane,1,1,1-trichloro-		10/04/82	10/04/92
74-87-3	Chloromethane—Methane, chloro-		10/04/82	10/04/92
75-02-5	Vinyl fluoride—Ethene, fluoro-		10/04/82	10/04/92
75-05-8	Acetonitrile		10/04/82	10/04/92
75-09-2	Methylene chloride—Methane, dichloro-		10/04/82	10/04/92
75-12-7	Formamide		04/29/83	04/29/93
75-38-7	Vinylidene fluoride—Ethene, 1,1-difluoro-		10/04/82	10/04/92
75-86-5	Propanenitrile, 2-hydroxy-2-methyl-		03/07/86	03/07/96
77-47-4	Hexachlorocyclopentadiene—1,3-Cyclopentadiene,1,2,3,4,5,5-hexachloro-		10/04/82	10/04/92
78-59-1	Isophorone—2-Cyclohexen-1-one, 3,5,5-trimethyl-		10/04/82	10/04/92
78-83-1	1-Propanol, 2-methyl-		03/07/86	03/07/96
78-87-5	1,2-Dichloropropane—Propane,1,2-dichloro-		10/04/82	10/04/92
78-93-3	Methyl ethyl ketone—2-Butanone		10/04/82	10/04/92
78-99-9	Propane, 1,1-dichloro-		03/07/86	03/07/96
79-06-1	Acrylamide—2-Propenamide		10/04/82	10/04/92
79-94-7	Tetrabromobisphenol A—Phenol, 4,4'-(methylethylidene) bis [2,6-dibromo-		06/20/85	06/20/95
80-05-7	Bisphenol A—Phenol, 4,4'-(1-methylethylidene)bis-		06/28/84	06/28/94
80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl		03/07/86	03/07/96
84-65-1	Anthraquinone—9,10-Anthracenedione		12/28/84	12/28/94
85-22-3	Pentabromoethylbenzene—Benzene, pentabromoethyl-		12/28/84	12/28/94
85-68-7	Benzyl butyl phthalate—1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester		04/29/83	04/29/93
86-74-8	9*H*-Carbazole		03/07/86	03/07/96
87-68-3	Hexachloro-1,3-butadiene—1,3,-butadiene,1,1,2,3,4,4-hexachloro-		10/04/82	10/04/92
92-52-4	1,1,'-Biphenyl		04/29/83	04/29/93
95-47-6	*o*-Xylene—Benzene, 1,2,-dimethyl-		10/04/82	10/04/92
95-48-7	*o*-Cresol—Phenol, 2-methyl-		10/04/82	10/04/92
95-49-8	2-Chlorotoluene—Benzene, 1-chloro-2-methyl-		04/29/83	04/29/93
95-53-4	Benzenamine, 2-methyl-		03/07/86	03/07/96
95-63-6	1,2,4-Trimethylbenzene—Benzene, 1,2,4-trimethyl-		04/29/83	04/29/93
96-37-7	Methylcyclopentane—Cyclopentane, methyl-		06/20/85	06/20/95
98-09-9	Benzenesulfonyl chloride		03/07/86	03/07/96
98-51-1	*p-tert*-Butyltoluene—Benzene, 1-(1,1-dimethylethyl)-4-methyl-		06/25/86	06/25/96
98-56-6	4-Chlorobenzotrifluoride— Benzene, 1-chloro-4-(trifluoromethyl)-		04/29/83	04/29/93
98-73-7	*p-tert*-Butylbenzoic acid—Benzoic acid, 4-(1,1-dimethylethyl)-		06/25/86	06/25/96
98-82-8	Cumene—Benzene, (1-methylethyl)-		12/28/84	12/28/94
98-95-3	Nitrobenzene—Benzene, nitro-		10/04/82	10/04/92
101-77-9	Benzenamine, 4,4'-methylenebis-		10/04/82	10/04/92
106-42-3	*p*-Xylene—Benzene, 1,4-dimethyl-		10/04/82	10/04/92
106-44-5	*p*-Cresol—Phenol, 4-methyl-		10/04/82	10/04/92
106-49-0	Benzenamine, 4-methyl-		03/07/86	03/07/96
106-50-3	*p*-Phenylenediamine—1,4-Benzenediamine		10/04/82	10/04/92
106-51-4	Quinone—2,5-Cyclohexadiene-1,4-dione		10/04/82	10/04/92
107-10-8	1-Propanamine		03/07/86	03/07/96
107-19-7	2-Propyn-1-o1		03/07/86	03/07/96
108-05-4	Vinyl acetate—Acetic acid ethenyl ester		02/10/86	02/10/96
108-10-1	Methyl isobutyl ketone—2-Pentanone, 4-methyl-		10/04/82	10/04/92

CAS No.	Substance	Special exemptions	Effective date	Sunset date
108-31-6	Maleic anhydride—2,5-Furandione		09/10/84	09/10/94
108-38-3	*m*-Xylene—Benzene, 1,3-dimethyl-		10/04/82	10/04/92
108-39-4	*m*-Cresol—Phenol, 3-methyl-		10/04/82	10/04/92
108-67-8	1,3,5-Trimethylbenzene—Benzene, 1,3,5-trimethyl-		02/13/84	02/13/94
108-88-3	Toluene—Benzene, methyl-		10/04/82	10/04/92
108-89-4	4-Methylpyridine—Pyridine, 4-methyl-		09/10/84	09/10/94
108-94-1	Cyclohexanone		10/04/82	10/04/92
108-98-5	Benzenethiol		03/07/86	03/07/96
108-99-6	3-Methylpyridine—Pyridine, 3-methyl-		09/10/94	09/10/94
109-06-8	2-Methylpyridine—Pyridine, 2-methyl-		09/10/84	09/10/94
109-77-3	Propanedinitrile		03/07/86	03/07/96
110-75-8	Ethene, (2-chloroethoxy)-		03/07/86	03/07/96
110-82-7	Cyclohexane		12/19/85	12/19/95
110-86-1	Pyridine		10/04/82	10/04/92
111-21-7	Ethylene bisoxyethylene diacetate—Ethanol, 2,2'-[1,2-ethanediylbis(oxy)]bis-, diacetate.		01/13/84	01/13/94
111-40-0	Diethylenetriamine—1,2-Ethanediamine, *N*-(2-aminoethyl)-		04/29/83	04/29/93
111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-		03/07/86	03/07/96
112-35-6	Triethyleneglycol monomethyl ether—Ethanol, 2-[2-(2-methoxyethoxy) ethoxy]-		06/20/85	06/20/95
112-50-5	Triethyleneglycol monoethyl ether—Ethanol, 2-[2-(2-ethoxyethoxy)ethoxy]-		06/20/85	06/20/95
112-90-3	Oleylamine—9-Octadecen-1-amine, (*Z*)-		01/13/84	01/13/94
122-09-8	Benzeneethanamine, *alpha,alpha*-dimethyl-		03/07/86	03/07/96
122-99-6	2-Phenoxyethanol—Ethanol, 2-phenoxy-		07/01/83	07/01/93
123-31-9	Hydroquinone—1,4-Benzenediol		10/04/84	10/04/94
124-17-4	2-(2-Butoxyethoxy)ethyl acetate—Ethanol, 2-(2-butoxyethoxy)-, acetate		01/13/83	01/13/92
126-73-8	Phosphoric acid, tributyl ester		06/18/86	06/18/96
126-99-8	Chloroprene—1,3-Butadiene, 2-chloro-		12/28/84	12/28/94
128-39-2	Phenol, 2,6-bis(1,1-dimethylethyl)-		12/19/85	12/19/95
137-20-2	Sodium *N*-methyl-*N*-oleoyltaurine—Ethanesulfonic acid, 2-[methyl(1-oxo-9-octadecenyl)amino]-, sodium salt, (*Z*)-		12/28/84	12/28/94
140-66-9	4-(1,1,3,3-Tetramethylbutyl) phenol—Phenol, 4-(1,1,3,3-tetramethylbutyl)-		01/30/83	01/03/93
141-79-7	Mesityl oxide—3-Penten-2-one, 4-methyl-		10/04/82	10/04/92
142-28-9	Propane, 1,3-dichloro-		03/07/86	03/07/96
142-84-7	1-Propanamine, *N*-propyl-		03/07/86	03/07/96
143-22-6	Triethyleneglycol monobutyl ether—Ethanol, 2-[2-(2-butoxyethoxy)ethoxy]-		06/20/85	06/20/95
149-30-4	Mercaptobenzothiazole—2(3*H*-Benzothiazolethione		12/28/84	12/28/94
149-57-5	2-Ethylhexanoic acid—Hexanoic acid, 2-ethyl-		06/28/84	06/28/94
328-84-7	3,4-Dichlorobenzotrifluoride—Benzene, 1,2-dichloro-4-(trifluoromethyl)-		05/08/85	05/08/95
357-57-3	Strychnidin-10-one, 2,3-dimethoxy-		03/07/86	03/07/96
526-73-8	1,2,3-Trimethylbenzene—Benzene, 1,2,3-trimethyl-		02/13/84	02/13/94
556-67-2	Octamethylcyclotetrasiloxane—Cyclotetrasiloxane, octamethyl-		12/28/84	12/28/94
563-54-2	1-Propene, 1,2-dichloro-		03/07/86	03/07/96
563-58-6	1-Propene, 1,1-dichloro-		03/07/86	03/07/96
591-08-2	Acetamide, *N*-(aminothioxomethyl)-		03/07/86	03/07/96
594-20-7	Propane, 2,2-dichloro-		03/07/86	03/07/96
598-31-2	2-Propanone, 1-bromo-		03/07/86	03/07/96
616-23-9	1-Propanol, 2,3-dichloro-		03/07/86	03/07/96
646-06-0	1,3-Dioxolane		01/03/83	01/03/93
692-42-2	Arsine, diethyl-		03/07/86	03/07/96
696-28-6	Arsonous dichloride, phenyl-		03/07/86	03/07/96
757-58-4	Tetraphosphoric acid, hexaethyl ester		03/07/86	03/07/96
939-97-9	*p-tert*-Butylbenzaldehyde—Benzaldehyde, 4-(1,1-dimethylethyl)-		06/25/86	06/25/96
1000-82-4	Methylolurea—Urea, (hydroxymethyl)-		07/01/83	07/01/93
1309-64-4	Antimony trioxide		10/04/82	10/04/92
1333-41-1	Methyl pyridine—Pyridine, methyl-		09/10/84	09/10/94
1345-04-6	Antimony trisulfide		10/04/82	10/04/92
1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-		03/07/86	03/07/96
2763-96-4	3(2*H*)-Isoxazolone, 5-(aminomethyl)-		03/07/86	03/07/96
3268-58-2	Phosphorodithioic acid,*O,O*-diethyl *S*-methyl ester		03/07/86	03/07/96
3319-31-1	Tris(2-ethylhexyl) trimellitate—1,2,4-Benzenetricarboxylic acid, tris(2-ethylhexyl)ester.		01/03/83	01/03/93
3322-93-8	1,2-Dibromo-4-(1,2-dibromoethyl) cyclohexane—Cyclohexane, 1,2-dibromo-4-(1,2-dibromoethyl)-		06/28/84	06/28/94
3389-71-7	1,2,3,4,7,7-Hexachloronorbornadiene—Bicyclo[2.2.1]hepta-2,5-diene, 1,2,3,4,7,7-hexachloro-		01/13/84	01/13/94
4170-30-3	2-Butenal		03/07/86	03/07/96
5344-82-1	Thiourea, (2-chlorophenyl)-		03/07/86	03/07/96
6422-86-2	Bis(2-ethylhexyl) terephthalate—1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester.		01/03/83	01/03/93
7440-36-0	Antimony		10/04/82	10/04/92
9011-05-6	Urea, polymer with formaldehyde	§ 716.20(b)(1) applies.	06/03/85	06/03/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
13414-54-5	Methallyl 2-nitrophenyl ether—Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-		02/13/84	02/13/94
13414-55-6	7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran—Benzofuran, 2,3-dihydro-2,2-dimethyl-7-nitro .		02/13/84	02/13/94
25550-98-5	Phosphorous acid, diisodecyl phenyl ether		12/19/85	12/19/95
25551-13-7	Trimethylbenzene—Benzene, trimethyl- (mixed isomers)		02/13/84	02/13/94
25640-78-2	Isopropyl biphenyl—1,1'-Biphenyl, (1-methylethyl)-		06/28/84	06/28/94
61788-33-8	Terphenyl, chlorinated		10/04/82	10/04/92
61789-36-4	Calcium naphthenate—Naphthenic acids, calcium salts		07/01/83	07/01/93
61789-51-3	Cobalt naphthenate—Naphthenic acids, cobalt salts		07/01/83	07/01/93
61790-14-5	Lead naphthenate—Naphthenic acids, lead salts		07/01/83	07/01/93
68298-46-4	7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran—7-Benzofuranamine, 2,3-dihydro-2,2-dimethyl- .		02/13/84	02/13/94
68611-64-3	Urea, reaction products with formaldehyde	§ 716.20(b)(1) applies.	06/03/85	06/03/95
69009-90-1	Diisopropyl biphenyl—1,1'-Biphenyl, bis(1-methylethyl)-		06/28/84	06/28/94
5344-82-1	Thiourea, (2-chlorophenyl)-		03/07/86	03/07/96
6422-86-2	Bis(2-ethylhexyl) terephthalate—1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester.		01/03/83	01/03/93
7440-36-0	Antimony		10/04/82	10/04/92
9011-05-6	Urea, polymer with formaldehyde	§ 716.20(b)(1) applies.	06/03/85	06/03/95
13414-54-5	Methallyl 2-nitrophenyl ether—Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-		02/13/84	02/13/94
13414-55-6	7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran—Benzofuran, 2,3-dihydro-2,2-dimethyl-7-nitro .		02/13/84	02/13/94
25550-98-5	Phosphorous acid, diisodecyl phenyl ether		12/19/85	12/19/95
25551-13-7	Trimethylbenzene—Benzene, trimethyl- (mixed isomers)		02/13/84	02/13/94
25640-78-2	Isopropyl biphenyl—1,1'-Biphenyl, (1-methylethyl)-		06/28/84	06/28/94
61788-33-8	Terphenyl, chlorinated		10/04/82	10/04/92
61789-36-4	Calcium naphthenate—Naphthenic acids, calcium salts		07/01/83	07/01/93
61789-51-3	Cobalt naphthenate—Naphthenic acids, cobalt salts		07/01/83	07/01/93
61790-14-5	Lead naphthenate—Naphthenic acids, lead salts		07/01/83	07/01/93
68298-46-4	7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran—7-Benzofuranamine, 2,3-dihydro-2,2-dimethyl- .		02/13/84	02/13/94
68611-64-3	Urea, reaction products with formaldehyde	§ 716.20(b)(1) applies.	06/03/85	06/03/95
69009-90-1	Diisopropyl biphenyl—1,1'-Biphenyl, bis(1-methylethyl)-		06/28/84	06/28/94

(2) By alphabetical order.

Substance	CAS No.	Special exemptions	Effective date	Sunset date
Acetamide, *N*-(aminothioxomethyl)-	591-08-2		03/07/86	03/07/96
Acetic acid, fluoro-, sodium salt	62-74-8		03/07/86	03/07/96
Acetonitrile	75-05-8		10/04/82	10/04/92
Acrylamide—2-Propenamide	79-06-1		10/04/82	10/04/92
7-Amino-2,2-dimethyl-2,3-dihydro-benzofuran—7-Benzofuranamine, 2,3-dihydro-2,2-dimethyl- .	68298-46-4		02/13/84	02/13/94
Anthraquinone—9,10-Anthracenedione	84-65-1		12/28/84	12/28/94
Antimony	7440-36-0		10/04/82	10/04/92
Antimony trioxide	1309-64-4		10/04/82	10/04/92
Antimony trisulfide	1345-04-6		10/04/82	10/04/92
Arsine, diethyl-	692-42-2		03/07/86	03/07/96
Arsonous dichloride, phenyl-	696-28-6		03/07/86	03/07/96
Benzenamine, 2-methyl-	95-53-4		03/07/86	03/07/96
Benzenamine, 4-methyl-	106-49-0		03/07/86	03/07/96
Benzenamine, 4,4'-methylenebis-	101-77-9		10/04/82	10/04/92
Benzeneethanamine, *alpha, alpha*-dimethyl-	122-09-8		03/07/86	03/07/96
Benzenesulfonyl chloride	98-09-9		03/07/86	03/07/96
Benzenethiol	108-98-5		03/07/86	03/07/96
Benzyl butyl phthalate—1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7		04/29/83	04/29/93
1,1'-Biphenyl	92-52-4		04/29/83	04/29/93
Bis(2-ethylhexyl) terephthalate—1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester.	6422-86-2		01/03/83	01/03/93
Bisphenol A—Phenol, 4,4'-(1-methylethylidene)bis-	80-05-7		06/28/84	06/28/94
2-Butenal	4170-30-3		03/07/86	03/07/96
2-(2-Butoxyethoxy)ethyl acetate—Ethanol, 2-(2-butoxyethoxy)-,acetate	124-17-4		01/13/84	01/13/94
p-tert-Butylbenzaldehyde—Benzal-dehyde, 4-(1,1-dimethylethyl)-	939-97-9		06/25/86	06/25/96
p-tert-Butylbenzoic acid—Benzoic acid, 4-(1,1-dimethylethyl)-	98-73-7		06/25/86	06/25/96
p-tert-Butyltoluene—Benzene, 1-(1,1-dimethylethyl)-4-methyl-	98-51-1		06/25/86	06/25/96
Calcium naphthenate—Naphthenic acids, calcium salts	61789-36-4		07/01/83	07/01/93
9*H*-Carbazole	86-74-8		03/07/86	03/07/96
4 Chlorobenzotrifluoride—Benzene, 1-chloro-4-(trifluoromethyl)-	98-56-6		04/29/83	04/29/93

Substance	CAS No.	Special exemptions	Effective date	Sunset date
Chloromethane—Methane, chloro-	74-87-3		10/04/82	10/04/92
Chloroprene—1,3-Butadiene, 2-chloro-	126-99-8		12/28/84	12/28/94
2-Chlorotoluene—Benzene, 1-chloro-2-methyl-	95-49-8		04/29/83	04/29/93
Cobalt naphthenate—Naphthenic acids, cobalt salts	61789-51-3		07/01/83	07/01/93
o-Cresol—Phenol, 2-methyl-	94-48-7		10/04/82	10/04/92
m-Cresol—Phenol, 3-methyl-	108-39-4		10/04/82	10/04/92
p-Cresol—Phenol, 4-methyl-	106-44-5		10/04/82	10/04/92
Cumene—Benzene, (1-methylethyl)-	98-82-8		10/28/84	10/28/94
Cyclohexane	110-82-7		12/19/85	12/19/95
Cyclohexanone	108-94-1		10/04/82	10/04/92
1,2-Dibromo-4-(1,2-dibromoethyl) cyclohexane—Cyclohexane, 1,2-dibromo-4-(1,2-dibromoethyl)-	3322-93-8		06/28/84	06/28/94
3,4-Dichlorobenzotrifluoride—Benzene, 1,2-dichloro-4-(trifluoromethyl)-	328-84-7		05/08/85	05/08/95
1,2-Dichloropropane—Propane, 1,2-dichloro-	78-87-5		10/04/82	10/04/92
Diethylenetriamine—1,2-Ethanediamine, *N*-(2-aminoethyl)-	111-40-0		04/29/83	04/29/93
Diisopropyl biphenyl—1,1'-Biphenyl, bis(1-methylethyl)-	69009-90-1		06/28/83	06/28/93
1,3-Dioxolane	646-06-0		01/03/83	01/03/93
Ethane, 1,1'-[methylenebis(oxy)] bis[2-chloro-	111-91-1		03/07/86	03/07/96
Ethene,(2-chloroethoxy)-	110-75-8		03/07/86	03/07/86
Ethylene bisoxyethylene diacetate—Ethanol, 2,2'-[1,2-ethanediylbis(oxy)] bis-, diacetate.	111-21-7		01/13/84	01/13/94
2-Ethylhexanoic acid—Hexanoic acid, 2-ethyl-	149-57-5		06/28/84	06/28/94
Formamide	75-12-7		10/04/82	10/04/92
Hexacholoro-1,3-butadiene—1,3,-Butadiene, 1,1,2,3,4,4-hexachlro-	87-68-3		10/04/82	10/04/92
Hexachlorocyclopentadiene—1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4		10/04/82	10/04/92
1,2,3,4,7,7-Hexachloronorbornadiene— Bicyclo[2.2.1]hepta-2,5-diene, 1,2,3,4,7,7-hexachloro-	3389-71-7		01/13/84	01/03/94
Hydroperoxide, 1-methyl-1-phenylethyl	80-15-9		03/07/86	03/07/96
Hydroquinone—1,4-Benzenediol	123-31-9		10/04/84	10/04/94
Isophorone—2-Cyclohexene-1-one, 3,5,5-trimethyl-	78-59-1		10/04/82	10/04/92
Isopropyl biphenyl—1,1'-Biphenyl, (1-methylethyl)-	25640-78-2		06/28/84	06/28/94
3(2*H*)Isoxazolone, 5-(aminomethyl)-	2763-96-4		03/07/86	03/07/96
Lead naphthenate—Naphthenic acids, lead salts	61790-14-5		07/01/83	07/01/93
Maleic anhydride—2,5-Furandione	108-31-6		09/10/84	09/10/94
Mercaptobenzothiazole—2(3*H*)-Benzothiazolethione	149-30-4		12/28/84	12/28/94
Mesityl oxide—3-Penten-2-one, 4-methyl-	141-79-7		10/04/82	10/04/92
Methallyl 2-nitrophenyl ether—Benzene, 1-[(2-methyl-2-propenyl oxy]-2-nitro-	13414-54-5		02/13/84	02/13/94
Methylcyclopentane—Cyclopentane, methyl-	96-37-7		06/20/85	06/20/95
Methylene chloride—Methane, dichloro-	75-09-2		10/04/82	10/04/92
Methyl ethyl ketone—2-Butanone	78-93-3		10/04/82	10/04/92
Methyl isobutyl ketone—2-Pentanone, 4-methyl-	108-10-1		10/04/82	10/04/92
Methylolurea—Urea, (hydroxymethyl)-	1000-82-4		07/01/83	07/01/93
Methylpyridine—Pyridine, methyl-	1333-41-1		09/10/84	09/10/94
2-Methylpyridine—Pyridine, 2-methyl-	109-06-8		09/10/84	09/10/94
3-Methylpyridine—Pyridine, 3-methyl-	108-99-6		09/10/84	09/10/94
4-Methylpyridine—Pyridine, 4-methyl-	108-89-4		09/10/84	09/10/94
Nitrobenzene—Benzene, nitro-	98-95-3		10/04/82	10/04/92
7-Nitro-2,2-dimethyl-2,3-dihydro-benzofuran—Benzofuran, 2,3-dihydro-2,2-dimethyl-7-nitro-	13414-55-6		02/13/84	02/13/94
Octamethylcyclotetrasiloxane— Cyclotetrasiloxane, octamethyl-	556-67-2		12/28/84	12/28/94
Oleylamine—9-Octadecen-1-amine, (*Z*)-	112-90-3		01/13/84	01/13/94
Pentabromoethylbenzene-Benzene, pentabromoethyl-	85-22-3		12/28/84	12/28/94
Phenol, 2,6-bis(1,1-dimethylethyl)-	128-39-2		12/19/85	12/19/95
2-Phenoxyethanol—Ethanol, 2-phenoxy-	122-99-6		07/01/83	07/01/93
p-Phenylenediamine— 1,4-Benzenediamine	106-50-3		10/04/82	10/04/92
Phosphoric acid, tributyl ester	126-73-8		06/18/86	06/18/96
Phosphorodithioic acid, *O,O*-diethyl *S*-methyl ester	3288-58-2		03/07/86	03/07/96
Phosphorous acid, diisodecyl phenyl ether	25550-98-5		12/19/85	12/19/95
1-Propanamine	107-10-8		03/07/86	03/07/96
1-Propanamine, *N*-propyl-	142-84-7		03/07/86	03/07/96
Propane, 1,1-dichloro-	78-99-9		03/07/86	03/07/96
Propane, 1,3-dichloro-	142-28-9		03/07/86	03/07/96
Propane, 2,2-dichloro-	594-20-7		03/07/86	03/07/96
Propanedinitrile	109-77-3		03/07/86	03/07/96
Propanenitrile, 2-hydroxy-2-methyl-	75-86-5		03/07/86	03/07/96
1-Propanol, 2,3-dichloro-	616-23-9		03/07/86	03/07/96
1-Propanol, 2-methyl-	78-83-1		03/07/86	03/07/96
2-Propanone, 1-bromo-	598-31-2		03/07/86	03/07/96
1-Propene, 1,1-dichloro-	563-58-6		03/07/86	03/07/96
1-Propene, 1,2-dichloro-	563-54-2		03/07/86	03/07/96
1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7		03/07/86	03/07/96
2-Propyn-1-ol	107-19-7		03/07/86	03/07/96

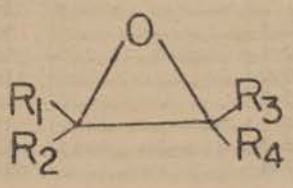
Substance	CAS No.	Special exemptions	Effective date	Sunset date
Pyridine	110-86-1		10/04/82	10/04/92
Quinone—2,5-Cyclohexadiene-1,4-dione	106-51-4		10/04/82	10/04/92
Sodium *N*-methyl-*N*-oleoyltaurine—Ethanesulfonic acid, 2-[methyl(1-oxo-9-octadecenyl) amino]-, sodium salt, (*Z*)-	137-20-2		12/28/84	12/28/94
Strychnidin-10-one, 2,3-dimethoxy-	357-57-3		03/07/86	03/07/96
Terphenyl, chlorinated	61788-33-8		10/04/82	10/04/92
Tetrabromobisphenol A—Phenol, 4,4'-(1-methylethylidene) bis(2,6-dibromo-	79-94-7		06/20/85	06/20/95
4-(1,1,3,3-Tetramethylbutyl) phenol—Phenol, 4-(1,1,3,3-tetramethylbutyl)-	140-66-9		01/30/83	01/30/93
Tetraphosphoric acid, hexaethyl ester	757-58-4		03/07/86	03/07/96
Thiourea, (2-chlorophenyl)-	5344-82-1		03/07/86	03/07/96
Toluene—Benzene, methyl-	108-88-3		10/04/82	10/04/92
1,1,1,-Trichloroethane—Ethane, 1,1,1-trichloro-	71-55-6		10/04/82	10/04/92
Triethyleneglycol monobutyl ether—Ethanol, 2-[2-(2-butoxyethoxy) ethoxy]-	143-22-6		06/20/85	06/20/95
Triethyleneglycol monoethyl ether—Ethanol, 2-[2-(2-ethoxyethoxy) ethoxy]-	112-50-5		06/20/85	06/20/95
Triethyleneglycol monomethyl ether—Ethanol, 2-[2-(2-methoxyethoxy) ethoxy]-	112-35-6		06/20/85	06/20/95
1,2,3-Trimethylbenzene—Benzene, 1,2,3-trimethyl-	526-73-8		02/13/84	02/13/94
1,2,4-Trimethylbenzene—Benzene, 1,2,4-trimethyl-	95-63-6		04/29/83	04/29/93
1,3,5-Trimethylbenzene—Benzene, 1,3,5-trimethyl-	108-67-8		02/13/84	02/13/94
Trimethylbenzene—Benzene, trimethyl- (mixed isomers)	25551-13-7		02/13/84	02/13/94
Tris(2-ethylhexyl) trimellitate—1,2,4-Benzenetricarboxylic acid, tris(2-ethylhexyl)ester.	3319-31-1		01/03/83	01/03/93
Urea, polymer with formaldehyde	9011-05-6	§ 716.20(b)(1) applies.	06/03/85	06/03/95
Urea, reaction products with formaldehyde	68611-64-3	§ 716.20(b)(1) applies.	06/03/85	06/03/95
Vinyl acetate—Acetic acid ethenyl ester	108-05-4		02/10/86	02/10/96
Vinyl fluoride—Ethene, 1,1-difluoro- fluoro-	75-02-5		10/04/82	10/04/92
Vinylidene fluoride—Ethene,	75-38-7		10/04/82	10/04/92
p-Xylene—Benzene, 1,4-dimethyl-	106-42-3		10/04/82	10/04/92
m-Xylene-Benzene, 1,3-dimethyl-	108-38-3		10/04/82	10/04/92
o-Xylene—Benzene, 1,2-dimethyl-	95-47-6		10/04/82	10/04/92

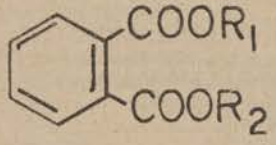
(b) *Listed mixtures.* The following mixtures are subject to all the provisions of Part 716. Manufacturers, importers, and processors of a listed mixture are subject to the reporting requirements of Subpart A for that mixture.

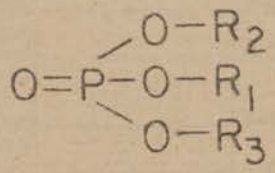
Mixture	CAS No.	Special exemptions	Effective date	Sunset date
Aromatic C_9 fraction from petroleum refining: The C_9 fraction is primarily composed of.			02/13/84	02/13/94
o-Ethyltoluene—(Benzene, 1-ethyl-2-methyl-)	611-14-3		02/13/84	02/13/94
m-Ethyltoluene—(Benzene, 1-ethyl-3-methyl-)	620-14-4		02/13/84	02/13/94
p-Ethyltoluene—(Benzene, 1-ethyl-4-methyl-)	622-96-8		02/13/84	02/13/94
Ethyltoluene—(Benzene, ethylmethyl-) (mixed isomers)	25550-14-5		02/13/84	02/13/94
Trimethylbenzenes (mixed)—(Benzenes, trimethyl	25551-13-7		02/13/84	02/13/94
1,2,3-Trimethylbenzene—(Benzene, 1,2,3-trimethyl-)	526-73-8		02/13/84	02/13/94
1,2,4-Trimethylbenzene—(Benzene, 1,2,4-trimethyl-)	95-63-6		02/13/84	02/13/94
1,3,5-Trimethylbenzene—(Benzene, 1,3,5-trimethyl-)	108-67-8		02/13/84	02/13/94

(c) *By category.* The following categories are listed in alphabetical order. Chemical substances listed within a category are provided only as examples of the category. All chemical substances within a category are subject to all the provisions of Part 716. Manufacturers, importers, and processors of any chemical substance within a category are subject to the reporting requirements of Subpart A for that category, except when the exemption of § 716.20(b) of this part applies.

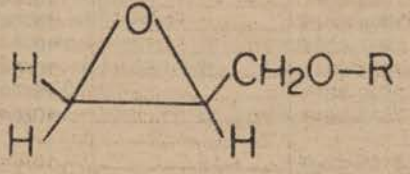
Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
Alkyl epoxides—including all noncyclic aliphatic hydrocarbons with one or more epoxy functional groups			10/04/82	10/04/92



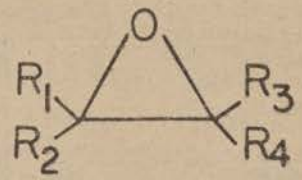
Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
$R_1=R_2=R_3=R_4=H$ or alkyl. Groups R_1-R_2 may contain one or more epoxide functions:				
2,2'-Bioxirane	1464-53-5		10/04/82	10/04/92
Oxirane	75-21-8		10/04/82	10/04/92
Oxirane, decyl-	2855-19-8		10/04/82	10/04/92
Oxirane, 2,2-dimethyl-	558-30-5		10/04/82	10/04/92
Oxirane, 2,3-dimethyl-	3266-23-7		10/04/82	10/04/92
Oxirane, dodecyl	3234-28-4		10/04/82	10/04/92
Oxirane, ethenyl-	930-22-3		10/04/82	10/04/92
Oxirane, ethyl-	106-88-7		10/04/82	10/04/92
Oxirane, heptadecyl-	678604-04-2		10/04/82	10/04/92
Oxirane, hexadecyl-	7390-81-0		10/04/82	10/04/92
Oxirane, methyl-	75-56-9		10/04/82	10/04/92
Oxirane, octyl-	2404-44-6		10/04/82	10/04/92
Oxirane, pentadecyl-	22092-38-2		10/04/82	10/04/92
Oxirane, tetradecyl-	7320-37-8		10/04/82	10/04/92
Oxirane, tridecyl-	18633-25-5		10/04/82	10/04/92
Alkyl phthalates—all alkyl esters of 1,2-benzenedicarboxylic acid (*ortho*-phthalic acid)			10/04/82	10/04/92
				
$R_1=R_2=$alkyl.				
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, bis(1-methylheptyl) ester	131-15-7		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, bis(2-methylpropyl) ester	84-69-5		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, butyl cyclohexyl ester	84-64-0		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, 2-butoxy-2-oxyethyl butyl ester	85-70-1		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, butyl 2-ethylhexyl ester	85-69-8		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, butyl octyl ester	84-78-6		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, decyl hexyl ester	25724-58-7		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, decyl octyl ester	119-07-3		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, dicyclohexyl ester	84-61-7		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, dihexyl ester	84-75-3		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, diisodecyl ester	26761-40-0		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, diisononyl ester	28553-12-0		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, diisooctyl ester	27554-26-3		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, dinonyl ester	84-76-4		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, ditridecyl ester	119-06-2		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, diundecyl ester	3648-20-2		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, 2-ethylhexyl-8-methylnonyl ester	89-13-4		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, hexyl isodecyl ester	61702-81-6		10/04/82	10/04/92
1,2-Benzenedicarboxylic acid, isodecyl tridecyl ester	61886-60-0		10/04/82	10/04/92
Alkyltin compounds			01/03/83	01/03/93
Dibutytin dilaurate—Stannane, dibutylbis[(l-oxododecyl)oxyl]-	77-58-7		01/03/83	01/03/93
Dimethyltin *S,S'*-bis(isooctyl mercaptoacetate)—Acetic acid, 2,2'-[(dimethylstannylene)bis(thio)] bis-, diisooctyl ester	26636-01-1		01/03/83	01/03/93
Dibutyltin *S,S'*-bis(isooctyl mercaptoacetate)—Acetic acid, 2,2'-[(dibutylstannylene)bis (thio)] bis-, diisooctyl ester	25168-24-5		01/03/83	01/03/93
Dibutyltin bis(isooctyl maleate)—2-Butenoic acid, 4,4'-[(dibutyl stannylene)bis(oxy)]bis [4-oxo-, diisoctl ester, (*Z, Z*)-	25168-21-2		01/03/83	01/03/93
Dibutyltin bis(lauryl mercaptide)—Stannane, dibutyl bis(dodecylthio)-	1185-81-5		01/03/83	01/03/93
Monobutyltin tris(isooctyl mercaptoacetate)—[(butylstannylidyne)tris-, (thio)]tris-tri-isoacetyl ester	25852-70-4		01/03/83	01/03/93
Monomethyltin tris(isooctyl mercaptoacetate)—Acetic acid, 2,2',2''-[(methylstannylidyne)tris (thio)]tris-, triisoacetyl ester	54849-38-6		01/03/83	01/03/93
Aniline and chloro-, bromo-, and/or nitroanilines			10/04/82	10/04/92
Benzenamine	62-53-3		10/04/82	10/04/92
Benzenamine, 4-bromo-	106-40-1		10/04/82	10/04/92
Benzenamine, 2-bromo-6-chloro-4-nitro-	99-29-6		10/04/82	10/04/92
Benzenamine, 2-bromo-,4,6-dinitro-	1817-73-8		10/04/82	10/04/92
Benzenamine, 2-chloro-	95-51-2		10/04/82	10/04/92
Benzenamine, 3-chloro	108-42-9		10/04/82	10/04/92
Benzenamine, 4-chloro	106-47-8		10/04/82	10/04/92

Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
Benzenamine, 2-chloro-4,6,-dinitro-	3531-19-9		10/04/82	10/04/92
Benzenamine, 4-chloro-2,6-dinitro-	5388-62-5		10/04/82	10/04/92
Benzenamine, 3-chloro-, hydrochloride	141-85-5		10/04/82	10/04/92
Benzenamine, 2-chloro-4-nitro-	121-87-9		10/04/82	10/04/92
Benzenamine, 2-chloro-5-nitro-	6283-25-6		10/04/82	10/04/92
Benzenamine, 4-chloro-2-nitro-	89-63-4		10/04/82	10/04/92
Benzenamine, 4-chloro-3-nitro-	635-22-3		10/04/82	10/04/92
Benzenamine, 2,6-dibromo-4-nitro-	827-94-1		10/04/82	10/04/92
Benzenamine, 2,3-dichloro-	608-27-5		10/04/82	10/04/92
Benzenamine, 2,4-dichloro-	554-00-7		10/04/82	10/04/92
Benzenamine, 2,5-dichloro-	95-82-9		10/04/82	10/04/92
Benzenamine, 3,4-dichloro-	95-76-1		10/04/82	10/04/92
Benzenamine, 3,5-dichloro-	626-43-7		10/04/82	10/04/92
Benzenamine, 2,6-dichloro-4-nitro-	99-30-9		10/04/82	10/04/92
Benzenamine, 2,4-dinitro-	97-02-9		10/04/82	10/04/92
Benzenamine, 2-nitro-	88-74-4		10/04/82	10/04/92
Benzenamine, 3-nitro-	99-09-2		10/04/82	10/04/92
Benzenamine, 4-nitro-	100-01-6		10/04/82	10/04/92
Benzenamine, 2, 4, 6-tribromo-	147-82-0		10/04/82	10/04/92
Benzenamine, 2, 4, 6-trichloro-	634-93-5		10/04/82	10/04/92
Aryl phosphates—phosphate esters of phenol or of alkyl-substituted phenols. Triaryl and mixed alkyl and aryl esters are included but trialkyl esters are excluded			10/04/82	10/04/92
				
R_1 = phenyl, either unsubstituted or substituted with one or more alkyl or aralkyl groups $R_2 = R_3$ = alkyl; or phenyl, either unsubstituted or substituted with one or more alkyl or aralkyl groups				
Phenol, dimethyl-, phosphate (3:1)	25155-23-1		10/04/82	10/04/92
Phenol, 4-(1,1-dimethylethyl)-, phosphate (3:1)	78-33-1		10/04/82	10/04/92
Phosphoric acid, dibutyl phenyl ester	2528-36-1		10/04/82	10/04/92
Phosphoric acid, diisodecyl phenyl ester	51363-64-5		10/04/82	10/04/92
Phosphoric acid, (1,1-dimethylethyl)phenyl diphenyl ester	56803-37-3		10/04/82	10/04/92
Phosphoric acid, 2-ethylhexyl diphenyl ester	1241-94-7		10/04/82	10/04/92
Phosphoric acid, isodecyl diphenyl ester	29761-21-5		10/04/82	10/04/92
Phosphoric acid, (1-methylethyl)phenyl diphenyl ester	28108-99-8		10/04/82	10/04/92
Phosphoric acid, methylphenyl diphenyl ester	26444-49-5		10/04/82	10/04/92
Phosphoric acid, (1-methyl-1-phenylethyl)phenyl diphenyl ester	34364-42-6		10/04/82	10/04/92
Phosphoric acid, triphenyl ester	115-86-6		10/04/82	10/04/92
Phosphoric acid, tris(methylphenyl) ester	1330-78-5		10/04/82	10/04/92
Phosphoric acid, tris(2-methylphenyl) ester	78-30-8		10/04/82	10/04/92
Phosphoric acid, tris(3-methylphenyl) ester	563-04-2		10/04/82	10/04/92
Phosphoric acid, tris(4-methylphenyl) ester	78-32-0		10/04/82	10/04/92
Asbestos—asbestiform varieties of chrysolite (serpentine); crocidolite (riebeckite); amosite (cummingtonite—grunerite); anthophyllite; tremolite; and actinolite			10/04/82	10/04/92
Asbestos	1332-21-4		10/04/82	10/04/92
Asbestiform minerals	12001-29-5		10/04/82	10/04/92
Asbestiform minerals	12172-73-5		10/04/82	10/04/92
Asbestiform minerals	17068-78-9		10/04/82	10/04/92
Bisazobiphenyl dyes derived from benzidine and its congeners, *ortho*-toluidine (dimethylbenzidine) and dianisidine (dimethoxybenzidine).			10/04/82	10/04/92
Benzoic acid, 2-[[2-amino-6-[[4'-[(3-carboxy-4-hydroxyphenyl)azo]-3, 3'-dimethoxy[1,1'-biphenyl]-4-yl]azo]-5-hydroxy-7-sulfo-1-naphthalenyl]azo]-5-nitro-, trisodium salt	6739-62-4		10/04/82	10/04/92
Benzoic acid, 5-[[4'-[2-amino-8-hydroxy-6-sulfo-1-naphthalenyl)azo] [1,1'-biphenyl]-4-yl]-azo]-2-hydroxy-, disodium salt	2429-84-7		10/04/82	10/04/92
Benzoic acid, 5-[[4'-[7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo] [1,1'-biphenyl]-4-yl]-azo]-2-hydroxy-, disodium salt	2429-82-5		10/04/82	10/04/92
Benzoic acid, 5-[[4'-[(1-amino-4-sulfo-2-naphthalenyl)azo] [1,1'-biphenyl]-4-yl]-azo]-2-hydroxy-, disodium salt	2429-79-0		10/04/82	10/04/92
Benzoic acid, 5-[[4'-[[2,6-diamino-3-[[8-hydroxy-3,6-disulfo-7-[(4-sulfo-1-naphthalenyl)azo]-2-naphthalenyl]azo]-5-methylphenyl]azo] [1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, tetrasodium salt	2429-81-4		10/04/82	10/04/92

Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
Benzoic acid, 5-[[4'-[(2,6-diamino-3-methyl-5-sulfophenyl)azo]-3,3'-dimethyl[1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, disodium salt	6637-88-3		10/04/82	10/04/92
Benzoic acid, 5-[[4'-[[2,6-diamino-3-methyl-5-[(4-sulfophenyl)azo]phenyl]azo] [1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, disodium salt	2586-58-5		10/04/82	10/04/92
Benzoic acid, 5-[[4'-[[2,6-diamino-3-methyl-5-[(4-sulfophenyl)azo]phenyl]azo] [1,1'-biphenyl]-4-yl]azo]-2-hydroxy-3-methyl-, disodium salt	6360-54-9		10/04/82	10/04/92
Benzoic acid, 5-[[4'-[[2,4-dihydroxy-3-[(4-sulfophenyl)azo]phenyl]azo] [1,1'-biphenyl]-4-yl]azo]2-hydroxy-, disodium salt	2893-80-3		10/04/82	10/04/92
Benzoic acid, 3,3'-[3,7-disulfo-1,5-naphthalene-diyl)bis[azo(6-hydroxy-3,1-phenylene) azo[6(or 7)-sulfo-4,1-naphthalenediyl] azo[1,1'-biphenyl]-4,4'-diylazo]bis[6-hydroxy-, hexasodium salt	8014-91-3		10/04/82	10/04/92
[1,1'-Biphenyl]-4,4'-bis diazonium), 3,3'-dimethoxy-	20282-70-6		10/04/82	10/04/92
Butanamide, *N,N'*-(3,3'-dimethyl [1,1'-biphenyl-4,4'-diyl)bis[3-oxo-	91-96-3		10/04/82	10/04/92
C.I. Direct Blue 218	10401-50-0		10/04/82	10/04/92
Cuprate(2-), [5-[[4'-[[2,6-dihydroxy-3-[2-hydroxy-5-sulfophenyl)azo]phenyl]azo] [1,1'-biphenyl]-4-yl]azo]-2-hydroxybenzoato(4-)]-, disodium	16071-86-6		10/04/82	10/04/92
Cuprate(3-), [*mu*-[7-([3,3'-dihydroxy-4'-[[1-hydroxy-6-(phenylamino)-3-sulfo-2-naphthalenyl] azo] [1,1'-biphenyl]-4-yl]azo]-8-hydroxy-1,6-naphthalenedisulfonato(7-)]]di-, trisodium	6656-03-7		10/04/82	10/04/92
Cuprate(4-), [*mu*-[[6,6'-[3,3'-dihydroxy[1,1'-biphenyl]-4-4'-diyl)bis(azo)]bis[4-amino-5-hydroxy-1,3-naphthalenedisulfonato]](8-)]]di-, tetrasodium	16143-79-6		10/04/82	10/04/92
2-Naphthalenecarboxamide, *N,N'*-(3,3'-dimethoxy[1,1'-biphenyl]-4,4'-diyl)bis[3-hydroxy-	91-92-9		10/04/82	10/04/92
1,3-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-6-[[4'-[(2-hydroxy-1-naphthalenyl)azo]-3,3'-dimethoxy[1,1'-biphenyl]-4-yl]azo]-, disodium salt	2586-57-4		10/04/82	10/04/92
1,3-Naphthalenedisulfonic acid, 6,6'-[(3,3'-dimethoxy-[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[4-amino-5-hydroxy-, tetrasodium salt	2610-05-1		10/04/82	10/04/92
1,3-Naphthalenedisulfonic acid, 8-[[4'-[(4-ethoxyphenyl)azo] [1,1'-biphenyl]-4-yl]azo]-7-hydroxy-, disodium salt	3530-19-61		10/04/82	10/04/92
1,3-Naphthalenedisulfonic acid, 8-[[4'-[4-ethoxyphenyl)azo]-3,3'-dimethyl] [1,1'-biphenyl]-4-yl]axo]-7-hydroxy-, disodium salt	6358-29-8		10/04/82	10/04/92
1,3-Naphthalenedisulfonic acid, 7-hydroxy-8-[[4'-[[4-methylphenyl)sulfonyl[oxy]phenyl]-azo] [1,1'-biphenyl]-4-yl]azo]-, disodium salt	3567-65-5		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 5-amino-3-[[4'-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo] [1,1'-biphenyl]-4-yl]azo]-4-hydroxy-, trisodium salt	2429-73-4		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4'-diamino-5-methylphenyl)azo] [1,1'-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt	2429-83-6		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4'-[(2,4-diaminophenyl)azo] [1,1'-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt	1937-37-7		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-6[[4'-[(4-hydroxyphenyl)azo] [1,1'-biphenyl]-4-yl]-azo]-3-[(4-nitrophenyl)azo]-, disodium salt	4335-09-5		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3[[4'-[(4-hydroxyphenyl)azo] [1,1'-biphenyl]-4-yl]-azo)-6-(phenylazo)-, disodium salt	3626-28-6		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[[1,1'-bi-phenyl]-4,4',-diylbis(azo)]bis[5-amino-4-hydroxy-, tetrasodium salt	2602-46-2		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethoxy[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[5-amino-4-hydroxy-, tetrasodium salt	2429-74-5		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-diphenyl]-4,4'-diyl)bis(azo)]bis[5-amino-4-hydroxy-, tetrasodium salt	72-57-1		10/04/82	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis-[4,5-dihydroxy-, tetrasodium salt	2150-54-1		10/04/82	10/04/92
1-Naphthalenesulfonic acid, 3-[[4'-[(6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-3,3'-dimethoxy[1,1'-biphenyl]-4-yl]azo]-4-hydroxy-, disodium salt	6449-35-0		10/04/82	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[[1,1'-biphenyl]-4,4'-diyl-4,4'-diyl)bis(azo)]bis[4-amino-, disodium salt	573-58-0		10/04/82	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[3,3'-dimethoxy-[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[4-hydroxy-, disodium salt	2429-71-2		10/04/82	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[(,3'dimethyl [1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[4-amino-, disodium salt	992-59-6		10/04/82	10/04/92
Chlorinated benzenes, mono-, di-, tri-, tetra-, and penta-	—		10/04/82	10/04/92
Benzene, chloro-	108-90-7		10/04/82	10/04/92

Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
Benzene, 1,2-dichloro-	95-50-1		10/04/82	10/04/92
Benzene, 1,3-dichloro-	541-73-1		10/04/82	10/04/92
Benzene, 1,4-dichloro-	106-46-7		10/04/82	10/04/92
Benzene, pentachloro-	608-93-5		10/04/82	10/04/92
Benzene, 1,2,3,4-tetrachloro-	634-66-2		10/04/82	10/04/92
Benzene, 1,2,3,5-tetrachloro-	634-90-2		10/04/82	10/04/92
Benzene, 1,2,4,5-tetrachloro-	95-94-3		10/04/82	10/04/92
Benzene, 1,2,3-trichloro-	87-61-6		10/04/82	10/04/92
Benzene, 1,2,4-trichloro-	120-82-1		10/04/82	10/04/92
Benzene, 1,3,5-trichloro-	108-70-3		10/04/82	10/04/92
Chlorinated naphthalenes—chlorinated derivatives of naphthalene (empirical formula) $C_{10}H_xCl_y$ where $x+y=8$			10/04/82	10/04/92
Naphthalene, chloro-	25586-43-0		10/04/82	10/04/92
Naphthalene, chloro derivatives	70776-03-3		10/04/82	10/04/92
Naphthalene, 1-chloro-	90-13-1		10/04/82	10/04/92
Naphthalene, 2-chloro-	91-58-7		10/04/82	10/04/92
Naphthalene, 1,2-dichloro-	2050-69-3		10/04/82	10/04/92
Naphthalene, 1,3-dichloro-	2198-75-6		10/04/82	10/04/92
Naphthalene, 1,4-dichloro-	1825-31-6		10/04/82	10/04/92
Naphthalene, 1,5-dichloro-	1825-30-5		10/04/82	10/04/92
Naphthalene, 1,6-dichloro-	2050-72-8		10/04/82	10/04/92
Naphthalene, 1,7-dichloro-	2050-73-9		10/04/82	10/04/92
Naphthalene, 1,8-dichloro-	2050-74-0		10/04/82	10/04/92
Naphthalene, 2,3-dichloro-	2050-75-1		10/04/82	10/04/92
Naphthalene, 2,6-dichloro-	2065-70-5		10/04/82	10/04/92
Naphthalene, 2,7-dichloro-	2198-77-8		10/04/82	10/04/92
Naphthalene, heptachloro-	32241-08-0		10/04/82	10/04/92
Naphthalene, hexatachloro-	1335-87-1		10/04/82	10/04/92
Naphthalene, octachloro-	2234-13-1		10/04/82	10/04/92
Naphthalene, pentachloro-	1321-64-8		10/04/82	10/04/92
Naphthalene, tetrachloro-	1335-88-2		10/04/82	10/04/92
Naphthalene, trichloro-	1321-65-9		10/04/82	10/04/92
Chlorinated paraffins—chlorinated paraffin oils and chlorinated paraffin waxes, with chlorine content of 35 percent through 70 percent by weight			10/04/82	10/04/92
Alkanes, chloro-	61788-76-9		10/04/82	10/04/92
Alkanes, C_{6-18} chloro-	68920-70-7		10/04/82	10/04/92
Paraffin waxes and hydrocarbon waxes, chlorinated	63449-39-8		10/04/82	10/04/92
Ethylotoluenes—This category consists of ethyltoluene (mixed isomers) and the ortho (1,2-), meta (1,3-) and para (1,4-) isomers			10/04/82	10/04/92
Benzene, ethylmethyl (mixed isomers)	25550-14-5		04/29/83	04/29/93
Benzene, 1-ethyl-2-methyl-	611-14-3		04/29/83	04/29/93
Benzene, 1-ethyl-3-methyl-	620-14-4		04/29/83	04/29/93
Benzene, 1-ethyl-4-methyl-	622-96-8		04/29/83	04/29/93
Fluoroalkenes—This category is defined as fluoroalkenes of the general formula: $C_nH_{2n-x}F_x$ where n equals 2 to 3 and X equals 1 to 6			04/29/83	04/29/93
Ethene, tetrafluoro-	116-14-3		04/29/83	04/29/93
Ethene, trifluoro-	359-11-5		04/29/83	04/29/93
1-Propene, 1,1,2,3,3,3-hexafluoro-	116-15-4		04/29/83	04/29/93
Glycidol (oxiranemethanol) and its derivatives			10/04/82	10/04/92
				
R=H; alkyl, alkenyl or alkynyl; aryl; acyl. where R=alkyl, alkenyl, alkynyl, aryl, or acyl; any substituents or functional groups may be present with the alkyl, etc., groups.				
1,2-Cyclohexanedicarboxylic acid, bis(oxiranylmethyl) ester	5493-45-8		10/04/82	10/04/92
Disiloxane, 1,1,3,3-tetramethyl-1,3-bis[3-oxiranylmethoxy)propyl]-	126-80-7		10/04/82	10/04/92
2,4-Imidazolidinedione, 5,5-dimethyl-3-[2-(oxiranylmethoxy)propyl]-1-(oxiranylmethyl)-	32568-89-1		10/04/82	10/04/92
2,4-Imidazolidenedione, 3,3'-[2-(oxiranylmethoxy)-1,3-propanediyl]bis[5,5-dimethyl-1-(oxiranylmethyl)-	38304-52-8		10/04/82	10/04/92
Neodecanoic acid, oxiranylmethyl ester	26761-45-5		10/04/82	10/04/92
Oxirane, 2,2'-[1,4-butanediylbis(oxymethylene)]bis	2425-79-8		10/04/82	10/04/92
Oxirane, (butoxymethyl)-	2426-08-6		10/04/82	10/04/92
Oxirane, 2,2'-[1,4-cyclohexanediylbis(methyleneoxymethylene)]bis-	14228-73-0		10/04/82	10/04/92
Oxirane, [(2,4-dibromophenoxy)methyl]-	20217-01-0		10/04/82	10/04/92
Oxirane, [(1,2-dibromopropoxy)methyl]-	35243-89-1		10/04/82	10/04/92

Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
Oxirane, [(1,1-dimethylethoxy)methyl]-	7665-72-7		10/04/82	10/04/92
Oxirane, [[4-(1,1-dimethylethyl)phenoxy]methyl]-	3101-60-8		10/04/82	10/04/92
Oxirane, 2,2'-[(2,2-dimethyl-1,3-propanediyl)bis(oxymethylene)]bis-	17557-23-2		10/04/82	10/04/92
Oxirane, [(dodecyloxy)methyl]-	2461-18-9		10/04/82	10/04/92
Oxirane, 2,2'-[1,2-ethanediylbis(oxymethylene)]bis-	2224-15-9		10/04/82	10/04/92
Oxirane,2,2',2'',2'''-[1,2-ethanediylidenetetrakis-(4,1-phenyleneoxymethylene)]tetrakis-	7328-97-4		10/04/82	10/04/92
Oxirane, (ethoxymethyl)-	4016-11-9		10/04/82	10/04/92
Oxirane, [[(2-ethylhexyl)oxy]methyl]-	2461-15-6		10/04/82	10/04/92
Oxirane, [(hexadecyloxy)methyl]-	15965-99-8		10/04/82	10/04/92
Oxirane, 2,2',2''-[1,2,6-hexanetriyltris(oxymethylene)]tris-	68959-23-9		10/04/82	10/04/92
Oxirane, (methoxymethyl)-	930-37-0		10/04/82	10/04/92
Oxirane, 2,2'-[methylenebis(phenyleneoxymethylene)]bis-	39817-09-9		10/04/82	10/04/92
Oxirane, 2,2'-[methylenebis(2,1-phenyleneoxymethylene)]bis-	54208-63-8		10/04/82	10/04/92
Oxirane, [(1-methylethoxy)methyl]-	4016-14-2		10/04/82	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis[4,1-phenyleneoxy[1-(butoxymethyl)-2,1-ethanediyl]oxymethylene]]bis-	71033-08-4		10/04/82	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis(4,1-phenyl-eneoxymethylene)]bis-	1675-54-3		10/04/82	10/04/92
Oxirane,2,2'-[(1-methylethylidene)bis(4,1-phenyl-eneoxymethylene)]bis-, homopolymer	25085-99-8		10/04/82	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxy-3,1-propanediyloxy-4,1-phenylene(1-methylethylidene)-4,1-phenyleneoxymethylene]]bis-	72319-24-5		10/04/82	10/04/92
Oxirane, [(methylphenoxy)methyl]-	26447-14-3		10/04/82	10/04/92
Oxirane, [(2-methylphenoxy)methyl]-	2210-79-9		10/04/82	10/04/92
Oxirane, [(4-(1-methyl-1-phenylethyl)phenoxy]-methyl]-	61578-04-9		10/04/82	10/04/92
Oxirane, mono[(C_8-C_{12}-alkyloxy)methyl]derivatives	68987-80-4		10/04/82	10/04/92
Oxirane, mono[(C_8-C_{10}-alkyloxy)methyl]derivatives	68609-96-1		10/04/82	10/04/92
Oxirane, mono[(C_{10}-C_{16}-alkyloxy)methyl]derivatives	68081-84-5		10/04/82	10/04/92
Oxirane, mono[(C_{12}-C_{14}-alkyloxy)methyl]derivatives	68609-97-2		10/04/82	10/04/92
Oxirane, [(4-nitrophenoxy)methyl]-	5255-75-4		10/04/82	10/04/92
Oxirane, [(4-nonylphenoxy)methyl]-	6178-32-1		10/04/82	10/04/92
Oxirane, [(9-octadecenyloxy)methyl]-, (*Z*)-	60501-41-9		10/04/82	10/04/92
Oxirane, [(octadecyloxy)methyl]-	16245-97-9		10/04/82	10/04/92
Oxirane, 2,2'-(oxiranylmethoxy)-1,3-phenylene]bis(methylene)]bis-	13561-08-5		10/04/82	10/04/92
Oxirane, 2,2'-[[2-(oxiranylmethoxy)phenyl]methylene]bis(4,1-phenyleneoxymethylene)]bis-	67786-03-2		10/04/82	10/04/92
Oxirane, 2,2'-[oxybis(methylene)]bis-	2238-07-5		10/04/82	10/04/92
Oxirane, (phenoxymethyl)-	122-60-1		10/04/82	10/04/92
Oxirane, 2,2'-[1,3-phenylenebis(oxymethylene)]bis-	101-90-6		10/04/82	10/04/92
Oxirane, 2,2'-[1,4-phenylenebis(oxymethylene)]bis-	2425-01-6		10/04/82	10/04/92
Oxirane, 2,2',2''-[1,2,3-propanetriyltris(oxymethylene)]tris-	13236-02-7		10/04/82	10/04/92
Oxirane, [(2-propenyloxy)methyl]-	106-92-3		10/04/82	10/04/92
Oxirane, 2,2',2''-[propylidynetris(4,1-phenyleneoxymethylene)]tris-	68517-02-2		10/04/82	10/04/92
Oxirane, [(tetradecyloxy)methyl]-	38954-75-5		10/04/82	10/04/92
Oxiranecarboxylic acid, 3-methyl-3-phenyl-, ethyl ester	77-83-8		10/04/82	10/04/92
Poly(oxy-1,2-ethanediyl), -*alpha*-[4-(oxiranylmethoxy)benzoyl]-*omega*-[[4-(oxiranylmethoxy)benzoyl]oxy-	69943-75-5		10/04/82	10/04/92
2-Propenoic acid, 2-methyl-, oxiranylmethyl ester	106-91-2		10/04/82	10/04/92
2-Propenoic acid, oxiranylemthyl ester	106-90-1		10/04/82	10/04/92
Silane, [(3-chloropropyl)(dimethoxy)[3-(oxiranylmethoxy) propyl]-	71808-64-5		10/04/82	10/04/92
Silane, diethoxymethyl[3-(oxiranylmethoxy) propyl]-	2897-60-1		10/04/82	10/04/92
Silane, ethoxydimethyl[3-(oxiranylmethoxy)propyl]-	17963-04-1		10/04/82	10/04/92
Silane, trimethoxy[3(oxiranylmethoxy)propyl]-	2530-83-8		10/04/82	10/04/92
Trisiloxane, 1,1,1,3,5,5,5-heptamethyl-3-[3-(oxiranylmethoxy)propyl]-	7422-52-8		10/04/82	10/04/92
Tetrasiloxane, 1,1,1,3,5,7,7,7-octamethyl-3,5-bis[3-(oxiranylmethoxy) propyl]-	69155-42-6		10/04/82	10/04/92
Halogenated alkyl epoxides—halogenated noncyclic aliphatic hydrocarbons with one or more epoxy functional groups			10/04/82	10/04/92



R_1=X or $C_nH_{2n+1-y}X_y$(y=1 to 2n+1)
R_2=H or X or $C_nH_{2n+1-y}X_y$(y=0 to 2n+1)
R_3=H or X or $C_nH_{2n+1-y}X_y$(y=0 to 2n+1)
R_4=H or X or $C_nH_{2n+1-y}X_y$(y=0 to 2n+1)
X=halogen. Groups R_1-R_4 may contain one or more expoxide functions.

Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
Oxirane, (bromomethyl)-	3132-64-7		10/04/82	10/04/92
Oxirane, (chloromethyl)-	106-89-8		10/04/82	10/04/92
Oxirane, (2,2,2-trichloroethyl)-	3083-25-8		10/04/82	10/04/92
Oxirane, (2,2,3,3,4,4,5,5,6,6,7,7,7-tridecafluoroheptyl)-	38565-52-5		10/04/82	10/04/92
Oxirane, trifluoro(trifluoromethyl)-	428-59-1		10/04/82	10/04/92
Phenylenediamines (Benzenediamines). This category is defined as all nitrogen unsubstituted phenylenediamines and their salts with zero to two substitutents on the ring selected from the same or different members of the group of halo, nitro, hydroxy, hydroxy-lower alkoxy, lower-alkyl, and lower alkoxy. For this purpose, the term "lower" is defined as a group containing between one and four carbons			04/29/83	04/29/93
1,2-Benzenediamine	95-54-5		04/29/83	04/29/93
1,3-Benzenediamine	108-45-2		04/29/83	04/29/93
1,2-Benzenediamine, 4-butyl-,	3663-23-8		04/29/83	04/29/93
1,2-Benzenediamine, 4-chloro-	95-83-0		04/29/83	04/29/93
1,3-Benzenediamine, 4-chloro-,	5131-60-2		04/29/83	04/29/93
1,4-Benzenediamine, 2-chloro-, dihydrochloride	615-46-3		04/29/83	04/29/93
1,2-Benzenediamine, 5-chloro-3-nitro=,	42389-30-0		04/29/83	04/29/93
1,2-Benzenediamine, 4-chloro-, sulfate (1:1)	68459-98-3		04/29/83	04/29/93
1,3-Benzenediamine, 4-chloro-, sulfate (1:1)	68239-80-5		04/29/83	04/29/93
1,4-Benzenediamine, 2-chloro-, sulfate	6219-71-2		04/29/83	04/29/93
1,4-Benzenediamine, 2,5-dichloro-,	20103-09-7		04/29/83	04/29/93
1,2-Benzenediamine, dihydrochloride	615-28-1		04/29/83	04/29/93
1,3-Benzenediamine, dihydrochloride	541-69-5		04/29/83	04/29/93
1,4-Benzenediamine, dihydrochloride	624-18-0		04/29/83	04/29/93
1,4-Benzenediamine, ethanedioate (1:1)	62654-17-5		04/29/83	04/29/93
1,2-Benzenediamine, 4-ethoxy-,	1197-37-1		04/29/83	04/29/93
1,3-Benzenediamine, 4-ethoxy-, dihydrochloride	67801-06-3		04/29/83	04/29/93
1,4-Benzenediamine, 2-methoxy-	5307-02-8		04/29/83	04/29/93
1,2-Benzenediamine,ine, 4-methoxy-, dihydrochloride	614-94-8		04/29/83	04/29/93
1,3-Benzenediamine, 4-methoxy-, sulfate	6219-67-6		04/29/83	04/29/93
1,3-Benzenediamine, 4-methoxy-, sulfate (1:1)	39156-41-7		04/29/83	04/29/93
Benzenediamine, *ar*-methyl-	25376-45-8		04/29/83	04/29/93
1,2-Benzenediamine, 3-methyl-	2687-25-4		04/29/83	04/29/93
1,2-Benzenediamine, 4-methyl-	496-72-0		04/29/83	04/29/93
1,3-Benzenediamine, 2-methyl-	823-40-5		04/29/83	04/29/93
1,3-Benzenediamine, 4-methyl-	95-80-7		04/29/83	04/29/93
1,3-Benzenediamine, 5-methyl-	108-71-4		04/29/83	04/29/93
1,4-Benzenediamine, 2-methyl-	95-70-5		04/29/83	04/29/93
1,4-Benzenediamine, 2-methyl-, dihydrochloride	615-45-2		04/29/83	04/29/93
1,4-Benzenediamine, 2-methyl-, sulfate	6369-59-1		04/29/83	04/29/93
1,4-Benzenediamine, 2-methyl-, sulfate (1:1)	615-50-9		04/29/83	04/29/93
1,2-Benzenediamine, 4-nitro-	99-56-9		04/29/83	04/29/93
1,3-Benzenediamine, 4-nitro-,	5131-58-8		04/29/83	04/29/93
1,3-Benzenediamine, 5-nitro-,	5042-55-7		04/29/83	04/29/93
1,4-Benzenediamine, 2-nitro-,	5307-14-2		04/29/83	04/29/93
1,2-Benzenediamine, 4-nitro-, dihydrochloride	6219-77-8		04/29/83	04/29/93
1,4-Benzenediamine, 2-nitro-, dihydrochloride	18266-52-9		04/29/83	04/29/93
1,2-Benzenediamine, 4-nitro-, sulfate (1:1)	68239-82-7		04/29/83	04/29/93
1,4-Benzenediamine, 2-nitro-, sulfate (1:1)	68239-83-8		04/29/83	04/29/93
1,3-Benzenediamine, sulfate (1:1)	541-70-8		04/29/83	04/29/93
1,4-Benzenediamine, sulfate (1:1)	16245-77-5		04/29/83	04/29/93
Ethanol, 2-(2,4-diaminophenoxy)-, dihydrochloride	66422-95-5		04/29/83	04/29/93
Phenol, 2,4-diamino-, dihydrochloride	137-09-7		04/29/83	04/29/93
Phenol, 2,4-diamino-6-methyl-	15872-73-8		04/29/83	04/29/93
Phenol, 2,4-diamino-6-methyl-, hydrochloride	65879-44-9		04/29/83	04/29/93

[FR Doc. 86-20437 Filed 9-12-86; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Monday
September 15, 1986

Part III

Department of Labor

Wage and Hour Division

29 CFR Part 516

Reporting and Recordkeeping Requirements for Employers; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 516

Records to be Kept by Employers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise the recordkeeping regulations applicable to employers subject to the Fair Labor Standards Act, including the special requirements that apply to employers whose employees fall within various minimum wage and/or overtime pay exemptions in the Act. These changes are necessary to conform the regulations to statutory amendments which revised, repealed or added certain exemptions. In addition, editorial changes are proposed to simplify the language of the regulations. As a result of this proposal, some employers will be relieved of unnecessary recordkeeping burdens and others will be able to more readily comply with the requirements of the Act because of updated and simplified language.

DATE: Comments are due on or before November 14, 1986.

ADDRESS: Submit comments to Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Section 11(c) of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 et seq.), provides for the issuance of regulations governing the records employers must maintain and preserve to enable the Secretary of Labor to effectively enforce the FLSA's minimum wage and overtime provisions and the regulations issued thereunder.

Part 516 of Title 29, Code of Federal Regulations, sets forth the recordkeeping regulations applicable to employers under the FLSA, including special recordkeeping requirements for employers whose employees fall within various statutory minimum wage and/or overtime pay exemptions. These records that are required would be kept as a matter of customary or usual business practice.

Part 516 was last revised in February 1975, (40 FR 7405) to add § 516.34 explaining the recordkeeping requirements for domestic service employees. In 1974 and 1977, the FLSA was amended by repealing, revising or adding certain minimum wage and/or overtime pay exemptions which necessitated special recordkeeping requirements under Part 516. For example, the exemptions for minimum wage compensation for motion picture theater employees, telegraph agency employees, small logging crews and employees employed in growing and harvesting shade grown tobacco were repealed by the 1974 Amendments. Such employees, however, continued to be exempt from the overtime pay requirements. The 1977 Amendments repealed the overtime pay exemption for employees employed in growing and harvesting shade grown tobacco and the partial overtime pay exemption for certain employees of hotels, motels and restaurants. Also, a new complete exemption for minimum wage and overtime pay requirements for casual baby sitters and those who provide companionship services for the aged or infirm was enacted in 1974. It is necessary to amend Part 516 to take account of these amendments.

It is proposed to clarify the recordkeeping requirements for State and local government police and firefighters employed on a work period basis under the partial overtime exemption in section 7(k) of the Act. However, other special recordkeeping requirements unique to State and local governments in section 7(o) of the Act regarding compensatory time and compensatory time off added by the Fair Labor Standards Amendments of 1985 are being addressed in proposed Regulations, 29 CFR Part 553, Application of the Fair Labor Standards Act to State and Local Government Agencies.

In addition to proposed technical modifications to conform the regulations to the amended statute, housekeeping changes, such as simplification of language, elimination of gender specific terminology, deletion of repetitive references, etc., will streamline and update the recordkeeping requirements for all employers covered by the Act and particularly for those employers whose employees are subject to specific statutory exemptions. The changes are discussed in detail below.

Revisions

Section 516.1 contains a discussion of the forms of records to be maintained and preserved and the scope of the regulations. It is proposed to add at § 516.1(a) a statement that records may be kept on microfilm or basic source document of an automated word or data processing memory provided that certain accommodations are made for reproduction and availability for transcriptions. This takes into account the effects of modern technology on recordkeeping. The Department is particularly interested in receiving comments regarding the use of automated data processing for recordkeeping purposes.

Section 516.2 sets forth the basic records to be maintained and preserved by every covered employer. It is proposed to modify paragraph (a)(5) because of the U.S. Supreme Court decision in *Garcia* v. *San Antonio Metropolitan Transit Authority et al.*, 105 S.Ct. 1005 (February 19, 1985), which ruled that the minimum wage and overtime pay provisions of the FLSA apply to all non-exempt employees of State and local governments. A statement requiring a notation regarding the starting time and length of the work period for each employee employed by a public agency in law enforcement or fire protection activities under section 7(k) of the Act has been added to paragraph (a)(5). The remaining proposed changes to this section are to simplify or clarify language.

Section 516.4 sets forth the requirements for posting of notices. It is proposed that a statement be added to permit an employer of employees not subject to section 7 of the Act to alter or modify the poster with a legible notation to show that the overtime provisions do not apply to such employees. This will permit an employer to post a notice which more accurately describes the employment situation.

Sections 516.6 and 516.32 set forth the records which must be maintained and preserved for the enforcement of the equal pay provisions of the FLSA (29 U.S.C. 206(d)). As a result of Reorganization Plan No. 1 of 1978 (43 FR 19807), the responsibility for the administration and enforcement of the equal pay provisions of the Act was transferred, effective July 1, 1979, from the Wage and Hour Division to the Equal Employment Opportunity Commission (EEOC). The EEOC has subsequently adopted their own recordkeeping requirements (29 CFR 1620.21) in which the requirements of §§ 516.6(d) and 516.32 are specifically

included. Therefore, it is proposed that §§ 516.6(d) and 516.32 be removed.

Section 516.11 sets forth the recordkeeping requirements regarding employees exempt from both minimum wage and overtime pay. The references to sections 13(a)(9) applicable to motion picture theater employees, (a)(11) applicable to telegraph agency employees, (a)(13) applicable to small logging crews and (a)(14) applicable to employers who grow and harvest shade grown tobacco, have been removed since these exemptions were repealed by the 1974 Amendments. It is proposed to insert a reference to section 13(d) which exempts from both minimum wage and overtime employees engaged in the delivery of newspapers to the consumer and homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar or other evergreens.

Section 516.12 sets forth the recordkeeping requirements with respect to employees exempt from only the overtime pay requirements of the Act. The references to section 13(b)(4) (employees in the canning, processing, marketing, freezing, curing, storing, packing for shipment or distributing fish, shellfish, or other aquatic forms of animal or vegetable life), (b)(7) (any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier), (b)(8) (certain employees of hotels, motels and restaurants) and (b)(18) (employees of a retail or service establishment who are employed primarily in connection with the preparation or offering of food or beverages for human consumption), have been removed since they were repealed by either the 1974 or the 1977 Amendments. It is proposed to insert references to sections 13(b)(20), (21), (24), (27) and (28) of the Act which were added by the 1974 Amendments. Section 13(b)(20) exempts any employee of a public agency who in any workweek is employed in fire protection or law enforcement activities (including security personnel in correctional institutions) if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities. Section 13(b)21 exempts live-in domestic service employees from overtime Section 13(b)(24) exempts from overtime, in certain specified circumstances, husbands and wives employed together by a non-profit educational institution as houseparents for institutionalized children. Section 13(b)(27) exempts motion picture theater employees from overtime. Section 13(b)(28) exempts from overtime, employees who are engaged in certain small scale forestry or logging operations.

Sections 516.18 and 516.19 currently set forth special recordkeeping requirements with respect to the provisions of former sections 7(c) and 7(d). These statutory sections provided partial overtime pay exemptions during a limited period each year to employees in seasonal industries generally and to employees in industries engaged in the processing of agricultural or horticultural commodities. Although both of these sections of the Act were repealed by the 1974 Amendments, similar exemptions were created in 1974 by the addition of sections 7(m) concerning employees engaged in certain services involving types of cigar leaf and green leaf tobacco and 13(h) concerning employees in certain processes involving cotton, cottonseed, sugar cane and sugar beets, and, in 1977, by the addition of sections 13(i) and 13(j) concerning employees engaged in cotton ginning and sugar processing which replaced former sections 13(b)(25) and 13(b)(26). Employees subject to these exemptions are exempt from the normal 40-hour overtime standard for up to 14 weeks in any 52 week period, provided that they receive one and one-half times their regular rate of pay for hours worked in excess of 10 hours a day or 48 hours a week during the 14-week period. The proposed recordkeeping requirements for employees exempt under sections 7(m), 13(h) 13(i) and 13(j) are the same as those which applied to employees exempt under old sections 7(c) and 7(d) except that it is proposed for purposes of reducing paperwork burdens, to delete the requirement of posting a notice to inform the employees of the weeks taken under the exemption. These proposed requirements all appear in section 516.18.

Section 516.22 sets forth special recordkeeping requirements for former sections 13(b)(8) and 13(b)(19) of the Act. These sections, which provided for partial overtime pay exemptions for employees of residential care establishments and bowling establishments, were repealed by the 1974 Amendments. It is proposed to replace this section with special recordkeeping requirements for employees engaged in charter activities for street, suburban or interurban electric railway or local trolley or motorbus carrier under section 7(n) of the FLSA. Under this section of the Act added by the 1974 Amendments, the hours of an employee engaged in charter activities for certain carriers need not be included as hours worked for overtime pay purposes provided such charter activities are not part of the employee's regular employment and are performed pursuant to an agreement between the employer and the employee.

Section 516.23 sets forth special recordkeeping requirements applicable to employees exempt under section 7(j) of the FLSA. The only proposed change from the present requirement was made to reflect the fact that section 7(j), which had only applied to hospitals, was amended in 1974 to also apply to institutions primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises. Thus, these institutions would be subject to the same regulations which already apply to hospitals.

Section 516.28 sets forth special recordkeeping requirements applicable to tipped employees under section 3(m) of the FLSA. The proposed change reflects the reduction in the permissible tip credit from 50 to 40 percent of the minimum wage which resulted from the 1977 Amendments.

Section 516.29 sets forth special recordkeeping requirements applicable to employees who were subject to more than one minimum wage rate in the same workweek. From September 3, 1961 to February 1, 1971 and from May 1, 1974 to December 31, 1977, there were different Federal minimum wage rates applicable to employees depending on when their employers became subject to the minimum wage provisions (section 6) of the FLSA. However, beginning January 1, 1978, all employees became subject to the same minimum wage rate. Therefore, the records required by this section are no longer necessary. It is proposed that to replace this section with special recordkeeping requirements for employees employed by a private entity operating an amusement or recreational establishment located in a national park or national forest or land in the National Wildlife Refuge System pursuant to section 13(b)(29) of the FLSA. Under this section of the Act, added by the 1977 Amendments, employees are exempt from the normal 40-hour overtime standard provided that they receive one and one-half times their regular rates of pay for hours worked in excess of fifty-six hours in any workweek.

Section 516.30 sets forth recordkeeping requirements concerning certain employees who are paid less than the statutory minimum wage under certificates issued by the Department of Labor pursuant to section 14 of the FLSA. In the case of full-time students who work outside of school hours,

§ 516.30 has previously referred only to such students who work in retail or service establishments. This proposal amends this section to also include such students who are employed in agriculture and by institutions of higher education. This change reflects a 1974 amendment to the Act.

Section 516.33 sets forth special recordkeeping requirements applicable to employees employed in agriculture. Records are to be maintained by employers who actually used 500 "man-days" of agricultural labor in any calendar quarter in the previous calendar year or who can reasonably anticipate the use of 500 "man-days" of agricultural labor in any calendar quarter of the current calendar year. Excluded from the count of "man-days" (any day during which an employee does agricultural work for one hour or more) in the existing regulations are members of the immediate family and hand harvest laborers. It is proposed to include hand harvest laborers in the "man-day" count to reflect an amendment to the definition of "employee" in the Act at section 3(e)(3).

Section 516.34 sets forth special recordkeeping requirements for domestic service employees. Since these requirements are similar to the basic recordkeeping requirements of § 516.2, it is proposed that this section be removed to eliminate duplication.

The remaining proposed revisions are in the nature of editorial changes to simplify and clarify language, delete duplication, remove gender specific terminology or revise titles.

Classification

The Department conducted an analysis in 1984 under the Paperwork Reduction Act of the estimated cost impact of these recordkeeping regulations on covered establishments. Based on that analysis, it is believed that this action is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since this analysis was conducted, however, the Supreme Court ruled in *Garcia* v. *San Antonio Metropolitan Transit Authority et al.*, 105 S.Ct. 1005 (February 19, 1985), that the minimum wage and overtime pay provisions of the FLSA apply to all non-exempt employees of State and local governments. Based on available information, it appears that the inclusion of State and local governments would not affect the classification of this action under the Executive Order. However, any information the public can provide regarding the cost impact of the proposed regulations would be very helpful in making a final determination.

Initial Regulatory Flexibility Analysis

(1) Reasons Why Action by Agency Is Being Considered

Part 516 contains the recordkeeping requirements applicable to all employers covered by the Fair Labor Standards Act (FLSA), including special requirements for employers whose employees are within the scope of various minimum wage and/or overtime pay exemptions to the Act. Since the last major revision of the regulations, the FLSA has been amended twice, in 1974 and in 1977. These proposals are being issued to conform the recordkeeping regulations to the amended statute. In addition, editorial changes are being proposed in order to simplify the rules.

(2) Objectives of and Legal Basis for Rule

The regulations are issued pursuant to section 11(c) of the FLSA which provides for the issuance of regulations governing the types of records employers must maintain and preserve to enable the Secretary of Labor to effectively enforce the FLSA's provisions and any regulations issued thereunder. The objective of these proposed rules is to provide employers with recordkeeping regulations which not only take into account the amended statute but which also simplify the regulatory requirements, to the extent possible, and the regulatory language in order to enable employers to more easily comply with the requirements of the Act.

(3) Number of Small Entities Covered Under Rule

These proposed regulations would apply to all employers (approximately 4.2 million) covered by the provisions of the Fair Labor Standards Act (29 U.S.C. 201 et seq.). The majority of such employers would be classified as small entites. In addition, these proposed regulations would apply to approximately 83,000 State and local government agencies. It is estimated that 50,000 of these agencies would be classified as small entities.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The proposed rules would decrease the recordkeeping burdens for employers who previously had special recordkeeping requirements for employees subject to various exemptions in the FLSA. When a particular exemption is applicable, specific information, in addition to the basic recordkeeping requirements, is necessary to properly enforce the Act. Once an exemption has been repealed or revised, as occurred with the 1974 and 1977 Amendments, only certain basic information would be necessary for enforcement. Therefore, changes have been proposed to the rules to conform the regulations to the amended statute. Also, proposals have been made to simplify and clarify the language and to delete repetitiveness. As a result, the proposed rules would provide employers with a better understanding of their recordkeeping obligation and generally require employers to maintain information which they would normally keep as a matter of customary or usual business practice regardless of the size of the entity. These records also provide for maintaining the basic information necessary to enforce the provisions of the Act.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There is no duplication of existing Wage-Hour requirements. Certain similar information is required by the Internal Revenue Service (IRS) in 26 CFR Part 31. However, while the FLSA and IRS recordkeeping require similar information, the FLSA regulations do not require duplication of those records required by IRS.

(6) Differing Compliance or Reporting Requirements

As an alternative to the proposed approach, it was suggested that a standard format be required for the collection of information. In that way, all records would be kept in the same form and order. This would arguably provide an easier method for enforcement since all records would identically present the required information. After careful analysis, it was determined that requiring a standard format for recordkeeping would be an unnecessary burden, particularly on small entities. Each entity required to maintain and preserve records under the FLSA has varying capabilities and differing methods of recordkeeping which are most cost efficient and effective for their

respective business organizations. By not requiring a standard format, each employer can determine the method of recordkeeping which will have the smallest economic impact. This will be of particular benefit to small entities which would, in most cases, be unable to expend the same resources as large entities for recordkeeping. Under the proposed rules, small entities can maintain the required information in any order or from which they consider appropriate to their needs.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted above, the updated and streamlined rules would simplify compliance and reporting requirements for all employers covered by the Act, including small entities, by providing regulations which conform to the amended statute in language more easily understandable than the existing rule.

(8) Use of Other Standards

Appropriate alternative standards that would impose less burdensome regulations are not available.

(9) Exemptions of Small Entities From Coverage of the Rule

An exemption from recordkeeping for small entities covered by the FLSA is not appropriate since records are necessary for the enforcement of the Act regardless of the size of the entity. However, there are exemptions in the FLSA itself, reflected in the regulations, which take small entities into account. For example, section 13(a)(2) of the Act exempts from both minimum wage and overtime pay all employees of any retail or service establishment with an annual dollar volume of sales made or business done of less than $362,500 (exclusive of excise taxes at the retail level which are separately stated). This small business exemption is reflected in § 516.11 of the regulations where most of the basic recordkeeping requirements for such small entities have been waived. Therefore, the proposed regulations reflect a concern for the burden of recordkeeping on small entities.

As a result of the above Initial Regulatory Flexibility Analysis, it has been determined that the proposed rule will not have a significant detrimental economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the recordkeeping or reporting provisions that are included in these regulations have been or will be submitted for review to the Office of Management and Budget (OMB). OMB has reviewed the existing regulations and has assigned control numbers to the information collection requirements in this part: At the headings for Subpart A and Subpart B, OMB Control No. 1215-0017 for the recordkeeping requirements therein; at § 516.31, OMB Control No. 1215-0013 for the recordkeeping requirements of the homeworker handbook; and OMB Control No. 1215-0006 for the reporting requirements of § 516.8.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 516

Minimum Wage, Reporting and recordkeeping requirements.

Accordingly, it is proposed to revise Part 516 as set forth below:

Signed at Washington, DC, on this 8th day of September, 1986.

William E. Brock,

Secretary of Labor.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

Introductory

Sec.

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.

Introductory

§ 516.0 Display of OMB control Nos.

Subpart or section where information collection requirement is located	Currently assigned OMB control No.
Subpart A (except 516.8)	1215.0017
516.8	1215.0006
Subpart B (except 516.31)	1215.0017
516.31	1215.0013

§ 516.1 Form of records; scope of regulations.

(a) *Form of records.* No particular order or form of records is prescribed by the regulations in this part. However, every employer subject to any provisions of the Fair Labor Standards Act of 1938, as amended (hereinafter referred to as the "Act"), is required to maintain records containing the information and data required by the specific sections of this part. The records may be maintained and preserved on microfilm or other basic source document of an automatic word or data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period and that extensions or transcriptions of the information required by this part are made available upon request.

(b) *Scope of regulations.* The regulations in this part are divided into two subparts. (1) Subpart A of this part contains the requirements generally applicable to all employers employing covered employees, including the requirements relating to the posting of notices, the preservation and location of records, and the recordkeeping requirements for employers of employees to whom both the minimum wage provisions of section 6 or the minimum wage provisions of section 6 and the overtime pay provisions of section 7(a) of the Act apply. In addition, section 516.3 contains the requirements relating to executive, administrative, and professional employees (including academic administrative personnel or teachers in elementary or secondary schools), and outside sales employees.

(2) Subpart B of this part deals with the information and data which must be kept for employees (other than executive, administrative, etc., employees) who are subject to any of the exemptions provided in the Act. This section also specifies the records needed for deductions from and additions to wages for "board, lodging, or other facilities," industrial homeworkers and employees whose tips are credited toward wages. The sections in Subpart B of this part require the recording of more, less, or different items of information or data than required under the generally applicable recordkeeping requirements of Subpart A.

Subpart A—General Requirements

§ 516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.

(a) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

(1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,

(2) Home address, including zip code,

(3) Date of birth, if under 19,

(4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act),

(5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice,

(6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act, (ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and (iii) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data),

(7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays),

(8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation,

(9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under item (8) above,

(10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,

(11) Total wages paid each pay period,

(12) Date of payment and the pay period covered by payment.

(b) *Records of retroactive payment of wages.* Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act, shall:

(1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) *Employees working on fixed schedules.* With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also,

(1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by him, and

(2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

§ 516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in Part 541 of this chapter (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a) (6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "2 weeks paid vacation," etc.)

§ 516.4 Posting of notices.

Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. Any employer of employees to whom section 7 of the Act does not apply because of a total establishment exemption may alter or modify the poster with a legible notation to show that the overtime provisions do not apply. For example: "Overtime Provisions Not Applicable to Taxicab Drivers (Sec. 13(b)(17))".

§ 516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

(a) *Payroll records.* From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and

(b) *Certificates, agreements, plans, notices, etc.* From their last effective date, all written:

(1) Collective bargaining agreements relied upon for the exclusion of certain costs under section 3(m) of the Act,

(2) Collective bargaining agreements, under section 7(b)(1) or 7(b)(2) of the Act, and any amendments or additions thereto,

(3) Plans, trusts, employment contracts, and collective bargaining agreements under section 7(e) of the Act,

(4) Individual contracts or collective bargaining agreements under section 7(f) of the Act. Where such contracts or agreements are not in writing, a written memorandum summarizing the terms of each such contract or agreement,

(5) Written agreements or memoranda summarizing the terms of oral agreements or understandings under section 7(g) or 7(j) of the Act, and

(6) Certificates and notices listed or named in any applicable section of this part.

(c) *Sales and purchase records.* A record of (1) total dollar volume of sales or business, and (2) total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.), in such form as the employer maintains records in the ordinary course of business.

§ 516.6 Records to be preserved 2 years.

(a) Supplementary basic records: Each employer required to maintain records under this part shall preserve for a period of at least 2 years.

(1) *Basic employment and earnings records.* From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period earnings or wages of those employees.

(2) *Wage rate tables.* From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

(b) Order, shipping, and billing records: From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

(c) Records of additions to or deductions from wages paid:

(1) Those records relating to individual employees referred to in § 516.2(a)(10) and

(2) All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

§ 516.7 Place for keeping records and their availability for inspection.

(a) *Place of records.* Each employer shall keep the records required by this part safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Administrator or a duly authorized and designated representative.

(b) *Inspection of records.* All records shall be available for inspection and transcription by the Administrator or a duty authorized and designated representative.

§ 516.8 Computations and reports.

Each employer required to maintain records under this part shall make such extension, recomputation, or transcription of the records and shall submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the Administrator or a duly authorized and designated representative may request in writing.

§ 516.9 Petitions for exceptions.

(a) *Submission of petitions for relief.* Any employer or group of employers who, due to peculiar conditions under which they must operate, desire authority to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period specified in this part, may submit a written petition to the Administrator requesting such authority, setting forth the reasons therefor.

(b) *Action on petitions.* If, after review of the petition, the Administrator finds that the authority requested will not hinder enforcement of the Act, the Administrator may grant such authority limited by any conditions determined necessary and subject to subsequent revocation. Prior to revocation of such authority because of noncompliance with any of the prescribed conditions, the employer will be notified of the

reasons and given an opportunity to come into compliance.

(c) *Compliance after submission of petitions.* The submission of a petition or the delay of the Administrator in acting upon such petition will not relieve any employer or group of employers from any obligations to comply with all the applicable requirements of the regulations in this part. However, the Administrator will provide a response to all petitions as soon as possible.

§ 516.10 [Reserved]

Subpart B—Records Pertaining to Employees Subject to Miscellaneous Exemptions Under the Act; Other Special Requirements

§ 516.11 Employees exempt from both minimum wage and overtime pay requirements under section 13(a) (2), (3), (4), (5), (8) (10), (12), or 13(d) of the Act.

With respect to each and every employee exempt from both the minimum wage and overtime pay requirements of the Act pursuant to the provisions of section 13(a) (2), (3), (4), (5), (8), (10), (12), or 13(d) of the Act, employers shall maintain and preserve records containing the information and data required by § 516.2 (a) (1) through (4).

§ 516.12 Employees exempt from overtime pay requirements pursuant to section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to the provisions of section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act, shall maintain and preserve payroll or other records, containing all the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the monetary amount paid, expressed as earnings per hour, per day, per week, etc.).

§ 516.13 Livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(13), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek in which the employee is employed both in agriculture and in connection with livestock auction operations: (1) the total number of hours worked by each such employee, (2) the total number of hours in which the employee was employed in agriculture and the total number of hours employed in connection with livestock auction operations, and (3) the total straight-time earnings for employment in livestock auction operations.

§ 516.14 Country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act.

(a) With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(14), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek, the names and occupations of all persons employed in the country elevator, whether or not covered by the Act, and

(b) Information demonstrating that the "area of production" requirements of Part 536 of this chapter are met.

§ 516.15 Local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(11), the employer shall maintain and preserve payroll or other records, containing all the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the dollar amount paid per trip; the dollar amount of earnings per week plus 3 percent commission on all cases delivered). Records shall also contain the following information: (a) A copy of the Administrator's finding under Part 551 of this chapter with respect to the plan under which such employees are compensated; (b) a statement or description of any changes made in the trip rate or other delivery payment plan of compensation for such employees since its submission for such finding; (c) identification of each employee employed pursuant to such plan and the work assignments and duties; and (d) a computation for each quarter-year of the average weekly hours of full-time employees employed under the plan during the most recent representative annual period as described in § 551.8(g) (1) and (2) of this chapter.

§ 516.16 Commission employees of a retail or service establishment exempt from overtime pay requirements pursuant to section 7(i) of the Act.

With respect to each employee of a retail or service establishment exempt from the overtime pay requirements of the Act pursuant to the provisions of section 7(i), employers shall maintain and preserve payroll and other records containing all the information and data required by § 516.2(a) except paragraphs (a) (6), (8), (9), and (11), and in addition:

(a) A symbol, letter or other notation placed on the payroll records identifying each employee who is paid pursuant to section 7(i).

(b) A copy of the agreement or understanding under which section 7(i) is utilized or, if such agreement or understanding is not in writing, a memorandum summarizing its terms including the basis of compensation, the applicable representative period and the date the agreement was entered into and how long it remains in effect. Such agreements or understandings, or summaries may be individually or collectively drawn up.

(c) Total compensation paid to each employee each pay period (showing separately the amount of commissions and the amount of noncommission straight-time earnings).

§ 516.17 Seamen exempt from overtime pay requirements pursuant to section 13(b)(6) of the Act.

With respect to each employee employed as a seaman and exempt from the overtime pay requirements of the Act pursuant to section 13(b)(6), the employer shall maintain and preserve payroll or other records, containing all the information required by § 516.2(a) except paragraphs (a) (5) through (9) and, in addition, the following:

(a) Basis on which wages are paid (such as the dollar amount paid per hour, per day, per month, etc.)

(b) Hours worked each workday and total hours worked each pay period (for purposes of this section, a "workday" shall be any fixed period of 24 consecutive hours; the "payperiod" shall be the period covered by the wage payment, as provided in section 6(a)(4) of the Act),

(c) Total straight-time earnings or wages for each such pay period, and

(d) The name, type, and documentation, registry number, or other identification of the vessel or vessels upon which employed.

§ 516.18 Employees employed in certain tobacco, cotton, sugar cane or sugar beet services who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act.

With respect to each employee providing services in connection with certain types of green leaf or cigar leaf tobacco, cotton, cottonseed, cotton ginning, sugar cane, sugar processing or

sugar beets who are partially exempt from the overtime pay requirements of the Act pursuant to 7(m), 13(h), 13(i) or 13(j), the employer shall, in addition to the records required in § 516.2, maintain and preserve a record of the daily and weekly overtime compensation paid. Also, the employer shall note in the payroll records the beginning date of each workweek during which the establishment operates under the particular exemption.

§ 516.19 [Reserved]

§ 516.20 Employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(1) or section 7(b)(2) of the Act.

(a) The employer shall maintain and preserve all the information and data required by § 516.2 and shall record daily as well as weekly overtime compensation for each employee employed:

(1) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employees shall be employed more than 1,040 hours during any period of 26 consecutive weeks as provided in section 7(b)(1) of the Act, or

(2) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall be employed not more than 2,240 hours during a specified period of 52 consecutive weeks and shall be guranteed employment as provided in section 7(b)(2) of the Act.

(b) The employer shall also keep copies of such collective bargaining agreement and such National Labor Relations Board certification as part of the records and shall keep a copy of each amendment or addition thereto.

(c) The employer shall also make, and preserve a record, either separately or as a part of the payroll:

(1) Listing each employee employed pursuant to each such collective bargaining agreement and each amendment and addition thereto.

(2) Indicating the period or periods during which the employee has been or is employed pursuant to an agreement under section 7(b)(1) or 7(b)(2) of the Act, and

(3) Showing the total hours worked during any period of 26 consecutive weeks, if the employee is employed in accordance with section 7(b)(1) of the Act, or during the specified period of 52 consecutive weeks, if employed in accordance with section 7(b)(2) of the Act.

§ 516.21 Bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) of the Act.

With respect to each employee partially exempt from the overtime provisions of the Act pursuant to section 7(b)(3), the employer shall maintain and preserve records containing all the information and data required by § 516.2(a), and, in addition, shall record the daily as well as the weekly overtime compensation paid to the employees, the rate per hour and the total pay for time worked between the 40th and 56th hour of the workweek.

§ 516.22 Employees engaged in charter activities of carriers pursuant to section 7(n) of the Act.

With respect to each employee employed in charter activities for a street, suburban or interurban electric railway or local trolley or motorbus carrier pursuant to section 7(n) of the Act, the employer shall maintain and preserve records containing all the information and data required by § 516.2(a) and, in addition, the following: (a) Hours worked each workweek in charter activities; and (b) a copy of the employment agreement or understanding stating that in determining the hours of employment for overtime pay purposes, the hours spent by the employee in charter activities will be excluded and, also, the date this agreement or understanding was entered into.

§ 516.23 Employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act.

With respect to each employee of hospitals and institutions primarily engaged in the care of the sick, the aged, or mentally ill or defective who reside on the premises compensated for overtime work on the basis of a work period of 14 consecutive days pursuant to an agreement or understanding under section 7(j) of the Act, employers shall maintain and preserve.

(a) The records required by § 516.2 except paragraphs (a) (5) and (7) through (9), and in addition:

(1) Time of day and day of week on which the employee's 14-day work period begins,

(2) Hours worked each workday and total hours worked each 14-day work period,

(3) Total straight-time wages paid for hours worked during the 14-day period,

(4) Total overtime excess compensation paid for hours worked in excess of 8 in a workday and 80 in the work period.

(b) A copy of the agreement or understanding with respect to using the 14-day period for overtime pay computations or, if such agreement or understanding is not in writing, a memorandum summarizing its terms and showing the date it was entered into and how long it remains in effect.

§ 516.24 Employees employed under section 7(f) "Belo" contracts.

With respect to each employee to whom both sections 6 and 7(f) of the Act apply, the employer shall maintain and preserve payroll or other records containing all the information and data required by § 516.2(a) except paragraphs (a) (8) and (9), and, in addition, the following:

(a) Total weekly guaranteed earnings,

(b) Total weekly compensation in excess of weekly guaranty,

(c) A copy of the bona fide individual contract or the agreement made as a result of collective bargaining by representatives of employees, or where such contract or agreement is not in writing, a written memorandum summarizing its terms.

§ 516.25 Employees paid for overtime on the basis of "applicable" rates provided in sections 7(g)(1) and 7(g)(2) of the Act.

With respect to each employee compensated for overtime work in accordance with section 7(g)(1) or 7(f)(2) of the Act, employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a), (6) and (9) and, in addition, the following:

(a)(1) Each hourly or piece rate at which the employee is employed, (2) basis on which wages are paid, and (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate."

(b) The number of overtime hours worked in the workweek at each applicable hourly rate or the number of units of work performed in the workweek at each applicable piece rate during the overtime hours,

(c) Total weekly overtime compensation at each applicable rate which is over and above all straight-time earnings or wages earned during overtime worked.

(d) The date of the agreement or understanding to use this method of compensation and the period covered. If the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to use this method of compensation a single notation of the date of the agreement or

understanding and the period covered will suffice.

§ 516.26 Employees paid for overtime at premium rates computed on a "basic" rate authorized in accordance with section 7(g)(3) of the Act.

With respect to each employee compensated for overtime hours at a "basic" rate which is substantially equivalent to the employee's average hourly earnings, as authorized in accordance with section 7(g)(3) of the Act and Part 548 of this chapter, employers shall maintain and preserve records containing all the information and data required by § 516.2 except paragraph (a)(6) thereof and, in addition, the following:

(a)(1) The hourly rates, piece rates, or commission rates applicable to each type of work performed by the employee, (2) the computation establishing the basic rate at which the employee is compensated for overtime hours (if the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to accept this method of compensation, a single entry of this computation will suffice), (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate."

(b)(1) Identity of representative period for computing the basic rate, (2) the period during which the established basic rate is to be used for computing overtime compensation, (3) information which establishes that there is no significant difference between the pertinent terms, conditions and circumstances of employment in the period selected for the computation of the basic rate and those in the period for which the basic rate is used for computing overtime compensation, which could affect the representative character of the period from which the basic rate is derived.

(c) A copy of the written agreement or, if there is no such agreement, a memorandum summarizing the terms of and showing the date and period covered by the oral agreement or understanding to use this method of computation. If the employee is one of a group, all of whom have agreed to use this method of computation, a single memorandum will suffice.

§ 516.27 "Board, lodging, or other facilities" under section 3(m) of the Act.

(a) In addition to keeping other records required by this part, an employer who makes deductions from the wages of employees for "board, lodging, or other facilities" (as these terms are used in sec. 3(m) of the Act) furnished to them by the employer or by an affiliated person, or who furnishes such "board, lodging, or other facilities" to employees as an addition to wages, shall maintain and preserve records substantiating the cost of furnishing each class of facility except as noted in paragraph (c) of this section. Separate records of the cost of each item furnished to an employee need not be kept. The requirements may be met by keeping combined records of the costs incurred in furnishing each class of facility, such as housing, fuel, or merchandise furnished through a company store or commissary. Thus, in the case of an employer who furnishes housing, separate cost records need not be kept for each house. The cost of maintenance, utilities, and repairs for all the houses may be shown together. Original cost and depreciation records may be kept for groups of houses acquired at the same time. Costs incurred in furnishings similar or closely related facilities, moreover, may be shown in combined records. Where cost records are kept for a "class" of facility rather than for each individual article furnished to employees, the records must also show the gross income derived from each such class of facility; e.g., gross rentals in the case of houses, total sales through the store or commissary, total receipts from sales of fuel, etc.

(1) Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the reasonable cost, as defined in Part 531 of this chapter, and shall contain the data required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the facilities, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. If the assets include merchandise held for sale to employees, the records should contain data from which the average net investment in inventory can be determined.

(2) No particular degree of itemization is prescribed. However, the amount of detail shown in these accounts should be consistent with good accounting practices, and should be sufficient to enable the Administrator or authorized representative to verify the nature of the expenditure and the amount by reference to the basic records which must be preserved pursuant to § 516.6(c)(2).

(b) If additions to or deductions from wages paid (1) so affect the total cash wages due in any workweek (even though the employee actually is paid on other than a workweek basis) as to result in the employee receiving less in cash than the applicable minimum hourly wage, or (2) if the employee works in excess of the applicable maximum hours standard and (i) any addition to the wages paid are a part of wages, or (ii) any deductions made are claimed as allowable deductions under sec. 3(m) of the Act, the employer shall maintain records showing on a workweek basis those additions to or deductions from wages. (For legal deductions not claimed under sec. 3(m) and which need not be maintained on a workweek basis, see Part 531 of this chapter.)

(c) The records specified in this § 516.27 are not required with respect to an employee in any workweek in which the employee is not subject to the overtime provisions of the Act and receives not less than the applicable statutory minimum wage in cash for all hours worked in that workweek. (The application of section 3(m) of the Act in nonovertime weeks is discussed in Part 531 of this chapter.)

§ 516.28 Tipped employees.

(a) With respect to each tipped employee whose wages are determined pursuant to section 3(m) of the Act, the employer shall maintain and preserve payroll or other records containing all the information and data required in § 516.2(a) and, in addition, the following:

(1) A symbol, letter or other notation placed on the pay records identifying each employee whose wage is determined in part by tips.

(2) Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070).

(3) Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of 40 percent of the applicable statutory minimum wage). The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.

(4) Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours.

(5) Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earning for such hours.

§ 516.29 Employees employed by a private entity operating an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act.

With respect to each employee who is partially exempt from the overtime pay requirements of the Act pursuant to section 13(b)(29), the employer shall maintain and preserve the records required in § 516.2, except that the record of the regular hourly rate of pay in § 516.2(a)(6) shall be required only in a workweek when overtime compensation is due under section 13(b)(29).

§ 516.30 Learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Act.

(a) With respect to persons employed as learners, apprentices, messengers or full-time students employed outside of their school hours in any retail or service establishment in agriculture, or in institutions of higher education, or handicapped workers employed at special minimum hourly rates under Special Certificates pursuant to section 14 of the Act, employers shall maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations.

(b) In addition, each employer shall segregate on the payroll or pay records the names and required information and data with respect to those learners, apprentices, messengers, handicapped workers and students, employed under Special Certificates. A symbol or letter may be placed before each such name on the payroll or pay records indicating that that person is a "learner," "apprentice," "messenger," "student," or "handicapped worker," employed under a Special Certificate.

§ 516.31 Industrial homeworkers.

(a) *Definitions.* (1) "Industrial homeworker" and "homeworker," as used in this section, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(2) "Industrial homework," as used in this section, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

(3) The meaning of the terms "person," "employ," "employer," "employee," "goods," and "production" as used in this section is the same as in the Act.

(b) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every industrial homeworker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom Part 545 of this chapter apply, or in the Virgin Islands to whom Part 695 of this chapter applies):

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same as that used for Social Security purposes.

(2) House address, including zip code.

(3) Date of birth if under 19.

(4) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun.

(ii) Date on which work is turned in by worker, and amount of such work.

(iii) Kind of articles worked on and operations performed.

(iv) Piece rates paid.

(v) Hours worked on each lot of work turned in.

(vi) Wages paid for each lot of work turned in.

(vii) Deductions for Social Security taxes.

(viii) Date of wage payment and pay period covered by payment.

(5) With respect to each week:

(i) Hours worked each week.

(ii) Wages earned for each week at regular piece rates.

(iii) Extra pay due each week for overtime worked.

(iv) Total wages earned each week.

(v) Deductions for Social Security taxes.

(6) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and name and address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

(7) Record of retroactive payment of wages. Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator pursuant to section 16(c) of the Act, shall:

(i) Record and preserve, as an entry on the payroll or other pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(ii) Prepare a report of each such payment on the receipt form provided or authorized by the Wage and Hour Division, and *(a)* preserve a copy as part of the employer's records, *(b)* deliver a copy to the employee, and *(c)* file the original, which shall evidence payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) Homework handbook. In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by the employer to each worker) shall be kept for each homeworker. The information required therein shall be entered by the employer or the person distributing or collecting homework on behalf of such employer each time work is given out to or received from a homeworker. Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the homeworker until such time as the Wage and Hour Division may request it. Upon completion of the handbook (that is, no space remains for additional entries) or termination of the homeworker's services, the handbook shall be returned to the employer for preservation in accordance with the regulations in this part. A separate record and a separate handbook shall be kept for each person performing homework.

(d) *Preservation of industrial homework certificates.* Certificates issued to permit homework in the restricted industries (as set forth in Part 530 of this chapter) shall be preserved in accordance with the regulations § 530.8 and in § 516.5(b).

§ 516.32 [Reserved]

§ 516.33 Employees employed in agriculture pursuant to section 13(a)(6) or 13(b)(12) of the Act.

(a) No records, except as required under paragraph (f) of this section, need be maintained by an employer who did not use more than 500 mandays [1] of agricultural labor in any quarter of the preceding calendar year, unless it can reasonably be anticipated that more than 500 man-days of agricultural labor will be used in at least one calendar quarter of the current calendar year. The 500 man-day test includes the work of

[1] Sections 3(u) and 13(a)(6) of the Fair Labor Standards Act (29 U.S.C. 201 et seq.) set forth and define the term "man-day."

agricultural workers supplied by crew leaders if the farmer has power to direct, control or supervise the work, or to determine pay rates or methods of payments, but does not include members of the employer's immediate family. (A "man-day" is any day during which an employee does agricultural work for 1 hour or more).

(b) If it can reasonably be anticipated that the employer will use more than 500 man-days of agricultural labor in at least one calendar quarter of the current calendar year, the employer shall maintain and preserve for each employee records containing all the information and data required by § 516.2(a)(1), (2) and (4) and, in addition, the following:

(1) Symbols or other identifications separately designating those employees who are (i) members of the employer's immediate family as defined in section 13(a)(6)(B) of the Act, (ii) hand harvest laborers as defined in section 13(a)(6)(C) or (D), and (iii) employees principally engaged in the range production of livestock as defined in section 13(a)(6)(E).

(2) For each employee, other than members of the employer's immediate family, the number of man-days worked each week or each month.

(c) For the entire year following a year in which the employer used more than 500 man-days of agricultural labor in any calendar quarter, the employer shall maintain and preserve for each covered employee (other than members of the employer's immediate family, hand harvest laborers and livestock range employees as defined in sections 13(a)(6)(B), (C), (D), and (E) of the Act) records containing all the information and data required by § 516.2(a) except paragraphs (a)(3) and (8).

(d) In addition to other required items, the employer shall keep on file with respect to each hand harvest laborer as defined in section 13(a)(6)(C) of the Act for whom exemption is taken, a statement from each such employee showing the number of weeks employed in agriculture during the preceding calendar year.

(e) With respect to hand harvest laborers as defined in section 13(a)(6)(D), for whom exemption is taken, the employer shall maintain in addition to paragraph (b) of this section, the minor's date of birth and name of the minor's parent or person standing in place of the parent.

(f) Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 18 years of age on days when school is in session or on any day if the minor is employed in an occupation found to be hazardous by the Secretary shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

(1) Name in full,

(2) Place where minor lives while employed. If the minor's permanent address is elsewhere, give both addresses,

(3) Date of birth.

(g) Where a farmer and a bona fide independent contractor or crew leader are joint employers of agricultural laborers, each employer is responsible for maintaining and preserving the records required by this section. Duplicate records of hours and earnings are not required. The requirements will be considered met if the employer who actually pays the employees maintains and preserves the records specified in paragraphs (c) and (f) of this section.

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Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Arbitration of Patent Interference Cases; Notice of Proposed Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1
[Docket No. 50103-6060]

Arbitration of Patent Interference Cases

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 105 of the Patent Law Amendments Act of 1984, Pub. L. 98-622, provides for arbitration of patent interference cases. In this document, the Patent and Trademark Office is publishing a proposed regulation to implement the arbitration provision.

DATE: Comments and suggestions should be received by November 14, 1986. No hearing will be held.

ADDRESS: Address written comments to Box Interference, Commissioner of Patents and Trademarks, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Ian A. Calvert or Michael Sofocleous by telephone at (703) 557-4000 or by mail marked to the attention of either and addressed to Box Interference, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Section 105 of the Patent Law Amendments Act of 1984, enacted on November 8, 1984, provides for the arbitration of patent interference cases. Section 105, codified as 35 U.S.C. 135(d), provides:

> Parties to a patent interference, within such time as may be specified by the Commissioner by regulation, may determine such contest or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of title 9 to the extent such title is not inconsistent with this section. The parties shall give notice of any arbitration award to the Commissioner, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Commissioner from determining patentability of the invention involved in the interference.

The Patent and Trademark Office (PTO) conducts interference proceedings to determine any question of patentability and priority of invention between two or more parties claiming the same patentable invention. An interference may be declared between two or more pending applications naming different inventors when, in the opinion of an examiner, the applications contain claims for the same patentable invention. An interference may be declared between one or more pending applications and one or more unexpired patents naming different inventors when, in the opinion of an examiner, any application and any unexpired patent contain claims for the same patentable invention. Patent interference cases can be quite expensive. Arbitration may prove useful to minimize expenses in interference cases. The proposed arbitration rule, if adopted, would apply to all pending interferences.

The PTO published an advance notice of rulemaking in the **Federal Register** of January 16, 1985. (50 FR 2294 through 2296). The notice was also published in the *Official Gazette* on February 12, 1985. 1051 *Official Gazette* 9-10; 1051 TMOG 10-11. The notice also appeared in the Bureau of National Affairs' Patent, Trademark & Copyright Journal, Vol. 29, pp. 310 [January 24, 1985], hereinafter "BNA." Five written comments were received in response to the advance notice. The comments are analyzed herein. The five comments are available for public inspection in Room 10C01, Crystal Gateway II, 1225 Jefferson Davis Highway, Arlington, Virginia.

Guidelines for Arbitration

From the tenor of the comments, it is apparent that the commentors desire guidance from the PTO concerning its policy with respect to the arbitration of patentability issues and extensions of time for arbitration.

Under proposed § 1.690 the arbitrator could determine issues of patentability as between the parties but a determination that the subject matter is patentable would not be binding upon the PTO. If the arbitrator's award holds that a party's claims corresponding to the count are unpatentable over prior art or under 35 U.S.C. 112, that determination would be binding on that party vis-a-vis the party's opponent and would result in a judgment adverse to that party. The judgment, however, would not discharge the duty that each party has under 37 CFR 1.56 to bring to the attention of the examiner in charge of its respective application any prior art and/or reason relied upon by the arbitrator in the determination of unpatentability.

It is the longstanding practice of the PTO to favor the settlement of interferences and the PTO looks with favor on all proper efforts in that direction as being conducive to the termination of the proceeding. See 4 Rivise and Caesar, *Interference Law and Practice*, section 861, pp. 2956 (Michie Co. 1948) and the Commissioner's Notice of November 9, 1976, titled, "Extensions of time and Filing of Papers in Interferences," 953 *Official Gazette* 2 (December 7, 1976). In this reqard, the notice states that:

> . . . stipulations or motions for extensions of time under 37 CFR 1.245 will not henceforth be approved or granted, respectively, unless accompanied by a detailed showing of facts sufficient to establish that the action for which the extension is sought could not have been or cannot be taken or completed during the time previously set therefor, and that the entire extension appears necessary for the taking or completion of that action. Since the Office favors the amicable settlement of interferences, the foregoing requirement will be liberally applied in the case of a first request for extension of time for the purpose of negotiating settlement.

Consequently, the examiner-in-chief could give favorable consideration to a motion for an extension of time for purposes of settlement; however, a further motion for an extension for that purpose would not be granted unless it is accompanied by a schedule of specific dates showing that the parties will make a good faith effort to promptly terminate the proceeding. If preliminary motions under 37 CFR 1.633 have not been filed, the examiner-in-chief would not normally extend the time for their filing merely for purposes of settlement. In these circumstances, the examiner-in-chief would require that the preliminary motions be filed or that their filing be waived.

If the proceeding is in the testimony stage, the examiner-in-chief could grant the parties' motion to extend all the unexpired testimony times to close concurrently on the date the record is due provided they file a stipulation that any evidence to be submitted will be in one of the forms specified in 37 CFR 1.672 (e) and (f), i.e., affidavit testimony or a stipulation either as to what a particular witness would testify to if called or the facts in the case of any party.

Analogously, the aforesaid practice would apply to arbitration. Parties who intend to arbitrate an interference would be required to notify the examiner-in-chief in writing of their intention to arbitrate and file a copy of the arbitration agreement within 20 days of its execution. Pursuant to 35 U.S.C. 135(c) an agreement to arbitrate is considered to be one "made in connection with and in contemplation of the termination of the interference" and therefore would have to be in writing and a copy would have to be filed in the PTO. The notification would be made in a separate paper. Merely incorporating the notification in the settlement agreement under 35 U.S.C. 135(c) would not be sufficient to comply with proposed § 1.690(a). The parties also

would be required to adhere to a time schedule approved by the examiner-in-chief such that the interference proceeding can be expeditiously resolved so as to prevent the unnecessary postponement of the beginning of the running of the term of any patent resulting from an application involved in the interference. *Pritchard* v. *Loughlin*, 361 F.2d 483, 149 USPQ 841 (CCPA 1966).

If the parties desire to arbitrate an interference prior to the close of the motions period, the examiner-in-chief would not normally grant an extension of time for that purpose. The parties would be required to file their preliminary motions under 37 CFR 1.633. After the motions are filed, the examiner-in-chief could grant an extension only upon compliance with 37 CFR 1.645 which requires a showing of "good cause." Such a "good cause" showing would normally include a schedule, agreed to by the parties, setting forth, *inter alia*, the dates for (1) executing the arbitration agreement, (2) determining priority and (3) terminating the interference.

The arbitration agreement should include the following provisions:

(1) The name of the arbitrator or a date certain (not more than 30 days after the execution of the agreement) for his or her selection.

(2) The issues to be decided by the arbitrator.

(3) That the arbitrator's award is binding on the parties and that the Board can enter a judgment based thereon.

A copy of the arbitration award must be filed within 20 days from the date of the award or by the date set by the examiner-in-chief.

If the proceeding is in the testimony stage and the parties desire to arbitrate, the examiner-in-chief could grant a reasonable extension for that purpose. A motion for a further extension for that purpose would not be granted unless it is accompanied by a schedule, agreed to by the parties, setting forth, *inter alia*, the dates for (1) executing the arbitration agreement, (2) determining priority, and (3) terminating the interference. If the parties were to submit the required schedule, a motion for a further extension could be granted. If the parties file a copy of the arbitration agreement and they agree that any evidence submitted in the proceeding will be in one of the forms specified by 37 CFR 1.672 (e) or (f), the examiner-in-chief could give favorable consideration to the parties' motion that all the unexpired times be extended to close concurrently on the date the record is due. By that date, the parties would be required to file the arbitrator's award and their records, if necessary for the resolution of any issue not decided by the arbitrator. If the award is not dispositive of all the issues in the interference, the examiner-in-chief would set brief times so that the parties could explain their evidence relating to any issues which the arbitrator did not, or was unable to, decide. For example, the award might be dispositive of the issue of priority between the parties and leave for the Board's determination the question of substituting a new count raised in a preliminary motion under 37 CFR 1.633.

The arbitration award, filed by the parties, would be in the nature of a final decision and must include the following:

(1) The style (e.g., *Jones* v. *Smith*), the number of the interference and the names of the real parties in interest.

(2) The subject matter in issue, i.e., the counts and a table of counts, if necessary, indicating the relationship of the parties' claims corresponding to each count and those claims not corresponding thereto.

(3) The issues for decision before the arbitrator.

(4) The arbitrator's decision. The decision may also include a statement of the grounds and reasoning in support thereof.

(5) A summary, if appropriate, indicating, inter alia, that judgment should be awarded to one of the parties.

Any party to the arbitration can attack the award only in the manner provided by 9 U.S.C. 10 and 11.

9 U.S.C. 10 reads as follows:

> In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> (a) Where the award was procured by corruption, fraud, or undue means.
>
> (b) Where there was evident partiality or corruption in the arbitrators, or either of them.
>
> (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
>
> (d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
>
> (e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

9 U.S.C. 11 reads as follows:

> In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—
>
> (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
>
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.
>
> The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

See, for example, *Fairchild & Co., Inc.* v. *Richmond, F. & P. R. Co.*, 516 F.Supp. 1305 (D.D.C. 1981). If such an attack were to be made by one of the parties while the interference is pending before the Board, the Board would not stay the interference. Rather, the Board would issue its judgment in accordance with the award. So long as the award is in compliance with proposed § 1.690, it would carry the presumption that the arbitrator acted correctly in making his decision and accordingly, the party designated by the award as the prevailing party would be entitled *prima facie* to a judgment in its favor. If the dissatisfied party brings an action in an appropriate United States district court and if the court vacates, modifies or corrects the award, the Board would take action consistent with the court's findings. No action would lie in the PTO to vacate or correct an arbitration award, unless all parties agreed in writing.

The following examples illustrate the proposed practice of the PTO concerning arbitration.

Example 1

Arbitration Practice—Preliminary Stage

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. The parties decide to arbitrate the interference in accordance with proposed § 1.690 and file a motion for an extension of time so that they can "freely" arbitrate the interference, but do not file a waiver of their right to file motions.

The examiner-in-chief would deny the motion because the parties' intention to arbitrate, in and of itself, does not constitute a showing of "good cause" within the meaning of 37 CFR 1.645(a).

Even if the parties file an agreement to arbitrate, the PTO would not grant any extension of time to permit the parties to "freely" arbitrate an interference prior to the expiration of the time for filing preliminary motions.

Example 2

Arbitration Practice—Testimony Stage

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633. The parties file preliminary motions; the examiner-in-chief renders a decision thereon and sets the testimony times. The parties file a notice of intent to arbitrate the interference under proposed § 1.690(a) and a motion for a one month extension of the testimony times. The examiner-in-chief could grant the motion, but would indicate that if the parties file another motion for an extension for that purpose, the motion must be accompanied by a schedule, agreed to by the parties, setting forth the dates for (1) executing the arbitration agreement, (2) determining priority and (3) terminating the interference.

The parties file a motion for an additional one month extension of time to permit the parties to arbitrate the interference. Accompanying the motion is a proposed schedule of times and a copy of the arbitration agreement which provides, inter alia, (i) the name of the arbitrator or a date certain for his selection, (ii) that the arbitrator's award will be binding on the parties, (iii) the issues to be decided by the arbitrator and (iv) that the award will be filed by the date the record is due. The parties also indicate that the evidence to be filed in the proceeding will be in one of the forms specified by 37 CFR 1.672 (e) or (f). The examiner-in-chief could grant the motion and indicate that he will give favorable consideration to a motion to extend all the unexpired times to close concurrently on the date the record is due should the parties request such.

On the date for filing the record, the parties file the arbitrator's award and their evidentiary records, if necessary. The award states (i) the style and number of the interference and the real parties in interest, (ii) the subject matter in issue and the parties' claims which correspond thereto and which do not correspond thereto, (iii) the issues for decision before the arbitrator, (iv) the arbitrator's decision (which may include a statement of the grounds and reasoning in support thereof) and (v) that judgment should be awarded to one of the parties. The examiner-in-chief examines the award to ensure that it complies with proposed § 1.690 and is dispositive of the issues in the interference which can be decided by the arbitrator. If the award is otherwise acceptable, the Board would issue a judgment based on the award. If the award is not dispositive of all the issues in the interference, the examiner-in-chief would determine how the interference will proceed.

Example 3

Arbitration Practice—Award Decides Interference-in-Fact Issue and Junior Party Takes No Testimony

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. The junior party files a motion for judgment under 37 CFR 1.633(b) on the ground that there is no interference-in-fact between his claims corresponding to the count and his opponent's claims corresponding thereto. The examiner-in-chief denies the motion, examines the preliminary statements and sets the testimony times.

During the testimony period, the parties decide to arbitrate the interference, notify the examiner-in-chief of their intent to arbitrate and file an arbitration agreement which is approved by the examiner-in-chief. On the date for filing the record, the junior party files the award together with a motion requesting that the interference be terminated in view of the award. He does not file a record. In his award the arbitrator holds that no interference-in-fact exists between the parties' claims corresponding to the count.

The motion would be denied because the award decides a matter of patentability which would not result in a judgment adverse to one of the parties. Consequently, the junior party would be placed under an order to show cause why judgment under 37 CFR 1.652 should not be entered against him for his failure to file an evidentiary record by the time set therefor. In response to the order, the junior party requests final hearing to review the examiner-in-chief's denial of the motion for judgment and a testimony period to show no interference-in-fact. The examiner-in-chief would grant the junior party's request to the extent that final hearing is set and would deny the request for testimony because the junior party already had the opportunity to take testimony on the matter.

Example 4

Arbitration Practice—Cannot Decide Patentability

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. The junior party files a motion for judgment under 37 CFR 1.633(a) on the ground that the claims corresponding to the count are unpatentable over prior art. In his decision on motions, the examiner-in-chief grants the motion and places both parties under an order pursuant to 37 CFR 1.640(d)(1) to show cause why judgment should not be entered against them as to the count. In response to the order, the senior party files a paper in accordance with 37 CFR 1.640(e) purportedly showing good cause why judgment should not be entered in accordance with the order and a motion requesting permission to arbitrate the patentability issue. The examiner-in-chief would deny the motion. The arbitrator is without authority to establish vis-a-vis the public that the subject matter of the count is patentable. Thus, the arbitration will serve no useful purpose. The Board would consider the senior party's paper and enter an appropriate order.

Example 5

Arbitration Practice—Award After Decision on Motions

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. The junior party files a motion for judgment under 37 CFR 1.633(a) on the ground that the claims corresponding to counts 1 and 2 are unpatentable over prior art. In his decision on motions, the examiner-in-chief grants the motion with respect to count 1, denies the motion with respect to count 2 and places both parties under an order pursuant to 37 CFR 1.640(d)(1) to show cause why judgment should not be entered against them as to count 1. The senior party files a paper in accordance with 37 CFR 1.640(e); the junior party, a response thereto. The Board considers the paper and the response thereto and based on the record enters judgment adverse to both parties as to count 1. Thereafter, the examiner-in-chief examines the preliminary statements and sets dates for taking testimony and filing the record.

During the testimony period, the parties decide to arbitrate the interference, notify the examiner-in-chief of their intent to arbitrate and file an arbitration agreement which is approved by the examiner-in-chief. In his award, the arbitrator decides that judgment should be awarded to the junior party. On the date for filing the record, both parties file the award together with a motion requesting that the interference be terminated in view of the award. No record is filed.

The motion would be granted and accordingly it would be held that the senior party is not entitled to a patent containing his claims corresponding to count 2.

Example 6

Arbitration Practice—Award Decides Patentability

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. No motions for judgment under 37 CFR 1.633 are filed and after the examination of the preliminary statements, the examiner-in-chief sets the testimony times.

During the testimony period, the parties decide to arbitrate the interference, notify the examiner-in-chief of their intent to arbitrate and file an arbitration agreement which is approved by the examiner-in-chief. In his award, the arbitrator finds (1) that the evidence is insufficient to establish a prior public use bar under 35 U.S.C. 102(b) against the junior party, (2) that the claims of the junior party corresponding to the count are patentable under 35 U.S.C. 103 over the prior art cited by the senior party to the junior party, and (3) that judgment on priority should be awarded to junior party. On the date for filing the record, the parties file their records and the award together with a motion requesting that the interference be terminated in view of the award.

The motion would be granted and accordingly it would be held that the senior party is not entitled to a patent containing his claims corresponding to the count. After the termination of the proceeding, each party has the duty under 37 CFR 1.56 to bring before the primary examiner the evidence concerning the purported public use bar and the prior art cited by the senior party and/or considered by the arbitrator.

Example 7

Arbitration Practice—Award Grants Priority to Junior Party Contingent Upon Granting of Preliminary Motion Under 1.633(c)

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. The junior party files a motion under 37 CFR 1.633(c)(1) to substitute another count. The examiner-in-chief denies the motion, examines the preliminary statements and sets the testimony times.

During the testimony period, the parties decide to arbitrate the interference, notify the examiner-in-chief of their intention to arbitrate and enter into an arbitration agreement which is approved by the examiner-in-chief. The agreement provides that any evidence to be submitted by the parties will be in the form of a stipulation under 37 CFR 1.672 (e) and (f). The parties file a motion requesting that all the unexpired testimony times be extended to close concurrently on the date the record is due. The motion would be granted.

On the date for filing the record, the junior party files his record and the award. The award states, inter alia, that if the Board at final hearing should grant the junior party's motion under 37 CFR 1.633(c)(1) to substitute a new count, judgment should be awarded to the junior party based on the evidence. Otherwise, the award states that judgment should be awarded to the senior party.

The examiner-in-chief sets the brief times and after the filing thereof the interference would be set for final hearing so that the Board can review the examiner-in-chief's denial of the junior party's motion under 37 CFR 1.633(c) and issue an appropriate judgment based on the award.

Example 8

Arbitration Practice—Award Attacked

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. No preliminary motions are filed. The examiner-in-chief examines the preliminary statements and sets the testimony times.

During the testimony period, the parties decide to arbitrate the interference, notify the examiner-in-chief of their intention to arbitrate and file an arbitration agreement which is approved by the examiner-in-chief.

On the date for filing the record, both parties file their records. The junior party files the award which states that judgment should be awarded to him and a motion for judgment based on that award. The senior party files an opposition to the motion for judgment on the grounds (i) that the award contains errors of law, (ii) that the award was procured by "corruption, fraud or undue means" in violation of 9 U.S.C. 10(a), and (iii) that the arbitrator exhibited "evident partiality" in violation of 9 U.S.C. 10(b) and was "guilty of misconduct . . . in refusing to hear evidence pertinent and material" to the interference, citing 9 U.S.C. 10(c).

The Board would grant the judgment based on the award, holding that the senior party is not entitled to a patent containing his claims corresponding to the count. So long as the award is in compliance with the provisions of proposed § 1.690, it would carry a presumption that the arbitrator acted properly in all respects. Consequently, before the PTO the award is binding upon the parties and the junior party is *prima facie* entitled to a judgment in its favor. Thus, no action lies in the PTO as regards the matter raised by the senior party. The senior party's action lies in an appropriate United States district court and the PTO would take any action consistent with the court's decision.

Example 9

Arbitration Practice—Award Cannot Modify Board's Final Decision

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. No motions are filed. The examiner-in-chief examines the preliminary statements and sets the testimony times.

During the testimony period, the parties decide to arbitrate the interference and enter into an arbitration agreement. Neither party notifies the examiner-in-chief of their intent to arbitrate nor do they file a copy of the agreement in the interference. Both parties timely file their records and briefs. Both waive oral argument. The Board enters a final decision after consideration of the evidence in favor of the senior party.

The junior party requests reconsideration of the Board's final decision, submits a copy of the arbitration award and moves that the

Board set aside its final decision and enter judgment in his favor based on the award. In support of its request, the junior party cites 9 U.S.C. 9, which provides that "any party to the arbitration may apply to the court so specified for an order confirming the award" and 35 U.S.C. 135(d) which provides that title 9 applies to interference arbitrations.

The Board would deny the motion to set aside. The parties did not comply with proposed § 1.690(a), e.g., notify the examiner-in-chief in writing of their intention to arbitrate and file a copy of the arbitration agreement within twenty (20) days of its execution. The denial of the motion is an appropriate sanction under 37 CFR 1.616. Such action by the Board is considered consistent with long-standing interference practice. Cf. *Humphrey* v. *Fickert*, 1904 Dec. Comm'r. Pat. 447 (Comm'r. 1904) wherein the Board, after it had considered the evidence, refused to set aside its award of priority to Fickert and act upon the Fickert's concession of priority in favor of Humphrey, the losing party.

Example 10

Arbitration Award Filed With Record—No Notice to Examiner-in-Chief

An interference is declared on or after February 11, 1985. The examiner-in-chief sets a time in accordance with 37 CFR 1.611 for filing preliminary motions under 37 CFR 1.633 and preliminary statements. No motions are filed. The examiner-in-chief examines the preliminary statements and sets the testimony times.

During the testimony period, the parties decide to arbitrate the interference and enter into an arbitration agreement. Neither party notifies the examiner-in-chief of the agreement. The junior party timely files its record together with a copy of the arbitration award and a motion for judgment based on the award.

The motion would be denied. Under the provisions of 37 CFR 1.616, the examiner-in-chief places both parties under an order to show cause why judgment should not be rendered against them for their failure to comply with proposed § 1.690(a), i.e., failing to notify him of their intent to arbitrate and file a copy of the arbitration agreement.

Analysis of Comments

One commentor suggests that the parties should be able to arbitrate at any stage of the proceeding, including immediately after the declaration of the interference. Another commentor suggests that arbitration should not be instituted until after the motion period when the issues have been finally determined. The parties can begin arbitration at any stage of the interference; however, no extension of the time for filing preliminary motions will be granted for the purpose of arbitration. See Example 1. No change is necessary to the rule proposed in the advance notice.

One commentor suggests that the PTO should become involved in the selection of the arbitrator by maintaining a roster of arbitrators. This suggestion is not being adopted because the selection of an arbitrator is a matter for the parties.

One commentor notes that the American Arbitration Association [AAA] has developed rules for handling patent matters and requests that the PTO "give notice that following AAA rules is prima facie acceptable, as to the procedure used." In the PTO's view, the parties can stipulate the use of any procedure for resolving the arbitration.

One commentor suggests that the arbitrator should be able to "certify questions to the Board." The statute, 35 U.S.C. 135(d), and proposed § 1.690 provide that the parties may determine the interference or "any aspect thereof by arbitration." If the parties elect to arbitrate, the arbitrator must decide the interference. He cannot "certify" questions to the Board since "certification" would defeat the purpose of arbitration.

One commentor suggests that

> [The] arbitrator should have subpoena power or discovery authority to protect his own reputation in the event (a) a party is withholding information or (b) the parties are colluding in withholding information from the arbitrator.

While the arbitration proceeding is pending before him, the arbitrator has the authority under 9 U.S.C. 7 to

> summon in writing any person to attend . . . as a witness and in a proper case to bring with him . . . any book, record, document or paper which may be deemed material in the case.

If any person so summoned refuses or neglects to obey the summons, the arbitrator or a party may petition an appropriate United States district court pursuant to 9 U.S.C. 7 to compel the attendance of the person or to punish the person for contempt.

With respect to proposed § 1.690(a), one commentor urges that the subparagraph be changed by deleting "or any aspects thereof" so that the arbitrator can determine priority in its totality. The commentor believes that the retention of this language would tend to cause undue delays, thus requiring the examiner-in-chief to exert strong control in maintaining the schedule for an interference. The suggestion is not being adopted because the statute, 35 U.S.C. 135(d), provides:

> Parties to a patent interference . . . may determine such contest *or any aspect thereof* by arbitration. [Emphasis added.]

To adopt this suggestion would constitute taking from interference parties a right conferred on them by statute.

With respect to proposed § 1.690(a), one commentor suggests that a provision be added to the proposed rule requiring "advance notice to the examiner-in-chief of a proposed arbitration and specifying the issues to be arbitrated." This suggestion is being adopted and accordingly the following two sentences are added to proposed § 1.690(a):

> The parties must notify the Board in writing of their intention to arbitrate and specify the issues to be arbitrated. A copy of an agreement to arbitrate must be in writing and filed within twenty (20) days after its execution.

These two sentences require that the notification of intent to arbitrate must be in writing and should be presented in a separate paper, directed to the examiner-in-chief's attention and that the agreement to arbitrate must be in writing and be filed within twenty (20) days after its execution.

With respect to proposed § 1.690(b), one commentor states:

> Proposed sub-section (b) states that "(b) An interference or any aspect thereof shall be arbitrated within such time as may be authorized on a case by case basis by an examiner-in-chief." Since this is indefinite, it would in actual practice require obtaining advance approval from the examiner-in-chief in every case before even initiating arbitration efforts. Since this provision provides no guidance to the examiner-in-chief it could also lead to arbitrarily restrictive decisions. That seems contrary to the intent of the statute, which is to broadly provide a generally available resolution of disputes by the parties outside of the PTO. Furthermore, this provision even seems inconsistent with the practice until now under interference rule 272(c) [37 CFR 1.272(c) (1984)] which already allowed the parties, without advance approval by anyone, to stipulate to dispositive facts at any time during the testimony period or before the record was due. Yet an arbitration may well constitute or provide such stipulations. As with stipulations under 272(c), since any arbitration decisions are to the direct benefit of the PTO in reducing issues which must otherwise be decided by the Board at final hearing, there is no logical reason to restrict the availability of arbitration at any time before the filing of final briefs with the Board. It is respectively submitted that, pursuant to the intent of the statute, it is really not the appropriate business of the PTO as to when the parties conduct arbitration as long as it

does not interfere with the orderly operation of interferences or cause the Board to unnecessarily decide an issue which is being arbitrated. The purpose of this statute is to provide maximum flexibility to the parties, free of regulatory constraints, and that is what the enabling regulations for the statute should provide.

Accordingly, it is suggested that this proposed sub-section (b) be changed to: — any arbitration shall be completed and noticed by the time set for the filing of final briefs.—

These comments, which are essentially directed to the guidelines for arbitration, the authority of the examiner-in-chief vis-a-vis the rights of the parties to "freely" arbitrate and an apparent inconsistency between the old practice and the new practice, have been carefully considered. In addition, the commentor suggests that proposed § 1.690(b) be changed to state that the arbitration be completed and noticed by the time set for the filing of final briefs.

The arbitration guidelines are sufficiently discussed in the section, "Guidelines For Arbitration," *supra*, and will not be discussed below.

With respect to the authority of the examiner-in-chief and the rights of the parties, advance approval by the examiner-in-chief is required for the parties to arbitrate in order to prevent unnecessary work in the PTO. The parties must file their preliminary motions by the time set therefor and any arbitration must conform with the time schedule approved by the examiner-in-chief. If the parties are unable to meet the time schedule, they may file a motion for extension of time pursuant to the provisions of 37 CFR 1.645(a). Pursuant to 37 CFR 1.610(c), the examiner-in-chief must exercise control over the interference such that its pendency does not normally exceed two years. Consequently, the parties must notify the Board of their intention to arbitrate and file a copy of the arbitration agreement. When the award is filed, the examiner-in-chief must review the award to determine whether it is dispositive of all the issues in the interference. If the award is not, the examiner-in-chief must determine how the interference should proceed.

With respect to the assertion concerning an apparent inconsistency between proposed § 1.690(b) and § 1.672 (e) and (f), the counterpart of § 1.272(c), the guidelines show that none exists. The parties to an interference can agree to file stipulated evidence with respect to any issue whether or not it is decided by arbitration.

The suggestion that proposed § 1.690(b) be changed is not being adopted in view of the language in proposed § 1.690(c), infra.

Three commentors request that the arbitration award be made binding on the parties in order to save expense and reduce the pendency time of the interference proceeding. It is urged that if the arbitration is not binding, the arbitration would "serve as a rehearsal for the usual interference procedure." This suggestion is being adopted and proposed § 1.690(c) is being changed to require that the parties who desire to arbitrate must enter into a binding arbitration agreement.

One commentor suggests that if the arbitration is binding, then the reasons and conclusions need not be given but if the arbitration is not binding, then the reasons and conclusions for the award should be given so as to aid settlement. Another commentor concerned with possible "collusion" between the parties and the arbitrator and suggests that a "sufficient record" be created for the PTO and "interested third parties." These suggestions are being adopted in part. While the PTO would prefer that the award include a statement of the grounds and reasoning in support thereof, it is left to the discretion of the parties as to whether the award will contain such a statement. With respect to possible "collusion," the attorneys for the parties are subject to the Patent and Trademark Office Code of Professional Responsibility, 37 CFR 10.20 to 10.112, and any violation thereof can be brought to the attention of Director of Enrollment and Discipline. Accordingly, proposed § 1.690(c) is being changed to state that the award may also include a statement of the grounds and reasoning in support thereof.

Two commentors suggest that proposed § 1.690(c) be changed to read that the arbitration award should be filed on or prior to the date set for the filing of final briefs so that the PTO need not decide an interference which has already been resolved by the parties. This suggestion is being adopted to the extent that proposed § 1.690(c) is being changed to require that the parties must file a copy of the arbitration award within twenty (20) days from the date of the award unless otherwise ordered by the examiner-in-chief.

One commentor requests that a "reasonable grace period" be provided for filing an inadvertently unfiled award. Proposed § 1.690(c) has been changed to read that the parties must file the award within twenty (20) days from the date of the award unless otherwise ordered by the examiner-in-chief. If the award is not filed, the examiner-in-chief may issue appropriate sanctions under 37 CFR 1.616. Accordingly, this suggestion is not being adopted.

In view of the foregoing discussion, proposed § 1.690(c) has been modified to read as follows:

An arbitration award will be given no consideration unless it is binding on the parties, is in writing and states in a clear and definite manner (1) the issue or issues arbitrated and (2) the disposition of each issue. The award may also include a statement of the grounds and reasoning in support thereof. Unless otherwise ordered by an examiner-in-chief, the parties shall give notice to the Board of an arbitration award by filing within twenty (20) days from the date of the award a copy of the award signed by the arbitrator or arbitrators. When an award is timely filed, the award shall, as to the parties to the arbitration, be dispositive of the issue or issues to which it relates.

Two commentors urge that patentability questions should not be arbitrated in view of the public interest. One would go further and amend subparagraph (d) to read that unless ordered by an examiner-in-chief, an arbitration award shall not decide a preliminary motion for judgment under §§ 1.633(a) or 1.633(b), a preliminary motion to redefine the interfering subject matter under § 1.633(c), a preliminary motion to substitute a different application under § 1.633(d) or a motion to declare an additional interference under § 1.633(e). These suggestions are not being adopted. Subparagraph (d) makes clear that an arbitration award shall not preclude the Office from determining patentability of any invention in the interference. An arbitration award can decide a question of patentability which is binding on that party vis-a-vis his opponent and will result in a judgment adverse to that party. After the termination of the interference each party has the duty under 37 CFR 1.56 to bring to the attention of the examiner in charge of its application any evidence of unpatentability brought before or considered by the arbitrator. Consequently, the adoption of these suggestions could unduly restrict the parties' use of arbitration and prevent an arbitrator from deciding a proper matter of patentability.

Other Considerations

This rule does not have a significant impact on the quality of the human environment or the conservation of natural resources.

The rule is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce certified to

the Small Business Administration that the proposed rule will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) because arbitration is intended to minimize expenses in interference cases.

The Patent and Trademark Office has determined that this rule is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delations, Conflicts of interest, Courts, Inventions and patents, Lawyers.

For the reasons set out in the preamble and under the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 135, Part 1 of Title 37 CFR is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. New section 1.690 is proposed to be added to read as follows:

§ 1.690 Arbitration of interferences.

(a) Parties to a patent interference may determine the interference or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of Title 9, United States Code. The parties must notify the Board in writing of their intention to arbitrate. An agreement to arbitrate must be in writing, specify the issues to be arbitrated, the name of the arbitrator or a date not more than 30 days after the execution of the agreement for the selection of the arbitrator, and provide that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board. A copy of the agreement must be filed within twenty (20) days after its execution. The parties shall be solely responsible for the selection of the arbitrator and the rules for conducting proceedings before the arbitrator. Issues not disposed of by arbitration will be resolved in accordance with the procedures established in 37 CFR, Subpart E of Part 1, as determined by the examiner-in-chief.

(b) An interference or any aspect thereof shall be arbitrated within such time as may be authorized on a case-by-case basis by an examiner-in-chief.

(c) An arbitration award will be given no consideration unless it is binding on the parties, is in writing and states in a clear and definite manner (1) the issue or issues arbitrated and (2) the disposition of each issue. The award may also include a statement of the grounds and reasoning in support thereof. Unless otherwise ordered by an examiner-in-chief, the parties shall give notice to the Board of an arbitration award by filing within twenty (20) days from the date of the award a copy of the award signed by the arbitrator or arbitrators. When an award is timely filed, the award shall, as to the parties to the arbitration, be dispositive of the issue or issues to which it relates.

(d) An arbitration award shall not preclude the Office from determining patentability of any invention involved in the interference.

Dated: April 7, 1986.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 278

Mandatory Meals Program in Multifamily Rental or Cooperative Projects for the Elderly or Handicapped; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 278

[Docket No. R-86-1272; FR-2179]

Mandatory Meals Program in Multifamily Rental or Cooperative Projects for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish HUD program regulations for the management of mandatory meals programs for HUD-assisted multifamily housing for the elderly or handicapped. This rule would formalize, with some changes and elaboration, HUD's interim policy on the mandatory meals program, which was published in the **Federal Register** of February 10, 1986 (51 FR 4997), and later revised in the **Federal Register** of April 3, 1986 (51 FR 11483).

This rule presents alternative provisions on the scope of the mandatory meals program. Under one alternative, the rule would cover the universe of exsisting and future HUD-assisted housing projects for the elderly or handicapped (as further delineated in the rule). Under the other alternative, the rule would permit only mandatory meals programs already approved by HUD. For all other HUD-assisted projects for the elderly or handicapped, mandatory meals programs would be prohibited.

DATE: Comment due date: October 30, 1986.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Office of Multifamily Housing, telephone (202) 426-3970, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Introduction

Background

From 1959 to 1963 the Housing and Home Finance Agency (HHFA), HUD's predecessor agency, permitted owners of HHFA-assisted projects for the elderly or handicapped, where projects were equipped with central dining facilities, to require their tenants to purchase meals. HHFA placed no limit on the number of meals per day that owners could require tenants to purchase. Beginning in 1963, HHFA (and subsequently HUD) has permitted, with prior HUD approval, owners of HUD-assisted projects for the elderly or handicapped to require their tenants to purchase only one meal per day in the dining facilities unless special conditions existed, in which case HUD has on occasion approved required purchases of up to three meals per day. This "mandatory meals policy" has appeared over the years in various HUD Circulars and Handbooks covering projects for the elderly assisted under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q; sections 221(d)(3), (d)(4) and (d)(5), 231, and 236 of the National Housing Act, 12 U.S.C. 1715/(d)(3), (d)(4) and (d)(5), 1715v, and 1715z-1; and section 8 of the United States Housing Act of 1937, 42 US.C. 1437f. (Mandatory meals programs also exist in privately owned projects for the elderly or handicapped that receive no HUD assistance.)

Recently, mandatory meals programs have generated controversy both on procedural and substantive grounds. Procedurally, critics have complained that HUD should have published its policy in the **Federal Register**, after notice and an opportunity for public comment. Substantively, critics claim that (regardless of an applicant's awareness of a project's mandatory meals program before his or her move into the project) the programs suffer from several problems. These criticisms include arguments that mandatory meals programs: (1) Constitute an infringement on a tenant's freedom to prepare or purchase his or her own meals; (2) involve excessive cost, considering tenants' modest incomes; and (3) are unfair to some tenants who may not eat the meals under the program because they have special diets, or who, because of employment or other commitments outside the project, must unavoidably be absent from the project during the time meals are served. In light of these criticisms, this proposal (as explained in more detail hereafter) invites comment concerning whether the Department should consider changing its policy to prohibit mandatory meals programs in projects where they do not already exist.

In the **Federal Register** of February 10, 1986 (51 FR 4997), HUD issued an interim policy statement on mandatory meals programs. (This statement was revised in the **Federal Register** of April 3, 1986 (51 FR 11483), which clarified the applicability of the interim policy.) In that policy statement, the Department stated its intention to reevaluate its mandatory meals policy and to publish a final rule in the **Federal Register**, after providing notice and an opportunity for public comment. This decision follows a court order resolving litigation that involved HUD's policy on mandatory meals programs (specifically for projects for the elderly assisted under section 236 of the National Housing Act) in *Birkland* v. *Rotary Plaza, Inc.*, No. C 84-2026 SW. (N.D. Cal. Jan. 10, 1986) (order granting declaratory and injunctive relief). HUD intends to promulgate a final rule by February 1, 1987. HUD does not propose, however, to require owners to terminate their mandatory meals programs while HUD is engaged in rulemaking. The February 1986 policy statement will govern both current and newly instituted mandatory meals programs until the effective date of the final rule.

HUD has decided to allow owners of projects for the elderly or handicapped covered under the revised HUD interim policy to continue their mandatory meals programs pending this rulemaking because these programs provide vital nutritional services to tenants. HUD has determined that there exists an acknowledged need for mandatory meals programs. Both the U.S. Ninth Circuit Court of Appeals in *Aujero* v. *CDA Todco, Inc.*, 756 F.2d 1374, 1377 (9th Cir. 1985), and the Tenth Circuit in *Mayoral* v. *Jeffco American Baptist Residences, Inc.*, 726 F.2d 1361 (10th Cir.) *cert. denied*. 105 S.Ct. 255 (1984), have recognized that mandatory meals programs benefit elderly participants by ensuring adequate nutrition in a social environment, thereby avoiding malnutrition and social isolation. A recent report of the General Accounting Office (GAO) has confirmed these findings, and provides support for various policy determinations in this rule.

GAO Survey of Mandatory Meals Programs in HUD-Assisted Projects for the Elderly

In March 1985, GAO published the results of a survey of 930 HUD-assisted projects for the elderly and a random sample of the views of managers of projects with and without meals

programs. Of those projects involved in the GAO survey, only 98 (11 percent) had a mandatory meals program. GAO also estimated that approximately 45 percent of the 930 sampled projects offered a meals program that was voluntary and not a condition of occupancy. According to the GAO report, these voluntary meals programs were subsidized by public agencies or private organizations, and the residents pay only a portion of the costs (and in some projects are not required to pay for the meals). (This characteristic of voluntary meals programs is particularly important, because project income from rentals may not be used to make up for any shortfall in revenues to support a meals program.) In contrast, the mandatory meals programs that were surveyed by GAO generally are not subsidized. On the average, tenant charges cover 96 percent of the cost of the meals under mandatory programs. Under the voluntary meals programs that were surveyed, tenant charges covered only 71 percent of the cost of the program.

Other findings from the GAO survey include: 1. Ninety-eight percent of the managers of projects with a mandatory meals program that responded to the survey believe that their project's elderly residents would be adversely affected if the project's program was terminated. Those managers cited nutrition-related and social benefits for tenants who have participated in a mandatory meals program. Managers also stated that requiring participation in the program has provided management with the opportunity to monitor the health of the project's elderly tenants.

2. Approximately 75 percent of the managers of projects without *any* meals program responded that the absence of a meals program at their project had little or no adverse effect on their elderly residents. However, the principal reasons given by some of these managers was not that their project's tenants did not need meal services, but that (1) their residents were capable of preparing meals in their rooms and therefore did not need a meals program, or (2) their residents were able to participate in a meals program in a nearby facility. The GAO report also referred to home-delivered meals programs (e.g., "meals on wheels") as frequently serving as an available alternative source of meals.

3. Ninety-two percent of the managers of projects with mandatory meals programs responded that if they were required to make participation in their project's program voluntary, attendance would be too unpredictable to ensure a sufficiently steady stream of income to continue the program on a financially sound basis, and the project ultimately would be forced to terminate the program.

4. Approximatelyl 75 percent of the tenants participating in mandatory meals programs that were surveyed reported that their participation improved their day-to-day lives. However, 8 percent of the tenants surveyed regarded the mandatory meals programs as detrimental to the quality of their day-to-day lives. In addition, approximately 20 percent of these tenants were dissatisfied with the taste and variety of the mandatory meals.

5. Approximately 25 percent of the managers of projects with no meals program believed that the absence of a meals program negatively affected some or all of their project's residents, particularly with reference to nutrition and the opportunity for socialization. In addition, the increased fire risk resulting from the cooking of meals by elderly tenants in their own units was cited as another negative consequence of the lack of a meals program.

II. Summary of the Interim Policy Statement for Mandatory Meals

As revised in the April 1986 Correction Notice, the interim policy statement on mandatory meals contained the following provisions:

1. The policy applies to all current and newly instituted mandatory meals programs in projects for the elderly or handicapped that receive a subsidy in the form of: (1) Direct loans at below-market interest rates under section 202 of the Housing Act of 1959; (2) below-market interest rates under sections 221(d)(3) and 221(d)(5) of the National Housing Act; or (3) interest reduction payments under section 236 of the National Housing Act. In addition, other projects for the elderly are covered for those units that receive rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 or housing assistance under Section 8 of the United States Housing Act of 1937 (other than assistance to families under the Section 8 Existing Housing Certificate Program or the Housing Voucher Program).

2. With the prior written approval of HUD, owners of projects for the elderly or handicapped with new requests for mandatory meals programs covered under this interim policy may require that their tenants purchase no more than one meal per day at their facility. However, HUD will continue to permit certain projects to require the purchase of more than one meal per day. These projects must have received approval from HUD to require tenants to purchase more than one meal per day (generally in instances where the project is not equipped with individual kitchens in which tenants may prepare their own meals). HUD will not approve any new requests from owners to require the purchase of more than one meal per day.

3. Mandatory meal charges (and any subsequent increase in charges) must receive the prior written approval of HUD, must be modest, and may not exceed the per capita cost of purchasing, preparing, and serving the meals at the project.

4. Owners are required to grant exemptions under two circumstances: (1) for individuals who have a documented medical condition demanding a special diet that a project cannot provide; and (2) for any tenant who has a paying job that requires that he or she be absent during the time mandatory meals are served at the project.

5. Owners continue to have discretion to grant exemptions for other reasons, for example, for financial or religious reasons. HUD encourages owners, in managing their mandatory meals programs, to be sensitive to tenants' religious dietary practices.

III. Proposed Rule

This proposed rule would allow a new part in the Code of Federal Regulations (24 CFR Part 278) governing mandatory meals programs and would generally maintain, at least for existing projects, current requirements for mandatory meals programs as set out in the revised interim policy statement. However, the rule proposes to revise and further delineate departmental policies in several respects, as outlined below.

Applicability of This Rule to Existing and Future Projects

HUD particularly invites public comment concerning whether mandatory meals programs should continue to be authorized both for existing and future projects with central dining facilities, or only for projects that already have HUD-approved mandatory meals programs. It is the Department's position that, at a minimum, this rule should apply to *current* mandatory programs. According to the GAO report, most tenants in mandatory meals programs were satisfied that their participation improved their day-to-day lives. In addition, managers of projects with mandatory meals programs were concerned that without the mandatory nature of the programs, attendance would be too unpredictable to ensure a

sufficiently steady stream of income to continue the programs on a financially sound basis—resulting in the possible economic necessity of terminating meals programs in those projects. Owners of these projects may have included central dining facilities in reliance that HUD would continue to authorize mandatory meals programs. (As the GAO report demonstrates, sponsors of future projects with voluntary programs would probably be compelled to seek a source of subsidy assistance from public or private sources, since voluntary meals programs are not self-sustaining.)

However, HUD also wishes to review carefully whether there should be a prohibition of *all new* mandatory meals programs. Such a prohibition would require that all new meals programs—both in existing and in future HUD-assisted projects—be operated on a voluntary participation basis, thereby avoiding the restrictions involved in mandatory meals programs. This alternative would be responsive to concerns that mandatory meals programs infringe on a tenant's freedom to prepare or purchase his or her own meals, or to use outside meal service facilities. (According to the GAO report, approximately 75 percent of managers of projects without any meals program reported that the absence of a meals program had little or no effect on their tenants, because of their tenants' capability to prepare or purchase their own meals.)

In addition to offering these distinctly differing proposals relative to the universe of allowable mandatory meals programs, HUD invites public comments that may possibly favor variations on the alternative proposals set out in the rule. For example, the rule could provide a system to govern future approval by HUD of mandatory meals programs in *existing* projects with central dining facilities—but prohibit such programs in all future projects. Under this middle ground, HUD might allow the "conversion" of a voluntary meals program in an existing project to a mandatory program, or the establishment of a mandatory meals program in an existing project where no previous program existed (see proposed § 278.24). (A rationale for this alternative would be that sponsors of existing HUD-assisted projects may have included central dining facilities in their projects in reliance that HUD would permit the introduction of or the conversion to a mandatory meals program in their dining facility.) In the case of projects constructed in the future, no claim of reliance could be advanced, since sponsors (aware from the beginning of new HUD policy on the subject) would be responsible for planning projects that were either capable of sustaining a meals program entirely on a voluntary participation basis, or building a project with no meals facilities.

In order to reflect HUD's concerns on whether to authorize mandatory meals programs in both existing and future projects or to allow mandatory meals programs *only* where HUD approval has already been received, this rule sets out alternative proposals on the universe of allowable mandatory meals programs. To facilitate public comment, certain portions of the rule have been set in brackets and identified as Alternative A to set out the content of a proposed rule applicable to all mandatory meals programs approved by HUD in existing and future HUD-assisted projects for the elderly or handicapped. Alternative B has been bracketed and identified in the same rule text to indicate where the alternative of *prohibiting any new mandatory meals programs* would apply (see proposed §§ 278.1(a), 278.3(a), and 278.10(a)). (Under this approach, proposed § 278.24 (authorizing the conversion of a meals program to a mandatory program or the establishment of a mandatory meals program in an existing project) would be included under Alternative A, but not under Alternative B.)

Under either of the alternative proposals, this proposed rule would allow project owners with currently approved mandatory meals programs to continue to require the purchase of the current number of approved meals per day, or the owners could reduce the number of (or eliminate) required mandatory meals. (Similarly, where before the effective date of the rule a project owner had granted to any tenant an exemption from purchasing meals under the program, the exemption would remain valid.)

Program Coverage

Concerning the particular HUD programs covered by this proposed rule, the rule remains in accord with the April 3, 1986 Correction Notice in its statement of program coverage (see proposed § 248.3). Under the Correction Notice, this rule would not apply to projects for the elderly or handicapped for which HUD insures the mortgage but does not provide a form of subsidy. In accordance with the Correction Notice, this proposed rule would not apply to projects for the elderly for which HUD insures the mortgage under section 221(d)(4) (including HUD-approved Retirement Service Centers), section 231, or the market rate mortgage insurance program under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715*l*(d)(4), 1715v, or 1715*l*(d)(3)), where these projects do not receive HUD rental assistance. These projects are only covered under this proposed rule for those units for which HUD also provides rental assistance payments under a contract covering units in the project under section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s ("rent supplement payments") or housing assistance under section 8 of the United States Housing Act of 1937 (other than assistance to families under the Section 8 Existing Housing Certificate Program or the Housing Voucher Program). (Of course, should HUD's final rule provide for mandatory meals programs only in projects already approved in the past, program coverage questions would become essentially moot.)

The program coverage set out this rule is consistent with recent legislation and HUD regulations. For section 221(d)(4) and 231 projects and section 221(d)(3) projects under the market rate mortgage insurance program, HUD has already determined that, since rents are not controlled and no direct HUD financial assistance is provided for rental assistance or for below-market financing, no HUD regulation of mandatory meals programs at those projects would be appropriate. HUD has recently deregulated rents in projects insured under various sections of the National Housing Act, including section 221(d)(4) and 231. For HUD regulations authorizing the deregulation of rents in projects under section 221(d)(4) or 231, see 48 FR 16670 (April 19, 1983) and 51 FR 20264 (June 4, 1986). (See also section 431(a)(1) of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. No. 98-181) which amended section 207(b)(2) of the National Housing Act, 12 U.S.C. 1713(b)(2).)

Tenant Exemptions from Mandatory Meals Program Participation

This proposed rule would continue the two exemptions stated in the interim policy statement. (See unit II of this preamble.) It would also add three new exemptions to those set out in the interim policy staetment. Two of these new exemptions are: (1) For tenants who are absent from the project for at least one week for hospital care, temporary nursing home care, or vacation; and (2) under stated circumstances, for tenants who are permanently or temporarily immobile or incapable of independent transport to and from the central dining facilities. Under the third new exemption, where a project owner does

not grant an outright exemption for a religious-based dietary practice, the owner must offer an alternative menu that does not conflict with the tenant's dietary practice.

In proposing to require these five mandatory exemptions, but not others, HUD is attempting to balance the desirability of specific exemptions against the need of projects that operate mandatory meals programs for a steady stream of income to ensure the financial stability of those programs. In each of the situations where the proposed rule requires an exemption, tenants either would not be present to eat the meals provided or would be unable to eat them for medical or religious reasons. These circumstances appear to occur infrequently enough that the fiscal soundness of a project's mandatory meals program would not be jeopardized by requiring the exemptions contained in this proposed rule.

The Department would also permit project owners to grant any tenant an exemption because of dietary practices, for financial reasons, or for other reasons. (Project owners are encouraged to accommodate the dietary practices of their current and prospective tenants, regardless of whether the dietary practices are based on religious reasons.)

Other Requirements and Limitations in This Proposed Rule

Other notable requirements and limitations in the proposed rule include:

1. *Restriction on the coverage of this rule.* This rule clarifies that HUD's provisions governing mandatory meals programs are not applicable to group homes for the chronically mentally ill, developmentally disabled, or physically handicapped. HUD has determined that this rule should only apply to HUD-assisted projects for the elderly or handicapped with tenants who are capable of meeting minimum standards for independent living.

2. *Applicability of this rule to related households.* This rule would provide that for all new mandatory meals programs, project owners may require as a condition of occupancy that one meal per day be purchased by tenants residing in the project. However, for any household of two or more related persons residing in one unit of the project, only one meal per day *for the household* would be required. HUD proposes that the administration of mandatory meals programs should be developed on a per-unit basis, not necessarily according to the number of residents occupying a single unit in the project.

3. *Tenant incapacity.* Under this rule, special treatment would be provided to continue an incapacitated tenant in the project's mandatory meals program but to provide for the tenant's meals to be served in his or her dwelling unit or to exempt the tenant from participation in the meals program. (However, this section is not intended to describe the requirements of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.) HUD believes that these options would provide for a reasonable accommodation of the special needs of incapacitated tenants, including the needs of tenants with a temporary physical incapacity.

4. *Requirement that mandatory meals programs be conducted as non-profit operations.* This rule would require that mandatory meals programs be conducted on a non-profit basis and would include requirements covering situations where the meals program achieves an operating surplus at the end of a project's fiscal year. Through these provisions, HUD intends that mandatory meals programs will be operated solely for the nutritional and social benefit of tenants in affected projects for the elderly, and not as profit-making enterprises by project owners. The Department believes that the requirements of § 278.20 would be sufficient to ensure that charges under a mandatory meals operation would be modest. (In order to ensure that the meals programs are modestly priced, HUD will require that: The program operate on a non-profit basis; any surplus funds be used to either reduce future meals charges or to offset operating deficits from previous years; and meal charges be restricted to the cost of purchasing, preparing, and serving the meals.) Concerning the limited exception for certain commercial meals services, the contractor must prepare and serve the meals in the central dining facility of the project, and not exceed the average cost of comparable meals operations available to the project and in compliance with applicable State and local safety and health standards.

5. *Provisions for defraying the cost of a mandatory meals program.* This rule would require that project owners defray the cost of mandatory meals programs through the food stamp and the surplus food programs of the U.S. Department of Agriculture, where applicable. In addition, this rule would encourage project owners to pursue other activities to minimize related costs. HUD believes that through these requirements and other suggested methods for defraying costs, the per capita cost for mandatory meals would be minimized.

6. *Prior HUD approval for a project owner's decision to increase charges for mandatory meals.* This rule would require prior HUD approval for any increase in charges for mandatory meals. In addition, the rule would restrict any increase in charges for the special delivery of mandatory meals (see § 278.20(h)). HUD intends that these provisions would restrict arbitrary increases in mandatory meal charges.

7. *Clarification of the relationship between the mandatory meals agreement and a tenant's lease.* This rule would require that the mandatory meals agreement between a tenant and the project owner be incorporated as part of the tenant's lease. HUD believes that this provision is important for purposes of the project owners' enforcement of mandatory meals agreements.

8. *HUD-required termination of a project's mandatory meals program.* This rule would authorize HUD's taking appropriate action, including termination of a project's mandatory meals program, where a project owner has failed substantially to comply with the requirements in the rule.

IV. Miscellaneous

HUD has provided for a 45-day comment period for this proposed rule. Traditionally, the Department has provided for a 60-day comment period for proposed rules. However, in this instance, HUD has determined that a 60-day comment period would be impracticable for the consideration of the anticipated large number of comments that will be received on this rule. The Department believes that individual commenters can respond to this rule in the reduced comment period provided. Considering the anticipated volume of comments, HUD needs to afford itself the additional time that the reduced comment period will provide, in order to assure that adequate attention to the substance of the comments can be given and that a final rule be published by February 1, 1987.

This rules does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued 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 consumer, 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.

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. Although this rule would affect a number of small entities, it would not have a substantial economic impact. The rule would clarify the Department's requirements for mandatory meals programs and facilitate the operation of central dining facilities and meals programs in HUD-assisted projects for the elderly.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The Paperwork Reduction Act requires that Federal agencies obtain approval from OMB before collecting information from 10 or more persons. Please send any comments concerning the rule's collection of information requirements to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20403, Attention: Desk Officer for HUD.

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 in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule was listed as item number 842 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036, 14038) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.103, 14.137, 14.156, and 14.157.

List of Subjects in 24 CFR Part 278

Aged, Grant programs—housing and community development, Handicapped, Loan program—housing and community development, Low and moderate income housing, Mandatory meals program, Mortgage insurance, Rent subsidies.

Accordingly, a new Part 278 is proposed to be added in Title 24, Code of Federal Regulations, to read as follows [in paragraphs § 278.1(a), § 278.3(a), and § 278.10(a) and § 278.24, alternative texts are shown enclosed in brackets]:

PART 278—MANDATORY MEALS PROGRAM IN MULTIFAMILY RENTAL OR COOPERATIVE PROJECTS FOR THE ELDERLY OR HANDICAPPED

Subpart A—General

Subpart B—Mandatory Meals Programs

Subpart C—Program Management

Subpart D—Enforcement

Authority: Sec. 202 of the Housing Act of 1959 (12 U.S.C. 1701q); sec. 101 of the Housing and Urban Development Act of 1965, (12 U.S.C. 1701s); sec. 211 of the National Housing Act (12 U.S.C. 1715b); sec. 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 278.1 Purpose.

[Alternative A: (a) This part establishes requirements governing mandatory meals programs in HUD-assisted projects for the elderly or handicapped where these projects are equipped with central dining facilities. Central dining facilities must include:

(1) A kitchen with sufficient equipment to prepare the meals and

(2) A dining area of sufficient size to serve the residents of the project together or in accordance with a schedule set by the project owner or manager.]

[Alternative B:

(a) This part establishes requirements governing HUD-approved mandatory meals programs in HUD-assisted projects for the elderly or handicapped where these projects are equipped with central dining facilities. Central dining facilities must include:

(1) A kitchen with sufficient equipment to prepare the meals and

(2) A dining area of sufficient size to serve the residents of the project together or in accordance with a schedule set by the project owner or manager.]

(b) Project owners are responsible for compliance with any requirements established by—

(1) Applicable State or local statutes and regulations and

(2) Contracts with their tenants.

HUD approval of a project's mandatory meals program creates no inference that the requirements of State or local law have been met, nor does HUD approval preempt applicable State or local statutes and regulations.

§ 278.3 Applicability.

[Alternative A: (a) A project is covered under this part where:

(1) Statutory authority for HUD financial assistance for the project requires that occupancy be limited to the elderly or handicapped; or

(2) The HUD regulatory agreement designates the project as housing for the elderly or handicapped; or

(3) HUD requires a preference in tenant selection for the elderly or handicapped for all units in the project.]

[Alternative B: (a) A project with a mandatory meals program approved by HUD before *(insert the effective date of this rule)* is covered under this part where:

(1) Statutory authority for HUD financial assistance for the project requires that occupancy be limited to the elderly or handicapped; or

(2) The HUD regulatory agreement designates the project as housing for the elderly or handicapped; or

(3) HUD requires a preference in tenant selection for the elderly or handicapped for all units in the project.

No new mandatory meals program will be authorized for any project after *(insert the effective date of this rule)*. In addition, the Department prohibits the conversion of a meals program to a mandatory program or the establishment of a mandatory meals program in a project for which a HUD commitment to insure was issued or for which funds were reserved before *(insert the effective date of this rule)*.]

(b)(1) The requirements in this part apply to projects for the elderly or handicapped described in paragraph (a) of this section that receive a subsidy in the form of—

(i) Interest reduction payments under section 236 of the National Housing Act (including State-assisted projects without HUD mortgage insurance);

(ii) Below-market interest rates under sections 221(d)(3) and 221(d)(5) of the National Housing Act; or

(iii) Direct loans at below-market interest rates under section 202 of the Housing Act of 1959.

(2) Other projects for the elderly or handicapped described in paragraph (a) of this section are only covered under this part for those units that receive—

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (including State-assisted projects without HUD mortgage insurance);

(ii) Housing assistance payments under 24 CFR Part 886, Subpart A (Section 8 Loan Management Set Aside), for projects that converted their rent supplement contracts under section 101 of the Housing and Urban Development Act of 1965 to such assistance for the term of the HAP contract; or

(iii) Housing assistance payments under section 8 of the United States Housing Act of 1937 (other than assistance to families under the Section 8 Existing Housing Certificate Program or the Housing Voucher Program). This part also applies to Section 8 housing assistance payments by State housing agencies under 24 CFR Part 883, Subpart E (other than assistance to families under the Section 8 Existing Housing Certificate Program or the Housing Voucher Program).

(c) Only projects with central dining facilities may apply for HUD approval to operate mandatory meals programs.

(d) This part is not applicable to HUD-assisted projects for the chronically mentally ill, developmentally disabled, or physically handicapped.

Subpart B—Mandatory Meals Programs

§ 278.10 Administration of mandatory meals program.

[Alternative A: (a) Upon written approval by HUD, a project owner may require as a condition of occupancy that one meal per day be purchased by tenants residing in the project. For newly constructed projects covered under this part, a project owner shall obtain written approval by HUD for the establishment of a mandatory meals program before entering into rental agreements for occupancy. (However, for related households of two or more persons residing in a single unit in the project, only one meal per day per household may be required.) Where before the effective date of this rule, HUD has approved mandatory meals programs that require the purchase of two or more meals per day by tenants, project owners may continue to require the purchase of the same number of meals, or fewer meals, per day.]

[Alternative B: (a) Upon written approval by HUD, a project owner may require as a condition of occupancy that one meal per day be purchased by tenants residing in the project. (However, for related households of two or more persons residing in a single unit in the project, only one meal per day per household may be required.) Where before the effective date of this rule, HUD has approved mandatory meals programs that require the purchase of two or more meals per day by tenants, project owners may continue to require the purchase of the same number of meals, or fewer meals, per day.]

(b) Where HUD has approved a project owner's requirement of one meal per day under the program, all prospective tenants for admission to the project must be given notice, before the lease is executed, that participation in the program is a condition of occupancy in that project.

(c) A project owner shall administer the project's mandatory meals program in a nondiscriminatory manner as required under Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

§ 278.12 Exemptions.

(a) A project owner with a mandatory meals program shall grant an exemption from purchasing meals under the program to:

(1) Any tenant with a physical condition that requires a special diet that the project cannot provide. To be entitled to this exemption, the tenant shall be required to provide documentation signed by a physician, stating that the tenant requires a special diet for medical reasons. The physician's statement must contain a description of the special diet. If the project cannot provide the diet specified in the physician's signed statement, the project owner shall grant the tenant a medical exemption. (However, if the project owner determines that a special diet for certain tenants can be provided, it shall be provided at no increased cost to those tenants.)

(2) Any tenant with a paying job that requires absence from the project during the time period that the mandatory meals are served.

(3) Any tenant who is absent from the project for one week or more for hospital care, temporary nursing home care, or vacation. The project owner may require tenants to provide reasonable advance notice of any anticipated absence for a reason described in this paragraph, except absences for hospital care of an emergency nature; or

(4) Any tenant who is permanently immobile or otherwise incapable of visiting the central dining facility (see § 278.14(b)). (In addition, under § 278.14(a), after one month of serving meals in a temporarily incapacitated tenant's dwelling unit, a project owner must either continue serving meals in the tenant's dwelling unit during the period of incapacity or approve a temporary exemption from the mandatory meals program.)

(b) A project owner may grant any tenant an exemption because of dietary practices, for financial reasons, or for other reasons. Where a project owner does not grant an exemption for a religious-based dietary practice, the owner must offer an alternative menu that does not conflict with the tenant's religious dietary practice.

(c) Any exemption granted under this section (including the temporary exemption referred to in paragraph (a)(4)) shall only be in effect during the period that the tenant meets the specified conditions for the exemption.

(d) Where, before the effective date of this rule, a project owner has granted to any tenant an exemption from purchasing meals under the program, the exemption will remain valid.

§ 278.14 Tenant incapacity.

(a) The project owner shall provide for the serving of meals in a tenant's dwelling unit if the tenant is temporarily immobile or otherwise incapable of participating in the mandatory meals program in the central dining facility. After one month of serving meals in an incapacitated tenant's dwelling unit, a project owner shall either continue serving meals in the tenant's dwelling unit during the period of incapacity or approve a temporary exemption from the mandatory meals program.

(b) Where a tenant is permanently immobile or otherwise incapable of visiting the central dining facility, the project owner shall either continue the tenant's participation in the mandatory meals program but provide for the tenant's meals to be served in his or her dwelling unit, or approve an exemption from the mandatory meals program. (This paragraph is not intended to describe the requirements of section 504 of the Rehabilitation Act of 1973.)

(c) A tenant's use of a wheelchair, walking support, or similar equipment to enable to tenant to visit the central dining facility may not be considered as conclusive evidence of the tenant's temporary or permanent incapacity.

Subpart C—Program Management

§ 278.20 Cost management.

(a) A project's mandatory meals program shall be operated as a nonprofit operation. Project owners shall not rely on income from the meals operations to subsidize other project costs, nor use project rental income (including HUD housing assistance payments) to subsidize the cost of purchasing, preparing or serving meals. However, a project owner may contract with a commercial firm to provide meals on a for-profit basis. To qualify under this provision, the commercially provided meals shall:

(1) Be prepared and served in the central dining facility of the project, and

(2) Not exceed the average cost of comparable meals operations available to the project and in compliance with applicable State and local safety and health standards.

(b) With HUD approval, tenants may be charged a specific amount per month for partcipation in a mandatory meals program. The amount charged for mandatory meals shall be limited to the per capita cost of purchasing the food products and of preparing and serving the meals. Neither operating expenses related to equipment purchase (or replacement) or the maintenance of the central dining facility (including labor, utilities, and the maintenance of equipment) nor the project's debt service shall be included in the meal charges. However, operating expenses related to the preparation and serving of the meals may be included in the meal charges.

(c) Charges under a mandatory meals program are not rent and must be accounted for in project's accounting system as a separate revenue item. A tenant may, however, pay for both rent and meal charges with one monthly payment. In addition, project owners shall maintain separate accounting records for expenses and account balances directly related to the mandatory meals operations.

(d) A private owner may not increase charges for participation in a mandatory meals program without prior HUD approval. A request for such an increase must be submitted in writing to HUD with adequate supporting documentation, as determined by HUD.

(e) If a mandatory meals program achieves an operating surplus at the end of a project's fiscal year, the project owner must use the surplus funds—

(1) To offset operating deficits created from previous years of mandatory meals operations (including years that preceded the effective date of this part);

(2) To offset projected increases in meals charges for the next fiscal year; or

(3) To reduce meals charges for the next fiscal year.

(f) Project owners shall take action to limit the per capita cost of mandatory meals by allowing eligible tenants to pay for meal charges with food stamps (in accordance with regulations of the U.S. Department of Agriculture at 7 CFR Parts 271–278) and by participating in surplus food programs (in accordance with regulations of the U.S. Department of Agriculture at 7 CFR Part 250).

(g) Project owners may take action to limit the per capita cost of mandatory meals by sponsoring fund-raising events where State or local jurisdictions permit, and by soliciting donations from charitable organizations.

(h) No additional charge may be imposed by project owners for delivering meals to an incapacitated tenant's dwelling unit as required under § 278.14.

§ 278.22 Lease provisions.

(a) A separate contract shall be executed explaining a tenant's obligations under a project's mandatory meals program. This contract will be incorporated as part of the tenant's lease, and substantial failure by a tenant to comply with the mandatory meals agreement will be a violation of the lease and will subject the tenant to eviction procedures in accordance with the lease.

(b) The mandatory meals agreement shall specify the number of meals required, the duration of the meals agreement, and the charges for the meals, and shall be signed and executed by the tenant and the owner.

(c) Owners of HUD-assisted projects with mandatory meals programs shall revise lease agreements to implement the requirements of this part as the term of each lease comes due for renewal or not more than 12 months from the effective date of this part.

[Under Alternative A:

§ 278.24 Conversion of a meals program to a mandatory program or the establishment of a mandatory meals program in an existing project.

(a) Upon written approval by HUD, a project owner may convert an existing voluntary meals program to a mandatory program or may establish a mandatory program in a project covered under § 278.3 with no previous meals program. The request to HUD for the conversion to a mandatory meals program or for the establishment of a mandatory meals program in an existing project must be supported by documentation that:

(1) The project has a central dining facility;

(2) The tenant's nutritional needs cannot be met by alternative approaches (e.g., a "meals-on-wheels" program or a local community service center for the elderly that is located in reasonable proximity to the project); and

(3) Without a mandatory meals program, the project would not be able to sustain a meals program for tenants on an adequate financial basis.

In addition, prior HUD approval is required for the proposed monthly meals charges to tenants (see § 278.20(b)).

(b) If HUD approves the project owner's request under paragraph (a) of this section, the project owner shall comply with the cost management requirements of § 278.20.

(c) At least 30 days before any conversion takes effect, the project owner shall give notice to the project's tenants of HUD's approval of the conversion and the amount of the initial monthly meals charge that HUD has approved. At the end of the 30-day notice period, the tenant may elect whether or not to participate in the mandatory meals program for the remainder of each tenant's residency in the project.

(d) After a conversion has been approved by HUD, all new tenants may be required to agree to participate in the mandatory meals program as a condition of occupancy. This agreement must be in writing, signed by both parties, and be in conformity with the lease and meals agreement requirements under § 278.22.]

[No § 278.24 under Alternative B].

Subpart D—Enforcement

§ 278.30 Noncompliance.

Where HUD determines that a project owner has failed substantially to comply with the requirements of this part, HUD shall take appropriate action, which may include the withdrawal of the Department's approval of the project's mandatory meals program. Within 30 days after the date of HUD's notice to the project owner of the withdrawal of the Department's approval, the project owner shall notify its tenants in writing that the meals program is no longer mandatory.

Dated: September 8, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 86-20518 Filed 9-12-86; 8:45 am]

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Federal Register

Monday
September 15, 1986

Part VI

Department of Labor

Employment and Training Administraiton

Reexamination of the Purpose and Role of the Employment Service; Notice of Pubic Meetings and Request for Comments

DEPARTMENT OF LABOR

Employment and Training Administration

Reexamination of the Purpose and Role of the Employment Service; Public Meetings

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor is announcing four public meetings to be held to provide interested parties opportunities to present oral or written views to ETA on issues related to the purpose of the Employment Service, and its ability, in the future, to respond to labor market needs.

DATES: The dates of the four public meetings are as follows:

October 15, 1986: San Francisco, California
October 17, 1986: Denver, Colorado
October 21, 1986: Atlanta, Georgia
October 23, 1986: Washington, DC

Persons desiring to present oral statements at the meeting must provide the Employment and Training Administration (ETA) a notice of intent to appear, postmarked on or before October 2, 1986.

Written statements from persons not presenting oral statements must be postmarked no later than October 29, 1986.

ADDRESSES: The meetings are open to the public. The locations of the public meetings are shown below.

San Francisco—Ramada Renaissance Hotel, 55 Cyril Magnin Street, San Francisco, California 94102, 415–392–8000.

Denver—Holiday Inn Denver Downtown, 1450 Glenarm Place, Denver,Colorado 80202, 303–573–1450.

Atlanta—Georgia International Convention and Trade Center, 1902 Sullivan Road, College Park, Georgia 30337, 404–997–3566.

Washington—J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004, 202–393–2000.

Notices of intent to present oral statements must be mailed to the addresses listed below. Persons planning to come to a public meeting should call the appropriate ETA regional office, at the telephone mumber listed below, to indicate their attendance.

For the San Francisco Meeting: U.S. Department of Labor, Employment and Training Administration, 450 Golden Gate Avenue, Box 36084 (Room 9108), San Franciso, California 94102, 415–556–7414.

For the Denver Meeting: U.S. Department of Labor, Employment and Training Administration, 1961 Stout Street, Room 1668, Denver, Colorado 80294, 303–844–4477.

For the Atlanta Meeting: U.S. Department of Labor, Employment and Training Administration, 1371 Peachtree Street, NE., Room 400 Atlanta, Georgia 30367, 404–347–4411.

For the Washington Meeting: U.S. Department of Labor, Employment and Training Administration, 3535 Market Street, Room 13300, P.O. Box 8796 Philadelphia, Pennsylvania 19101, 215–596–6336.

Written statements from persons not presenting oral statements should be mailed to: Shirley Peterson, Administrator, Office of Employment Security, Employment and Training Administration, Room N4470, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Robert Schaerfl, Director, U.S. Employment Service, Employment and Training Administration, Room N4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0157.

SUPPLEMENTARY INFORMATION: Over the next few months, the principles which currently guide the Employment Serivce system will be the subject of a Department of labor review. The review will examine two basic concerns:

1. The central purposes of the Employment Service, and

2. The ability of the Employment Service to respond to the dramatic shifts in the labor force makeup and the demands these shifts will have on public labor exchange activities of the future.

The Employment and training Administration (ETA), Department of Labor will host four public meetings to provide an opportunity for interested parties to present orally or submit in writing their views to ETA on issues related to the purpose of the Employment Service and its ability, in the future, to respond to labor market needs.

The Department of Labor has identified key issues to be addressed in its reexamination of the Employment Service. This **Federal Register** notice briefly discusses each issue and requests interested parties to present their views on the issues. Respondents are also encouraged to present their views on other related issues that may not be specifically addressed by this notice.

The notice also presents a rationale for reexamination and explores the need for change, given the lack of clarity surrounding the purpose of the Employment Service and expected labor market needs of the future.

Rationale for ES Purpose and Role Change

The dedicated employees of the Employment Service share a history rich in accomplishment. Asked again and again during a 53-year history to take on new challenges, they have responded quickly and effectively. For millions of America's workers, the Employment Service provides a smooth transition from unemployment to work. For thousands of America's employers, the Employment Service provides a steady stream of qualified workers. The newest challenge is the Year 2000; and once again the Employment Service is being asked to respond to the challenge.

The particular genius of America and her public institutions has always been the ability to respond—from the 90-day wonder of Liberty Ship production in World War II to the touch down on the lunar surface in 1969. Our people and institutions have met astounding challenges.

Traditionally, it has taken a "jolt" for us to react: World War II or Sputnik. There is a new jolt afoot. It is the Year 2000. But this is an unfamiliar catalyst. It lacks the clarity of surprise attack or the visible evidence of another nation's spacecraft streaking across our sky. The signs are less obvious to the general public, but no less urgent in their importance for our country. Most of us feel them as isolated episodes:

- The slow death of regional industries
- Spreading worker dislocation
- Loss of markets to international competition
- Soaring school dropout rates and an epidemic of illiteracy
- Changes in the nature of work and the profiles of available workers

Between now and the end of the century, we may experience pervasive mismatches between workplace needs and workforce capabilities. It is a public emergency of the first order, but it is moving in slow motion. Unattended, it will jeopardize every worker and business in America. The time to encounter our nation's future is now.

Reexamination of Employment and Training Institutions

Secretary of Labor William E. Brock has launched a series of initiatives to examine the role and functions of government training and employment programs. The intent of this effort is to

lay the needs of the Year 2000 alongside our current institutions in order to identify:

- Where they are strong
- Where they are weak
- And the critical changes that must occur

The process reflects an exercise in practical, good sense management, exclusive of partisan or ideological debate. A workforce in conscious jeopardy demands no less. Resources are scarce, needs are intense, and roles are changing. America's training and employment programs must refelect our society's best efforts to position the nation's workforce and business for the future. This means a hard and honest look at our institutions followed by an agenda for action. Training and retraining programs were reassessed as part of the enactment process for the Job Training Partnership Act (JTPA). The reassessment continues as JTPA, after 4 years, is again being reviewed by the Department and by Congress. The unemployment insurance program is currently under review, particularly the area of administrative financing.

Attention is now being turned to the third major instrument of labor market policy: The Employment Service. The Employment Service can be proud of its hard work and contributions in assisting citizens and businesses. It is the nature of its future contributions which must be reexamined in light of the demands of the new century. The needs for a public presence in the business of the workforce and the workplace is not in question. The question is what kind of presence and what kind of public. Of those activities performed by the Employment Service, which will provide the best solutions for the Year 2000? Which activities best match the future needs of employers and workers?

Through this reexamination, attention is focused now on what the basic purpose and functions of a public labor exchange—currently reflected in the Wagner Peyser Act—must be. Direct labor exchange refers to the formalized process of matching workers to jobs. Components may include a job order, registration of applicants, an interview and/or test, a referral and placement. Functions currently imposed on the Employment Service by other legislation are not at issue. These responsibilities, which Congress has mandated over the years, will continue. How they are to be carried out, and by whom, will be considered when the basic purpose of a public labor exchange of the future has been charted.

The United States Employment Service

Late in the 19th century, local and State government joined charitable efforts in public concern about employment placement. Federal participation began with the Division of Information, Bureau of Immigration and Naturalization, in 1907 with 50 local placement offices as well as a procedure for employers to post notices of job vacancies at immigration ports of entry. The American genius to respond was at work.

In 1933, at the depths of the Great Depression, the Wagner-Peyser Act was passed, forging the present Federal/State Employment Service. Initially, its role was to screen and place millions of workers into federally funded public works and job creation projects. In 1935, the Social Security Act established the nation's system of Unemployment Insurance. This was combined with the Employment Service in a system of State employment security agencies (SESAs) and made registration with the Employment Service a condition of receiving unemployment benefits.

As the economy started to revive, the Employment Service shifted its efforts toward placement into private sector jobs. Mobilized and federalized during World War II to handle war labor needs, it returned to its Federal/State structure in the post-war years.

Over the next several decades, administrative and enforcement responsibilities for various Federal income transfer programs were added to the Employment Service role. In the 1960s, agency attention began to be focused upon persons experiencing difficulty in the labor market rather than on the mainstream workforce.

The Employment Service entered the 1970s and 80s a veritable Christmas tree upon which were hung a variety of special programs and emphases:

- Labor exchange duties
- Enforcement
- Compliance
- Labor market information gathering activities
- Focus upon the poor
- Focus upon the employer
- Focus upon veterans
- Focus upon the handicapped
- Responsibilities relating to alien labor certification
- Housing inspections for agricultural workers
- Focus upon trade impacted and dislocated workers

By this time, the Congress and Federal policy makers had set up new and additional training and employment programs: Job training programs (like the Comprehensive Employment and Training Act and JTPA) as well as a host of community action agencies. The Employment Service and these new institutions often served similar target groups and resources were spent by different agencies on similar activities. Coordination and cooperation among these institutions has varied significantly from one State and community to another.

Recognizing the conflicting nature of the long list of special emphases, the 1982 amendments to the Wagner-Peyser Act provided to each State more authority for setting Employment Service priorities and goals.

In 1986, the Employment Service is funded at a level of approximately $800 million and consists of over 2,000 local offices. Earnest, pulled in multiple directions, successful in episodes, and saddled with a negative public image driven by its "jack-of-all-trades" mandate, the institution stands at a critical juncture—only 14 years from the turn of the century. Can the Employment Service accommodate America's needs for the Year 2000 in its present state?

The history of the Employment Service has shown us several "themes." These tell us some reasons why the agency performs as it does. The next logical question is how does the Employment Service perform?

- *Employers and the Employment Service:* A relatively small proportion of employers use the Employment Service and it accounts for a small percentage of all placements:

—Less than 10% of all job placements are attributable to the Employment Service

—Only 9% of Employment Service job openings in Program Year 1984 (July 1, 1984—June 30, 1985) were professional, managerial, or technical

The largest volume of vacancies listed with the Employment Service are for relatively poorly paid, entry-level positions in domestic service jobs, clerical occupations and high-turnover blue collar jobs. Employers using the Employment Service most frequently include restaurants, hospitals, gas stations, personal service firms, hotels, insurance companies, and retailers.

- *Types of Applicant:* The breakout of those served by the Employment Service in Program Year 1984 (July 1, 1984—June 30, 1985) was:

—45.7% female
—31.6% minority
—25.3% under 22 years of age
—12.7% veterans
—3.8% dislocated workers
—3.4% handicapped

• *Applicant Labor Exchange Services:* The labor market has about 116 million workers. The majority of job matching does not involve any intermediary institutions, but instead is achieved by jobseekers applying directly to firms. Only one third of jobseekers use public or private agencies. Fifteen million people completed an Employment Service application in Program Year 1984 (July 1, 1984—June 30, 1985):

—About 7 million of these applicants were referred to a job
—About 3 million applicants were hired in unsubsidized jobs
—Most of the jobs in which they were placed were entry level
—The average wage for individuals placed was $4.46

• *Applicant Services Other Than Job Placement:* Of the 15 million people who completed an Employment Service application in Program Year 1984 (July 1, 1984—June 30, 1985), about:

—9% received supportive services, such as referral to health, transportation or day care services
—4% were tested
—4% were counselled
—2% received job search training
—1% were referred to training

The percentages are not additive since an individual could have received several or all of the above services.

Employment Service Funding: Principal funding for the operation of the Employment Service comes as part of a payroll tax collected under the Federal Unemployment Tax Act (FUTA) which goes into a trust fund called the Employment Security Administration Account. This is allocated among States on the basis of civilian labor force and unemployed individuals. In Program Year 1986 (July 1, 1986—June 30, 1987), the basic exchange activities for the Employment Service were funded for $758,135,000. An additional $31,400,000 was allocated to States as reimbursement for national activities conducted by the Employment Service.

Is today's Employment Service ready for tomorrow's labor market?

The Year 2000

Despite the American ability to react creatively on short notice, we also have the capacity to identify many problems years before they are upon us and to take measures to alleviate or avoid them altogether.

Shortly after his appointment as Assistant Secretary, Roger Semerad launched a major study of trends in the work force through the year 2000. Several of these trends, listed below, are of critical importance in assessing the future role of a public labor exchange in the U.S. job market.

The Workplace

• The rapid pace of job creation in the United States will continue through the end of the century. As a result of slower labor force growth, there may be tighter labor markets and—potentially—skill shortages.

• Employment expansion will be accompanied by rapid changes in the nature and composition of jobs, as existing industries and firms adapt and new enterprises emerge in response to new technologies and the pressure of foreign competition.

• As a result of this accelerated rate of change, the culture of the American work place will be profoundly affected: Workers will change jobs five or six times during a normal worklife.

• Also, as a result of these technological and competitive pressures, many new and existing jobs will require higher levels of analytic, quantitative and verbal skills.

• These trends will have a significant geographic dimension. While most additional jobs through the year 2000 will be in large, established metropolitan areas, the highest rates of job growth will be in smaller, developing urban areas, largely in the sun-belt. Labor supply and demand are likely to be in imbalance in many areas.

The Work Force

• There will be a slowdown in the growth of the work force over the next 15 years; the rates of increase will be slower than at any time since the 1930s.

• The pool of young workers entering the labor market will shrink—declining both relatively and absolutely.

• However, the proportion of the youth labor force that is minority will increase substantially.

• Women will account for two—thirds of labor force growth.

• Immigrants will represent the largest share of the increase in population and work force since the first World War.

• Thus, most labor force growth through the year 2000 will come from sectors in the population—women, minorities, immigrants—which have traditionally been underutilized and suffer from labor market problems.

• In addition, it is likely that workers who are premanently dislocated, with obsolete skills, will increase well above the current 1.5 million level.

A Public Labor Exchange in the Year 2000

As a result of the convergence of these trends by the year 2000, the labor market and work place of the future will be substantially different from what we have today. Moreover, the Nation faces the grave possibility of a mismatch between the demands of employers and the capacity of the available work force to meet these demands. This critical mismatch reflects a clear and present danger. No sector of the American economy can afford a growing underclass that cannot qualify for or keep jobs or a growing pool of experienced displaced workers who, because of structural or other factors, are ill—equipped for reemployment.

The public labor exchange of the future must have the capacity to adapt to these emerging challenges of the labor market of the year 2000. Specifically,

• A public labor exchange should have the flexibility which will be required to effectively meet the rapidly changing requirements of employers in the labor market of the future.

• It must be capable of adapting to anticipated major geographic shifts in employment growth.

• It must be a position to play an effective role in achieving a match between the types of workers who will be entering the work force of the future and the emerging demands of employers for more adaptable, more literate, more highly motivated workers.

• In general, the public labor exchange's role and organizational configuration should enable it to facilitate the operation of the labor market of the year 2000.

Key Issues in the Review of the Employment Service

These challenges to the public labor exchange of the future, posed by labor market trends through the year 2000, raise five key issues which will provide the basis for this review of the Employment Service:

1. Does the labor market of the future require a public labor exchange?

2. If so, what public labor exchange services would be most effective in addressing the future needs of the labor market?

3. Which groups in the work force should receive public labor exchange services or should the work force as a whole receive such services?

4. What roles should be played by the Federal, State and local governments and the private sector in the administration of public labor exchange activities?

5. What should be the nature of the relationship between the public labor exchange system,the Unemployment Insurance system, the Job Training Partnership Act system, and other State

economic development and human resource programs?

The following summary of issues and questions is not exhaustive and is not prioritized. It is presented to begin a process for hearing the public's views on a public labor exchange.

1. Does the labor market of the future require a public labor exchange?

Proponents of a public role in the labor exchange process argue that it contributes to an improved economy by reducing frictional unemployment and performs an equity function by placing in jobs those individuals who might otherwise remain unemployed. Others question whether we really need an expensive public system through which less than 10 percent of the nation's job openings are filled. This issue must be considered within the context of the labor markets of the future: Many agree that we face possible labor shortages by the Year 2000 which may require better matching of workers and jobs.

a. Will the market place of the future adjust to the emerging challenges without a public labor exchange intervention?

b. If certain labor exchange services are essential to the smooth functioning of the labor market are they best performed by a public labor exchange agency?

c. Is there a better way to meet the needs of the future labor force than traditional labor exchange activities?

2. What public labor exchange services would be most effective in addressing the future needs of the labor market?

Services which could be provided by any labor market intermediary might include:

- Direct placement activities
- Individualized job development
- Intake, assessment, and referral to training opportunities or jobs
- Testing
- Specialized recruitment for employers
- Preliminary screening of applicants for employer job orders
- Technical employer services, such as occupational analysis
- Community labor market information and occupational information
- Job search training

This list is far from complete. Which of these services, or others, provide the most affordable and efficient public response to the expected changes in our workforce and workplace?

a. Should direct referral to jobs be a publicly-funded service?

b. Should a public labor exchange of the future act as a community intake, assessment, and referral arm for a consolidated human resource delivery system including JTPA and other programs?

c. Should public labor exchange activities in the future be exclusively focused on production and dissemination of community and State labor market and occupational information?

3. Which groups in the workforce should receive public labor exchange services or should the workforce as a whole receive such services?

Some argue that public labor exchange services should be available to all job applicants. Others argue that in a time of diminshing resources, service should be limited to those traditionally most in need. Still others suggest that the labor market needs of the future require priority attention to those who will be facing the most severe difficulties.

In any case, the debt that this nation owes its veterans is strongly imbedded in both legislation and in the mandate to provide priority employment related services to veterans. Groups which are mandated by law to receive priority or special services will continue to receive them in the spirit and letter of the law.

a. Should public labor exchange service be available to all job applicants?

b. Should specific functions, such as labor exchange, labor market information, and job search training be provided to designated groups only?

c. Should labor exchange services of the future serve only the job ready?

d. Should labor exchange functions only be provided in designated areas such as:

—Enterprise zones?
—High unemployment zones?
—Areas of private business expansion?

e. Should each State and local area have the discretion to determine who is best served by public labor exchange activities?

4. What roles should be played by the Federal, States and local governments and the private sector in the administration of public labor exchange activities?

The process of providing maximum local flexibility to meet local needs is likely to continue. It is generally recognized that future labor market problems will require diverse approaches in different locations and for different industries and groups.

a. Should the States have full discretion to deliver the mix of services which will comprise their public labor exchange system?

b. Should governors have the authority to further delegate the authority for public exchange services to local governments?

c. What could the private sector do to facilitate the operation of the overall labor market within the community?

5. What should be the nature of the relationship between the public labor exchange system, the Unemployment Insurance system, and Job Training Partnership Act system, and other State economic development and human resource programs?

Currently several labor market deliverers such as vocational education, JTPA, the Employment Service, all serve similar, and in some cases, the same clients with the same range of services. To complicate matters, a layer of community based organization, and even their subcontractors, offer similar intake, assessment, interview, labor market information, and placement services.

a. Should State have the discretion to determine the extent of coordination of separate systems, including consolidation of the Employment Service and JTPA?

b. Should specific relationships and nonduplicative functions be defined by regulation or legislation?

c. Should joint planning among human service program deliverers be strengthened or more clearly defined?

Notice of Public Meetings

To explore fully the above issues, and any other Employment Service issues which interested parties may wish to raise, ETA is conducting a series of four public meetings.

Locations and Dates

The meeting locations and dates are as follows:

October 15, 1986: San Francisco, California
October 17, 1986: Denver Colorado
October 21, 1986: Atlanta, Georgia
October 23, 1986: Washington, DC

The meetings will commence at 9:00 a.m. and adjourn at 4:00 p.m. There will be a one-hour break for lunch (12:00 p.m.–1:00 p.m.). The meetings are open to the public. The locations of the public meetings are shown below:

San Francisco—Ramada Renaissance Hotel, 55 Cyril Magnin Street, San Francisco, California. Telephone: 415–392–8000.

Denver—Holiday Inn Denver Downtown, 1450 Glenarm Place, Denver, Colorado 80202, Telephone: 303–573–1450.

Atlanta—Georgia International Convention and Trade Center, 1902 Sullivan Road, College Park, Georgia, 30337, Telephone: 404–997–3566.

Washington—J.W. Marriott Hotel, 1331 Pennsylvania Avenue NW., Washington, DC 20004, Telephone: 202–393–2000.

Participation of Interested Parties

An opportunity to present oral statements concerning the issues raised above will be provided at these public meetings. Notices of intent to present oral statements, postmarked on or before October 2, 1986, must be mailed to the following addresses:

For the San Francisco Meeting: U.S. Department of Labor, Employment and Training Administration, 450 Golden Gate Avenue, Box 36084 (Room 9108), San Francisco, California 94102.

For the Denver Meeting: U.S. Department of Labor, Employment and Training Administration, 1961 Stout Street, Room 1668, Denver, Colorado 80294.

For the Atlanta Meeting: U.S. Department of Labor, Employment and Training Administration, 1371 Peachtree Street, NE., Room 400, Atlanta, Georgia 30367.

For the Washington meeting: U.S. Department of Labor, Employment and Training Administration, 3535 Market Street, Room 13300, P.O. Box 8796, Philadelphia, Pennsylvania 19101.

The notice of intent to present oral comments must contain the following information:

(1) The name, address, and telephone number of each person to appear:

(2) The capacity in which the person will appear:

(3) The approximate amount of time required for the presentation; and

(4) The issues that will be addressed.

This information is necessary to properly schedule persons presenting oral statements. The amount of time requested for each presentation will be reviewed in light of the number of persons or groups wishing to appear and will affect the time limitations of the meetings' schedules. In some cases, the time requested will be modified. To provide all interested parties an opportunity to present their views at the public meetings, the Employment and Training Administration may impose an appropriate time restriction for each presentation or limit presentations to only one person for an organization or interest group.

An audiotape may be made of each meeting, and the proceedings may be transcribed.

Since this is a continuous series of meetings, material submitted at one meeting should not be submitted again at another site.

Meeting Procedures and Objectives

A Department of Labor official (or officials) will preside at each of the four meetings. The presiding official shall:

(1) Regulate the course of the meetings, including the order of appearance of persons presenting oral statements;

(2) Dispose of procedural requests and comparable matters; and

(3) Confine the oral presentations to matters pertinent to the purpose of the Employment Service and its role in serving the expected labor market needs of the future.

Signed at Washington, DC, this 9th day of September 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–20711 Filed 9–12–86; 8:45 am]

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[2] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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