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Monday
December 1, 1986

Briefings on How To Use the Federal Register—
For information on briefings in New York, NY, and Pittsburgh, PA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.,

WHERE: Room 305A, 26 Federal Plaza, New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212-264-4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-INFO
Philadelphia: 215-597-1707, 1709

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Presidential Documents

Title 3—

The President

Proclamation 5579 of November 26, 1986

National Farm-City Week, 1986

By the President of the United States of America

A Proclamation

American agriculture is the most productive in the world. Our Nation's consumers have the broadest selection of nutritious and healthful food in the world, and we purchase our food for only around 15 percent of after-tax income. Because we are most grateful for this abundance and we share it gladly with other lands, we lead in providing food aid programs around the world. In addition, we are a huge commercial exporter and dependable supplier of food and fiber.

Our Nation and the world owe many thanks for this bounty to American farmers, whose dedication, enterprise, hard work, and good management are models of modern productivity. One American farm worker supplies food and fiber for 75 people, 60 here in the United States and 15 overseas.

We also owe thanks to our farmers' partners in our agricultural system—the rural townspeople and the city workers who maintain a pipeline of production supplies to farms. We are grateful as well to the truckers, shippers, processors, warehousers, retailers, and others in our chain of marketing distributors.

Each year at Thanksgiving time, our Nation pauses for Farm-City Week activities to recognize the enterprise that makes this bountiful agricultural harvest possible through the blessings of our Creator.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 21 through November 27, 1986, as National Farm-City Week. I call upon all Americans, in rural areas and in cities alike, to join in recognizing the accomplishments of our productive farmers and of our urban residents cooperating to create abundance, wealth, and strength for the Nation.

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

Ronald Reagan

[FR Doc. 86-27110
Filed 11-28-86; 10:32 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 636]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 636 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period November 28 through December 4, 1986. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 636 (§ 907.936) is effective for the period November 28 through December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee met publicly on November 25, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 6 to 5, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that demand has improved.

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

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

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

2. Section 907.936 Navel Orange Regulation 636 is hereby added to read:

§ 907.936 Navel Orange Regulation 636.

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 28 through December 4, 1986, are established as follows:

(a) *District 1:* 1,600,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons;

Dated: November 26, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–27079 Filed 11–28–86; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 537]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 537 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 270,000 cartons during the period November 30 through December 6, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 537 (§ 910.837) is effective for the period November 30 through December 6, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant

economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on November 25, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 9 to 3, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that demand remains weak for larger sizes of lemons and has improved somewhat for smaller sizes.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.837 is added to read as follows:

§ 910.837 Lemon Regulation 537.

The quantity of lemons grown in California and Arizona which may be handled during the period November 30 through December 6, 1986, is established at 270,000 cartons.

Dated: November 26, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–27080 Filed 11–28–86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86–106]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of 12 counties in the State of Florida and 12 counties in the State of Texas from Class C to Class B. This action is necessary because it has been determined that these counties meet the standards for Class B status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from certain counties in the States of Florida and Texas.

DATES: Effective date of the interim rule is December 1, 1986. We will consider your comments if we receive them on or before January 30, 1987.

ADDRESSES: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86–106. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan D. Huber, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5965.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. The States of Florida and Texas are divided into Class B Areas and Class C Areas. Before the effective date of this document the following counties in Florida and Texas were included in portions of Florida and Texas designated as Class C: In Florida—Levy, Marion, Citrus, Pinellas, Orange, Flagler, Volusia, Seminole, Lake, Sumter, Hernando, and Pasco; in Texas—Frio, Denton, Grayson, Dimmit, Bastrop, Caldwell, Guadalupe, Lee, Milam, Falls, Gonzales, and Wilson. This document amends the regulations to include these counties in the portions of Florida and Texas designated as Class B.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Class A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive months herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high

risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Before the effective date of this document, Levy, Marion, Citrus, Pinellas, Orange, Flagler, Volusia, Seminole, Lake, Sumter, Hernando, and Pasco Counties in Florida; and Frio, Denton, Grayson, Dimmit, Bastrop, Caldwell, Guadalupe, Lee, Milam, Falls, Gonzales, and Wilson Counties in Texas were classified as Class C. It had been necessary to classify these counties as Class C rather than Class B because of the herd infection rate and the MCI reactor prevalence rate. To attain and maintain Class B status, a State or Area must, among other things, maintain an accumulated 12-month herd infection rate for brucellosis not to exceed 15 herds per 1,000 (1.5 percent) if the State has more than 1,000 herds, and the adjusted MCI reactor prevalence rate for such 12-month period must not exceed 3 reactors per 1,000 cattle tested (0.30 percent). A review of brucellosis program records establishes that the portion of Florida encompassing Levy, Marion, Citrus, Pinellas, Orange, Flagler, Volusia, Seminole, Lake, Sumter, Hernando, and Pasco Counties; and the portion of Texas encompassing Frio, Denton, Grayson, Dimmit, Bastrop, Caldwell, Guadalupe, Lee, Milam, Falls, Gonzales, and Wilson Counties should be changed to Class B, since these counties in the States of Florida and Texas now meet the criteria for classification as Class B.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of a portion of the States of Florida and Texas reduces certain testing and other requirements on the interstate movement of these cattle. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate or not affected by these changes in status. It has been determined that the changes in brucellosis status made by this document will not affect market patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from areas in Florida and Texas.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.20, paragraph (c), the listing for "Florida" is revised to read as follows:

§ 78.20 State/area classifications.

* * * * *

(c) * * * Florida (Counties of Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lafayette, Lake, Liberty, Leon, Levy, Madison, Marion, Nassau, Okaloosa, Orange, Pasco, Pinellas, Putnam, Saint Johns, Santa Rosa, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington). * * *

3. In § 78.20, paragraph (c), the listing for "Texas" is revised to read as follows:

(c) * * * Texas (Counties of Andrews, Archer, Armstrong, Bailey, Bandera, Bastrop, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Caldwell, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Denton, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, El Paso, Erath, Falls, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Gonzales, Gray, Grayson, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lee, Lipscomb, Llano, Loving, Lubbock, Lynn, McCullock, Martin, Mason, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Sterling, Stephens, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrel, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Wheeler, Witchita, Wilbarger, Williamson, Wilson, Winkler, Wise, Yoakum, Young and Zavala).

* * * * *

4. In § 78.20, paragraph (d), the listing for "Florida" is amended by removing the following counties: Citrus, Flagler,

Hernando, Lake, Levy, Marion, Orange, Pasco, Pinellas, Seminole, Sumter, and Volusia.

5. In § 78.20, paragraph (d), the listing for "Texas" is amended by removing the following counties: Bastrop, Caldwell, Denton, Dimmit, Falls, Frio, Gonzales, Grayson, Guadalupe, Lee, Milam, and Wilson.

Done in Washington, DC, this 25th day of November 1986.

B.G. Johnson,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86-26936 Filed 11-28-86; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 92

[Docket No. 86-031]

Importation of Poultry Hatching Eggs

AGENCY: Animal and Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the import regulations for poultry by deleting the quarantine requirements for poultry eggs for hatching that are imported into the United States from countries designated as free of viscerotropic velogenic Newcastle disease (VVND). This action is warranted since it has been determined that poultry eggs for hatching that are imported from VVND-free countries and are accompanied by a certificate pursuant to the regulations, and the poultry from such eggs, will not present a risk of introducing communicable diseases of poultry, including VVND, into the United States. This document also clarifies the period of quarantine for certain poultry eggs for hatching and the poultry therefrom by providing that poultry eggs for hatching that are imported from any country not designated as VVND-free be quarantined from time of arrival at the port of entry and that the poultry from such eggs be quarantined for not less than 30 days following hatch. This document also changes language in the regulations concerning such quarantine provisions to reflect more closely the language of the statutory authority for such provisions..

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. S.S. Richeson, Chief Staff Veterinarian, Import-Export Operations Staff, VS, APHIS, USDA, Room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8144.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations), contain, among other things, requirements for importing poultry into the United States. Prior to the effective date of this final rule, § 92.11(c) of the regulations required all poultry, including eggs for hatching, imported from any part of the world except Canada to be quarantined for not less than 30 days and to be subjected during this time to certain inspections, disinfections, and tests. The purpose of these requirements was to help protect the poultry industry of the United States from viscerotropic velogenic Newcastle disease (VVND) and other communicable diseases of poultry.

The regulations also contain inspection and certification requirements for poultry eggs for hatching and set forth conditions under which import permits for such eggs will be granted or denied.

A document published in the **Federal Register** on November 5, 1985 (50 FR 45918-45919), proposed to amend the import regulations for poultry by deleting the quarantine requirement for poultry eggs for hatching that are imported into the United States from countries designated in 9 CFR 94.6(a)(2) as VVND-free. The document also proposed to clarify the period of quarantine for certain poultry eggs for hatching and the poultry therefrom by providing that poultry eggs for hatching that are imported from any country not designated as VVND-free be quarantined from time of arrival at the port of entry and that the poultry from such eggs be quarantined for not less than 30 days following hatch. The document also proposed to change language in the regulations concerning such quarantine provisions to reflect more closely the language of the statutory authority for such provisions.

The document of November 5, 1985, invited the submission of written comments on or before January 6, 1986. A document published in the **Federal Register** on January 7, 1986 (51 FR 613) extended the comment period until March 7, 1986, to provide industry representatives and other interested persons adequate time in which to prepare comments. Thirty-three comments were received. These comments were from representatives of the poultry industry, a State governor, a State commissioner of agriculture, and a member of Congress. Eight comments supported the proposal. The others objected to the proposed deletion of quarantine requirements for poultry eggs for hatching that are imported from countries designated as VVND-free. These objections are discussed below.

Based on the rationale contained in the proposal and this document, the regulations are amended as proposed.

The effect of this rule is to relieve certain restrictions on poultry eggs for hatching that are imported into the United States from countries designated as free from VVND.

Effective Date

This final rule is made effective on the date of publication. The final rule relieves certain restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete these restrictions.

Comments

Commenters opposed deleting the quarantine requirement for poultry eggs for hatching that are imported into the United States from countries designated as VVND-free based on the premise that such eggs would present an unacceptable risk of disseminating diseases other than VVND into the United States.

In this connection, most of the commenters asserted that quarantine should be required for all poultry eggs for hatching that are imported into the United States. This assertion was based on one or more of the following premises: Transovarially transmitted diseases would not be detected until after hatch; "previously unrecognized diseases" and "emerging diseases" might escape detection prior to importation; and some diseases may not be eliminated by egg shell sanitation.

In addition, one commenter asserted that the quarantine should be lifted only for those poultry eggs for hatching that are imported from VVND-free countries for use as parent or grandparent breeder stock and raised to maturity under veterinary supervision.

No changes are made based on these comments.

Most poultry eggs for hatching that are imported into the United States originate in Canada and are exempt from quarantine. Further, as explained in the proposal and this document, poultry eggs for hatching which originate in countries other than Canada are imported for flock improvement projects, such as improving blood lines, in other words, for use as parent or grandparent breeder stock. Further, it is standard practice for breeder industries to protect their flocks by retaining the services of veterinarians. However, even if poultry eggs for hatching were imported for marketing as broilers, any disease risk from such eggs would be

insignificant because of the requirements which must be met before poultry hatching eggs may leave the country of origin for the United States.

The deletion by this final rule of the quarantine requirement for poultry eggs for hatching that are imported into the United States from countries designated as VVND-free does not allow such eggs to enter the United States without restrictions.

The regulations require, among other things, that a health certificate for the flock or flocks of origin of all poultry eggs for hatching imported into the United States accompany the eggs to a port of entry in the United States.

Section 92.5(b) states, in part:

> All eggs for hatching offered for importation from any part of the world, shall be accompanied by a certificate of a salaried veterinary officer of the national government of the country of origin stating that the flock or flocks of origin were found upon inspection to be free from evidence of communicable diseases of poultry, that no Newcastle disease has occurred on the premises of origin or on adjoining premises during the 90 days immediately preceding the date of movement of the eggs from such country, and that as far as it has been possible to determine such flock or flocks were not exposed to such disease during the preceding 90 days.

In addition, the regulations require importers of poultry eggs for hatching to first apply for and obtain an import permit from Veterinary Services. Section 92.4(a) states, among other things, that such import permits may be denied for any of the following reasons:

> Communicable disease conditions in the area or country of origin, or in a country where the shipment has been or will be held or through which the shipment has been or will be transported; deficiencies in the regulatory programs for the control or eradication of animal diseases and the unavailability of veterinary services in the above mentioned countries; the importer's failure to provide satisfactory evidence concerning the origin, history, and health status of the animals or animal semen; the lack of satisfactory information necessary to determine that the importation will not be likely to transmit any communicable disease to livestock or poultry of the United States; or any other circumstances which the Deputy Administrator believes require such denial to prevent the dissemination of any communicable disease of livestock or poultry into the United States.

It has been determined that the requirements for health certificates and import permits are adequate to ensure that poultry eggs for hatching that are imported into the United States from countries designated as VVND-free will not present a significant risk of disseminating communicable poultry diseases—including those types of diseases mentioned by the commenters—into the United States.

Transovarially transmitted diseases, for example, are transmitted from the mother hen to the embryo. Although such diseases may not be detected in the egg until after hatch, they would be detectable in the flock or flocks of origin, resulting in denial of the required health certificate and import permit.

The comment concerning "previously unrecognized diseases" and "emerging diseases" apparently refers to new, previously undefined, diseases and fresh outbreaks of diseases. Outbreaks of most virulent or highly contagious diseases of poultry are quickly and easily detected. Inspections for health certification include testing for certain hard-to-detect diseases such as pullorum typhoid and egg drop syndrome-76. The discovery of any previously undefined poultry disease in any country would be cause under § 92.4(a) for Veterinary Services to deny import permits for affected poultry, including poultry hatching eggs, from that country until sufficient information became available to determine that poultry from that country could be safely imported. If special safeguards appeared necessary, additional regulations would be developed to prevent the dissemination into the United States of any new disease.

Further, Veterinary Services does not rely on egg shell sanitation to prevent the dissemination of communicable poultry diseases. Rather, as stated above, it has been determined that the requirements for health certification of any flock or flocks of origin, combined with the precautions observed in issuing import permits, are adequate to ensure that poultry eggs for hatching imported into the United States from countries designated as VVND-free to not present a significant disease risk.

Miscellaneous

Four nonsubstantive changes have been made: one to conform a cross reference to the style now required by the Office of the **Federal Register**; the others to eliminate redundant language.

Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not 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.

Consideration was given concerning whether (1) to continue to impose the quarantine requirement for poultry eggs for hatching imported from countries designated as free of VVND, and the poultry from such eggs, or (2) to delete the quarantine requirement. Alternative 2 is adopted because it appears that poultry eggs for hatching accompanied by a certificate pursuant to the regulations, that are imported from VVND-free countries, and the poultry from such imported eggs, will not present a risk of introducing communicable diseases of poultry into the United States.

Most of the poultry eggs for hatching imported into the United States come from Canada. This document has no effect on the importation of poultry eggs for hatching from Canada because poultry imported from Canada is exempt from the quarantine requirement. Poultry eggs for hatching from countries other than Canada are imported in limited numbers for use in flock improvement projects, such as improving blood lines. These eggs are imported both from some of the VVND-free countries, such as Denmark, Great Britain, Iceland, Northern Ireland, and the Republic of Ireland, as well as from countries not designated as VVND-free, mainly Holland, France, and Germany. Although the elimination of the quarantine requirement will facilitate the entry of poultry eggs for hatching from those VVND-free countries that export these eggs to the United States, no significant change in the supply of or demand for poultry eggs for hatching imported into the United States from these countries is anticipated.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (c) of § 92.11 is revised to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(c) *Poultry.* (1) Poultry, other than eggs for hatching, imported, except as provided in § 92.26 of this part, shall be quarantined for not less than 30 days, counting from the date of arrival at the port of entry. During their quarantine, such poultry shall be subject to any inspections, disinfections, and tests as may be required by the Deputy Administrator, Veterinary Services, to determine their freedom from communicable diseases of poultry, and their freedom from exposure to such diseases.

(2) Poultry eggs for hatching imported, except from countries designated in § 94.6(a)(2) of this chapter as free of viscerotropic velogenic Newcastle disease, shall be quarantined from time of arrival at the port of entry until hatched and the poultry from such eggs shall remain quarantined for not less than 30 days following hatch. During their quarantine, such eggs for hatching and poultry from such eggs shall be subject to any inspections, disinfections, and tests as may be required by the Deputy Administrator, Veterinary Services, to determine their freedom from communicable diseases of poultry.

* * * * *

Done at Washington, DC, this 25th day of November 1986.

B.G. Johnson,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-26939 Filed 11-28-86; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 94

[Docket No. 86-081]

Importation of Meat of Ruminants and Swine and Animal Products From Northern Ireland

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that imposed additional restrictions on the importation of meat from ruminants and swine, and certain other animal products, from Northern Ireland. The restrictions are necessary to prevent rinderpest and foot-and-mouth disease from being introduced into the United States.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import-Export Animals and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 prohibit or restrict the importation of certain animals and animal products to prevent various diseases, including rinderpest and foot-and-mouth disease, from being introduced into the United States. Rinderpest and foot-and-mouth disease are dangerous and destructive communicable diseases of ruminants and swine.

Northern Ireland is included in § 94.1(a)(2) in the list of countries declared free from rinderpest and foot-and-mouth disease. We place minimal restrictions on the importation of meat and other animal products from these countries.

By an interim rule published in the **Federal Register** on July 1, 1986 [51 FR 23730–23731], we amended § 94.11 by adding Northern Ireland to the list of countries that are free from rinderpest and foot-and-mouth disease but subject to additional restrictions because of these diseases. These restrictions are necessary because meat and other animal products produced in these countries may be contaminated by infected animals and animal products from countries where rinderpest or foot-and-mouth disease exists. Northern Ireland imports fresh, chilled, or frozen beef and pork from countries where rinderpest or foot-and-mouth disease exists and also imports live animals from these countries under conditions less restrictive than would be acceptable for importation into the United States.

The interim rule was effective on the date of publication in the **Federal Register**, and comments were solicited for 60 days ending September 2, 1986. No comments were received. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The United States receives less than 1 percent of its imports of fresh, chilled, or frozen meat of ruminants and swine from Northern Ireland.

Under these circumstances, the administrator of the Animal and Plant Health Inspection Service has determined that this action will not have significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under N. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 94

African Swine Fever, Animal diseases, Foot-and-mouth Disease, Garbage, Hog Cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Rinderpest, Swine Vesicular Disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 94 and that was published at 51 FR 23730–23731 on July 1, 1986.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 25th day of November, 1986.

B. G. Johnson,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86-26940 Filed 11-28-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0585]

Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions): (1) To increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(C)), from $31.7 million to $36.7 million of net transaction accounts; (2) to increase the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent, as required by section 19(b)(11)(B) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)), from $2.6 million to $2.9 million of reservable liabilities; and (3) to increase the reporting cutoff level which is used to separate weekly reporters from quarterly reporters from $26.8 million to $28.6 million of total deposits and other reservable liabilities.

EFFECTIVE DATE: December 30, 1986.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452–3778), Legal Division, or Paul O'Brien, Economist (202/452–3589), Division of Research and Statistics; for users of the Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act requires each depository institution to maintain with the Federal Reserve System reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for each depository institution's total transaction accounts of $25 million or less and at 12 percent on total transaction accounts above $25 million. Section 19(b)(2) further provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in total transaction accounts for all depository institutions determined as of June 30 of each year.

Currently, the amount of the low reserve tranche on transaction accounts is $31.7 million. The growth in the total net transaction accounts of all depository institutions from June 30, 1985, to June 30, 1986, was 19.6 percent (from $427.2 billion to $510.8 billion). In accordance with section 19(b)(2), the Board is amending Regulation D to increase the amount of the low reserve tranche for transaction accounts for 1986 by $5.0 million to $36.7 million.

Section 19(b)(11)(A) of the Federal Reserve Act provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (*i.e.*, transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. The change in the amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the percentage increase in total reservable liabilities of all depository institutions determined as of June 30 each year. The growth in total reservable liabilities of all depository institutions from June 30, 1985, to June 30, 1986, was 13.6 percent (from $928.0 billion to $1,054.3 billion). In accordance with section 19(b)(11), the Board is amending Regulation D to increase the amount of the reserve requirement exemption for 1987 by $0.3 million to $2.9 million.

As a result, the effect of these amendments is to modify the low reserve tranche (which is $36.7 million, effective December 30, 1986) to apply a zero percent reserve requirement on the first $2.9 million of transaction accounts (effective January 1, 1987) and a three percent reserve requirement on the remainder of the low reserve tranche. Any amount of this zero percent reserve requirement tranche remaining after applying it to transaction accounts will then be applied to nonpersonal time deposits with maturities of less than 1½ years or to Eurocurrency liabilities, both of which are subject to a reserve requirement ratio of three percent.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective starting with the reserve computation period beginning on December 30, 1986, and with the corresponding reserve maintenance periods beginning January 1, 1987, for net transaction accounts, and on January 29, 1987, for other reservable liabilities. For institutions that report quarterly, the tranche adjustment and the exemption will be effective with the computation period beginning on December 16, 1986, and with the reserve maintenance period beginning January 15, 1987. In addition, all entities currently submitting Form FR 2900 will continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board established a deposit reporting cutoff level (currently $26.8 million in total deposits and other reservable liabilities) to determine deposit reporting frequency. In March of 1985, the Board decided to index this reporting cutoff level equal to 80 percent of the annual rate of increase of total deposits and

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act.

other reservable liabilities.[2] Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, and all other institutions with reservable liabilities in excess of the exemption level amount prescribed by section 19(b)(11) of the Federal Reserve Act and with at least $26.8 million in total deposits and other reservable liabilities are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (Form FR 2900). Depository institutions with reservable liabilities in excess of the exemption level amount but with total deposits and other reservable liabilities less than $26.8 million may file the Form FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (Form FR 2950) on the same frequency. The reporting cutoff level is also used to determine whether an institution with reservable liabilities at or below the exemption level amount must file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (Form FR 2910q) or the Annual Report of Total Deposits and Reservable Liabilities (Form FR 2910a).

From June 30, 1985, to June 30, 1986, total deposits and other reservable liabilities grew 8.1 percent, from $2.87 trillion to $3.11 trillion. This results in an increase in the cutoff level distinguishing weekly from quarterly reporters of $1.8 million from the current $26.8 million to $28.6 million. Based on the indexation of the reserve requirement exemption, the cutoff level for total deposits and other reservable liabilities above which reports of deposits must be filed rises $0.3 million to $2.9 million. Institutions with total deposits and other reservable liabilities below $2.9 million are excused from reporting if their deposits can be estimated from other sources. The $28.6 million cutoff level for weekly reporters and the $2.9 million level threshhold for reporting will be used in the second quarter 1987 deposits report screening process to identify weekly and quarterly reporters and the adjustments will be made when the new deposit reporting panels are implemented in September 1987.

Finally, the Board may require a depository institution to report on a weekly basis regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board believes that notice and public participation is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, banking; Currency; Federal Reserve System; Penalties and reporting requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for Part 204 is revised to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn St-Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. In § 204.9 paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
$0 to $36.7 million	3 percent of amount.
Over $36.7 million	$1,101,000 plus 12% of amount over $36.7 million.
Nonpersonal time deposits by original maturity (or notice period):	
Less than 1½ years	3 percent.
1½ years or more	0 percent.
Eurocurrency liabilities	3 percent.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or Agreement Corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section, nonpersonal time deposits, or Eurocurrency liabilities or any combination thereof not in excess of $2.9 million determined in accordance with § 204.3(a)(3) of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 24, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26885 Filed 11-28-86; 8:45 am]

BILLING CODE 6210-01-M

[2] Total deposits and other reservable liabilities is the sum of gross transaction deposits, savings accounts, and time deposits plus the sum of reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-34-AD; Amdt. 39-5472]

Airworthiness Directives; British Aerospace Models HP-137 MK 1, Jetstream 200 and 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to British Aerospace Models HP-137 MK 1 Series, Jetstream 200 Series, and certain Jetstream 3101 Series airplanes which requires inspection of the nut securing the special stud located on the aileron drive quadrant at the

wing root end for tightness, security and locking, and correction thereof as necessary. A report has been received of inadequate peening of this special stud. This situation, if not detected and corrected, may result in vibration being felt through the aileron controls or restriction or jamming of the ailerons and loss of control of the airplane.

EFFECTIVE DATE: January 2, 1987.

Compliance: Required within 600 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

ADDRESSES: British Aerospace Mandatory Service Bulletin (S/B) BAe 27-JM-5257, dated June 6, 1986, applicable to this AD may be obtained from British Aerospace PLC., Manager, Product Support Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Harvey A. Chimerine, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (316) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a visual inspection using a suitable light source and an inspection mirror of the special stud and nut for tightness, security and correct locking on certain British Aerospace (BAe) Models HP-137 MK 1 and Jetstream 200 Series (all serial numbers), and Model Jetstream 3101 (S/N 601-633, 635-646 and 648-654 inclusive) airplanes was published in the **Federal Register** on August 22, 1986 (51 FR 30074). The proposal resulted from an incident that occurred on a BAe Jetstream type airplane which was caused by a loosening of the nut (BAe P/N A103-JT) securing the special stud (BAe P/N 13705E29) located on the aileron drive quadrant at the wing root end. The manufacturer has determined that the cause of this problem is due to inadequate peening of the special stud. This looseness may result in vibrations being felt through the aileron controls or can possibly cause restriction in aileron control and jamming. Consequently, British Aerospace issued British Aerospace Mandatory S/B BAe 27-JM-5257, dated June 6, 1986, which requires a visual inspection of the nut securing the special stud located on the aileron drive quadrant at the wing root end for tightness, security and locking, and correction thereof as necessary.

The Civil Airworthiness Authority-United Kingdom (CAA-UK), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in United Kingdon, classified this BAe Mandatory S/B BAe 27-JM-5257, dated June 6, 1986, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of British Aerospace Mandatory S/B No. 27-JM-5257, dated June 6, 1986, and the mandatory classification of this service bulletin by CAA-UK, and concluded that the condition addressed by BAe Mandatory S/B BAe 27-JM-5257, dated June 6, 1986, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal.

No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 75 airplanes at an approximate one-time cost of $320 for each airplane for a total one-time cost of $24,000.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace: Applies to Models HP-137 MK 1 and Jetstream 200 Series (all serial numbers), and Model Jetstream 3101 (S/N 601-633, 635-646 and 648-654 inclusive) airplanes certificated in any category.

Compliance: Required within 600 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent unacceptable aileron control vibration and aileron jamming, accomplish the following:

(a) Inspect the special stud BAe P/N 13705E29 and nut BAe P/N A103-JT for tightness, visible thread length and punch marks, in accordance with Section 2. "Accomplishment Instructions" in BAe Mandatory S/B No. 27-JM-5257, dated June 6, 1986.

(1) If the special stud and nut are secure, and the special stud end protrudes 1½ to 2 threads beyond the nut and all three punch marks are visible, no further action is necessary.

(2) If the special stud and nut are loose, or the special stud end does not protrude 1½ to 2 threads beyond the nut, or all three punch marks are not visible, prior to further flight, remove aileron quadrant in accordance with Section 2. "Accomplishment Instructions," Paragraph B. "Removal/Installation" in BAe Mandatory S/B No. 27-JM-5257, dated June 6, 1986, and check the security of the nut P/N A103-JT securing the special stud P/N 13705E29 to the quadrant, and determine that peening of the stud is in accordance with the above BAe Service Bulletin.

(i) If security and locking are satisfactory, prior to further flight, reinstall aileron control

quadrant using steps (13) to (20) inclusive of the above Service Bulletin, and no further action is required.

(ii) If the securing nut P/N A103–JT or special stud P/N 13705E29 is loose or the peening of the stud is not in accordance with the above BAe Service Bulletin, prior to further flight, remove and replace nut BAe P/N A103–JT with new nut BAe P/N RMTE 9868–6, install new stud BAe P/N 13705E91 and add split pin SP90–C7 to lock the nut on, according to the instructions in BAe Mandatory S/B 27–JM–5257, dated June 6, 1986.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to British Aerospace P.L.C., Manager, Product Support Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 2, 1987.

Issued in Kansas City, Missouri, on November 18, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–26852 Filed 11–28–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–ASW–8; Amdt. 39–5471]

Airworthiness Directives; Sikorsky Model S–58 Series and Corresponding Military Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes retirement lives of intermediate gearbox pinions and bevel gears on Sikorsky Model S–58 series and corresponding military series helicopters. The AD is needed to prevent failure of the intermediate gearbox bevel pinion or bevel gear which could result in loss of tail rotor control.

EFFECTIVE DATE: January 5, 1987.

COMPLIANCE: As indicated in the body of this AD.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, FAA, Boston Aircraft Certification Office, ANE–153, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7102.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which establishes retirement times for intermediate gearbox bevel pinions and bevel gears on certain Sikorsky S–58 series and corresponding military series helicopters was published in the **Federal Register** on June 13, 1986 (51 FR 21563).

The proposal was prompted by an analysis of the intermediate gear box stress levels following two gearbox failures on Sikorsky S–58 helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 180 aircraft with only seven operators owning four or more aircraft. The approximate cost for each compliance event and aircraft would be $3,000. For an estimated 300 hours of operation per year, the annualized cost of this action would be $900 for each aircraft or $162,000 for the fleet. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S–58A, B, C, D, E, F, G, H, J, BT, DT, ET, FT, HT, and JT, CH–34 series, HH–34 series, SH–34 series, UH–34 series, and VH–34 series helicopters certificated in any category and fitted with tail rotor intermediate gearbox input bevel pinions Part Number (P/N) S1635–64114–0 and output bevel gears P/N S1635–64115–0. (See Note 1 for exempt pinion and gear configurations.)

Compliance is required as indicated, unless already accomplished.

(a) To preclude failure of pinions or gears indentified above, accomplish the following:

(1) For applicable pinions or gears that have attained 750 or less hours' time in service on the effective date of this AD, replace with a serviceable pinion or gear as required, prior to their accumulation of 1,000 hours' time in service.

(2) For pinions or gears that have attained more than 750 hours' time in service on the effective date of this AD, replace with a serviceable pinion or gear as required, within the next 250 hours' time in service.

(3) Operators who have not kept records of hours' time in service on individual intermediate gearbox bevel gears and bevel pinions shall substitute rotorcraft hours' time in service in lieu thereof.

Note 1.—This AD is not applicable to helicopters fitted with tail rotor intermediate gears which utilize the following pinion and gear combinations:

(a) P/N 1635–64114–101 pinion and P/N S1635–64115–101 gear.

(b) P/N 1635–64114–102 pinion and P/N S1635–64115–102 gear.

(c) P/N 1635–64114–0 pinion and P/N S1635–64115–0 gear reworked in accordance with Sikorsky Service Bulletin 58B35–26. This rework includes remarking P/N S1635–64114–0 pinion and P/N S1635–64115–0 gear with TS–200–1 and TS–200–2, respectively.

Note 2.—Refer to the Equalized Inspection and Maintenance Program Manual SA 4047–20, Revision 10, dated December 14, 1984, or later FAA-approved revision for retirement times assigned to new or modified bevel pinions and bevel gears for the Model S–58BT, DT, ET, FT, HT, and JT helicopters, and to the Maintenance Manual SA 4045–15 Section IV, revised December 14, 1984, or later FAA-approved revision for retirement times assigned to new or modified bevel pinions and gears for the Model S–58A, B, C, D, E, F, G, H, and J helicopters.

Upon request, an alternate method of compliance which provides an equivalent level of safety may be approved by the Manager, Boston Aircraft Certification Office, ANE–150, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Boston Aircraft Certification Office, ANE–150, FAA, 12 New England

Executive Park, Burlington, Massachusetts 01803 may adjust the compliance time specified in this AD.

This amendment becomes effective on January 5, 1987.

Issued in Fort Worth, Texas, on November 17, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86-26849 Filed 11-28-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-ASW-27; Amdt. 39-5470]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Aerospatiale Model AS 355 series helicopters by individual letters. The AD requires inspection of the main rotor head sleeves if a severe tracking discrepancy is experienced and reduction of the service life of Model AS 355 sleeves from 8,000 to 1,500 hours and Model AS 350B and D sleeves from no limit to 4,000 hours. The AD is prompted by a report of a crack found in the main rotor head sleeve of a Model SA 365C (The Model AS 350 and AS 355 rotor heads have a similar design) which could result in rotor head failure and consequent loss of control of the helicopter.

EFFECTIVE DATE: December 18, 1986, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86-19-15, issued September 24, 1986, which contained most of this amendment.

ADDRESSES: The applicable service documents may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone 513.38.30; or R.T. Weaver, Rotorcraft Standards Staff, ASW-110, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: On September 24, 1986, priority letter AD 86-19-15 was issued and made effective immediately as to all known U.S. owners and operators of certain Aerospatiale Model AS 355 series helicopters. The AD required inspection of the main rotor head sleeves if a severe tracking discrepancy is experienced and reduction of the service life of Model AS 355 sleeves from 8,000 to 1,500 hours. The AD was prompted by a report of a crack found in the main rotor head sleeve of a Model SA 365C which has a design similar to the Model AS 355. A sleeve crack could result in rotor head failure and consequent loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued September 24, 1986, to all known U.S. owners and operators of certain Aerospatiale Model AS 355 series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons. Also, since the same main rotor head sleeves are used on the Aerospatiale Model AS 350 series helicopters as on the Model AS 355 series helicopters, this amendment includes the Model AS 350 series helicopters.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to Aerospatiale Model AS 350 and AS 355 series helicopters, certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent failure of the main rotor head sleeves, accomplish the following:

(a) For AS 350B and AS 350D helicopters, accomplish the following:

(1) Within the next 100 hours' time in service after the effective date of this AD, replace, with serviceable parts, those main rotor head sleeves (Part Numbers (P/N) 350A31.1831.00, .01, .04, .05, .06, and .07) which have 3,900 or more hours' time in service.

(2) For those main rotor head sleeves having less than 3,900 hours' time in service on the effective date of this AD, replace with serviceable parts before 4,000 hours' time in service.

(b) For AS 355 series helicopters, accomplish the following:

(1) Within the next 100 hours' time in service after the effective date of this AD, replace, with serviceable parts, those main rotor head sleeves (P/N's 350A31.1831.04 .05, .06, and .07) which have 1,400 or more hours' time in service.

(2) For those main rotor head sleeves having less than 1,400 hours' time in service after the effective date of this AD, replace with serviceable parts before 1,500 hours' time in service.

(c) In the event of sudden or repeated occurrence of a severe tracking defect, accomplish the following before the next flight:

(1) Remove blades and visually check to determine if outboard sleeve bushes are separated; and

(2) If bush separation is found, remove and replace sleeves.

(d) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle

East Office, c/o American Embassy, Brussels, Belgium.

(e) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the maintenance required by this AD may be accomplished.

Note.—Aerospatiale Telex Services 01.13 and 01.16 and French AD's 86-35-28(B) and 86-57-44(B) pertain to this subject.

This amendment becomes effective December 18, 1986, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86-19-15 issued September 24, 1986, which contained this amendment.

Issued in Fort Worth, Texas, on November 17, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86-26850 Filed 11-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-27]

Alteration of Various Control Zones and Transition Areas Within the Great Lakes Region

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the published descriptions for certain control zones and transition areas within the Great Lakes Region.

This amendment to Part 71 of the Federal Aviation Regulations modifies the published descriptions for Mitchell, SD; Menominee, MI; Manistee, MI; and, Madison, WI by changing the acronyms VOR to VOR/DME or VOR to VORTAC.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This amendment to Part 71 of the Federal Aviation Regulations modifies the published descriptions for Mitchell, SD; Menominee, MI; Manistee, MI; and, Madison, WI by changing the acronyms VOR to VOR/DME or VOR to VORTAC.

There will be no changes to the existing designated airspace area or designated altitudes for the associated control zones or transition area.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. In all instances where the acronym VOR appears; remove and replace with VOR/DME for the Mitchell, SD; Menominee, MI; and, Manistee, MI control zones and/or transition areas listed below. Where the acronym VOR appears remove and replace with VORTAC for the Madison, Wisconsin, control zone.

3. Section 71.171 is amended as follows:

Madison, WI—[Amended]

Mitchell, SD—[Amended]

Menominee, MI—[Amended]

and

§ 71.181 [Amended]

4. Section 71.181 is amended as follows:

Mitchell, SD—[Amended]

Menominee, MI—[Amended]

Manistee, MI—[Amended]

Issued in Des Plaines, Illinois, on November 18, 1986.

Peter H. Salmon,

Acting Manager, Air Traffic Division.

[FR Doc. 86-26853 Filed 11-28-86; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 323 and 399

[Docket No. 43403; 323, Amdt. 9 and 399, Amdt. 91]

Certificate Duration in Limited-Entry Markets; Requirements for Carriers Leaving Limited-Entry Markets During a Selection Case; Procedures and Criteria for Selecting Carriers for Limited-Entry Markets

AGENCY: Department of Transportation.

ACTION: Final rule and policy statement.

SUMMARY: The Department of Transportation is making final the proposals set forth in Notice No. 85-12, with two modifications. Thus, as proposed in the NPRM, all certificates awarded to U.S. air carriers on limited-entry international routes will be issued for five-year periods. These certificates will be issued under the "experimental" provisions of section 401(d)(8) of the Federal Aviation Act. This action will establish by rule what has been the practice for the past five years and will not affect existing permanent certificates.

The Department also will require any air carrier operating under an exemption in a limited-entry market which is the subject of a carrier selection proceeding to file a notice with the Department at least 90 days before it terminates service in that market. This will prevent or minimize service gaps in those international markets where the exemption carrier loses the selection case and might otherwise leave the market before the selected carrier enters. We changed the wording of this provision slightly to clarify its effect.

With one exception the Department will adopt the carrier-selection criteria used by the Civil Aeronautics Board (Board), as well as its practice of varying the weight accorded each criterion depending on each case's particular circumstances. Instead of according an incumbent's application a positive weight if it has performed well, as the NPRM proposed to do, there will

be a rebuttable presumption favoring renewal of the incumbent's authority.

DATE: This regulation is effective December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Peter M. Bloch, Office of the Assistant General Counsel for International Law (202) 366–9183, or Robert Goldner, Office of the Assistant Secretary for Policy and International Affairs, Proceedings Division (202) 366–4826.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

These regulations primarily review and adopt former CAB practices on carrier selection and certification. The new notice requirement will impose little additional cost to the carriers; the situation addressed occurs very infrequently and the amount of time that a carrier would be held in a market would be minimal. Consequently, it is very unlikely that this rule will impose an economic hardship on any carrier. This regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies and is of unusual public interest. Because its economic impact should be minimal, however, a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. Most international air transportation is provided by large air carriers and, as noted above, there will be little economic impact on any carrier.

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

The collection of information requirements in this notice have been submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when those requirements are approved by OMB. The notice will incorporate the OMB approval numbers into the regulations.

I. Certificate Duration

The aviation relationship between the United States and a foreign country govern whether the air routes between the United States and that country are open to any number of U.S. carriers or are restricted to a specified number. In open-entry routes, there are no governmentally established limits on the number of U.S. carriers that may operate. In limited-entry routes, which are the subject of this rulemaking, the aviation relationship typically permits only one or two U.S. carriers to operate.

Before the passage of the Airline Deregulation Act of 1978, Pub. L. 95–504 (ADA), carriers were generally awarded permanent certificates for international routes. However, in certain limited-entry markets, including most of the transatlantic markets, carriers received temporary certificates; the Board chose not to grant much permanent transatlantic authority because it wanted to retain the ability to respond to changes in market conditions or the international situation. *See, Transatlantic Route Proceeding*, Order 78–1–118.

Before the ADA, certificates for scheduled authority could be awarded only under sections 401 (d)(1) and (d)(2) of the Federal Aviation Act, governing permanent and temporary certificates, respectively. A carrier would be issued a certificate if the proposed transportation was found to be required by the public convenience and necessity.[1]

The ADA gave the Board a significant new option for limited-entry routes. It added a new section 401(d)(8) to the Federal Aviation Act. The provision empowered the Board—and now empowers the Department—to grant an experimental certificate under sections 401 (d)(1) or (d)(2) upon determining that a test period is desirable, either to see if projected results will materialize and remain over time or to evaluate or assess the effects of new services.

A section 401(d)(8) experimental certificate may be revoked if the carrier fails to provide the innovative or low-priced air transportation it was selected to provide. This supplements provisions already in section 401(g) for deleting or suspending certificate authority if the public convenience and necessity so require and for revoking a certificate for violating the Act or the Board's—and now the Department's—rules or orders. Section 401(g) was amended by the International Air Transportation Competition Act (IATCA) to add section 401(g)(3), permitting suspension or revocation of an incumbent's authority without a hearing for failure to provide regularly scheduled service to the point at issue for 90 days.

After the ADA, although the Board continued to award permanent authority under subsection 401(d)(1) for open-entry markets, it began to grant three-year temporary, experimental certificates in limited-entry markets. *See Spokane-Vancouver Route Proceeding*, Order 80–3–170. At that time, the Board anticipated deciding *de novo* what carriers should serve the routes when these certificates expired. It would not entertain replacement applications before an incumbent had a reasonable opportunity to inaugurate service and establish itself in the market.

In late 1981, beginning with the *New Gateways to Brazil Case*, Order 81–11–137, the Board began granting five-year experimental certificates for limited-entry routes. The Board was concerned that three years might not be enough time for a carrier to establish itself on a route and realize a return on its investment. The Board continued to award five-year experimental certificates for the balance of its existence.

On September 3, 1982, Congress extended for two years the terms of all temporary certificates issued under section 401(d)(8), as well as those of certificates awarded in the *Transatlantic Route Proceeding* and the *California/Southwest—Western Mexico Route Proceeding*.[2] Finally, in anticipation of the Board's sunset, the Department asked the Board to extend the expiration dates of most international route certificates scheduled to expire between January 1, 1985, and January 15, 1986. The Board responded by issuing Order 84–8–107, served August 27, 1984, directing all interested persons to show cause why

[1] The ADA changed "required by" to "consistent with" for domestic route authority; the International Air Transportation Competition Act of 1979, Pub. L. 96–192 (IATCA) applied the new language to international route authority.

[2] Airport and Airway Improvement Act of 1982, section 531, Pub. L. 97–248, 96 Stat. 671, 701 (1982) (Title V, Tax Equity and Fiscal Responsibility Act of 1982, 96 Stat. 324).

these certificates should not be extended for 12 to 14 months. Order 84–8–107's tentative conclusions were finalized by Order 85–1–1. By this action, the Board sought to facilitate the orderly transfer of its carrier selection function to the Department and to allow us to establish our own procedures for carrier selection before beginning to process applications.

During the three years preceding the issuance of our NPRM, the issue of certificate duration had been examined on three separate occasions. First, in July 1982, the Civil Aeronautics Board issued an Advance Notice of Proposed Rulemaking (PSDR–78, Docket 40832) on the duration of experimental certificates awarded to U.S. carriers for limited-designation international markets.[3] The Board asked for comments on whether it should continue to award five-year temporary, experimental certificates; whether there should be a rebuttable presumption of renewal for temporary certificates; whether the Board should issue indefinite experimental certificates and adopt an effective "bumping" mechanism; what criteria should be used to develop either a rebuttable presumption or a replacement mechanism; and whether any changes the Board might adopt should be made retroactive to existing certificates. The Board took no further action after receiving comments to this ANPRM.

Certificate duration was also the subject of hearings held on May 31, 1984, by the Aviation Subcommittee of the House Committee on Public Works and Transportation. Legislation had been proposed to convert all temporary certificates to certificates of indefinite duration which could be altered or revoked only if required by the public convenience and necessity. This legislation was not enacted.

In May of 1985, while the NPRM was being prepared, the Subcommittee on Aviation of the Senate Committee on Commerce, Science and Transportation held hearings to consider legislation which would convert all temporary certificates to permanent certificates.

The views expressed in each of these instances were carefully considered in reaching the tentative conclusions set forth in the NPRM. Comments on the tentative conclusions set forth in the NPRM were filed by American Airlines, Calgary Transportation Authority, Dallas/Ft. Worth Parties, Delta Air Lines, Eastern Air Lines, City of Houston and the Houston Chamber of Commerce, Kansas City, Missouri, Northwest Airlines, Pan American World Airways, Peoples Express Airlines, the Regional Airline Association, Transamerica Airlines, Trans World Airlines, United Air Lines, and USAir.

[3] The Board noted a letter it had received from Senators Kassebaum and Cannon suggesting that all temporary certificates be converted to indefinite certificates.

Summary of Comments

1. *Comments supporting indefinite experimental certificates.* The proponents of indefinite experimental certificates repeat a number of the arguments advanced in the earlier proceedings and which were summarized in the NPRM: they argue that indefinite certificates would encourage carriers to expend the resources necessary to develop their routes properly. Without the burden of renewal proceedings and the attendant risk to their authority, some claim it would be easier to attract capital, recoup their high start-up costs, gain footholds in their markets, and thereby succeed over the long term. These commenters further argue that renewal proceedings, even when an incumbent has performed satisfactorily, consume much valuable time and money while accomplishing no affirmative good. Although routes generally have not been lost in these proceedings, these routes have been costly to defend. Proponents also argue that these expenses are not only "grossly" excessive, but that they put U.S. carriers at a disadvantage *vis-a-vis* their foreign flag competitors (since the latter enjoy permanent authority), when in fact it is the policy of the ADA to strengthen the competitive position of U.S. carriers. Renewal procedures are characterized as simply reviving pervasive regulatory procedures, which are inconsistent with the ADA's policy of placing maximum reliance on market forces.

Proponents further argue that temporary certificates result in an unfair anomaly: one carrier may hold permanent authority in the same market that another carrier holds temporary authority. The latter has the burden and expense of having to defend its authority periodically, while the former does not.

Proponents claim that indefinite experimental certificates would not prevent the government from replacing an incumbent that was performing unsatisfactorily—the Federal Aviation Act makes ample provision for revocation of route authority and for suspension of fares.

This last point notwithstanding, one proponent of indefinite experimental certificates did make suggestions for a bumping mechanism to replace ineffective incumbents. It stated that DOT should establish a standard to define what is "consistent with the public convenience and necessity". Under this proposal, the challenger would be required to show that its service proposal was better than the existing service in the market and that the incumbent's service was no longer consistent with the public convenience and necessity. The proposal further contemplates that full hearing procedures under section 401(g) should be employed only upon a *prima facie* showing that the incumbent was not performing adequately.

Another commenter argued that if DOT was not prepared to adopt indefinite certificates as the rule, it should at least use a case-by-case approach, awarding either indefinite certificates or 10-year certificates where an incumbent has, over a period of decades, provided uninterrupted service with competitive fares at the maximum allowed capacity level.

Exception also is taken to our statement in the NPRM that temporary certificates keep incumbents responsive to market needs; it is argued that existing competitive forces such as intergateway, intragateway (whether by a foreign or second U.S. carrier) and destination competition are already doing this. Further, as many limited-entry routes are heavily encumbered by restrictions imposed by foreign governments, there is little that pressure from renewal proceedings can accomplish; competition can only really be improved through liberalizing restrictive bilateral regimes.

One proponent alleges that DOT is trying to avoid the minimum due process requirements of section 401(g) by asserting that 401(d)(8) requires less process than 401(g). This proponent states that, to the contrary, a 401(d)(8) temporary certificate can only be amended or revoked using 401(g) procedures.

Some proponents argue that neither the language nor the legislative history of section 401(d)(8) indicate that it should be used for all routes all of the time. Rather, it was intended to be used for test periods to evaluate new and innovative services. In any event, it should not be used for renewals because the test period will already have expired and it will be known whether or not the experiment was a success.

Another proponent states that requiring renewal proceedings could cause incumbents to incur serious losses because, as renewal time approaches, they might offer fares and frequency levels which do not reflect the amount of traffic in the market, but which are

solely designed to maximize their chances of obtaining a renewal of their certificate authority. Such a situation could undermine a carrier's long term ability to continue to serve that market.

2. *Comments supporting temporary experimental certificates.* Commenters supporting the award of temporary experimental certificates contend that the public interest is best served by an approach to limited-entry route allocation that simulates free market competition to as great a degree as possible. Proponents claim that the threat of losing authority for the route in a renewal proceeding works to keep an incumbent's fare and service offerings competitive in much the same way that the threat of potential entry works in domestic markets. As a corollary, the certainty of renewal proceedings also preserves opportunities for potential new entrants, many of whom may not have been in existence when temporary authority for any particular market was first granted.

Claiming that the Civil Aeronautics Board never revoked a permanent certificate in a section 401(g) proceeding, some proponents of temporary experimental certificates do not believe that the traditional replacement procedures can effectively ensure that incumbent carriers remain continually responsive to the changing needs of the limited-entry markets which they serve. They also maintain that changing to a policy of awarding indefinite experimental certificates would create tremendous barriers to entry in limited-designation markets, an undesirable result because new carrier entry has, in past instances, greatly stimulated price and service innovations. They further argue that temporary certificates make it easier to replace a carrier that is no longer the best choice for the route due to subsequent events, for example, a significant change in its domestic route structure.

Proponents argue that rather than discouraging or hindering the investment of resources necessary to develop limited-designation markets, temporary certificates provide a greater developmental incentive than indefinite or permanent certificates, because carriers with temporary authority know that they will have to perform well to retain the authority. Proponents also argue that renewal proceedings are not necessarily costly, burdensome, protracted, or complicated. Simplified, non-oral, show-cause proceedings can be used in the majority of cases.

Also in support of temporary certificates, proponents argue that incumbents' reduction of fares and expansion of service as expiration and renewal approach is an advantage, not a liability. It shows that the intended simulation of competitive market forces is actually succeeding. Finally, they assert that there is no convincing evidence that temporary certificates limit U.S. carriers' ability to compete with foreign flag airlines.

Two carriers, although primarily supporting indefinite certificates, suggested procedures for handling the renewal of temporary experimental certificates which they believe would reduce the impact and cost of renewal proceedings on incumbents. One recommends that all temporary certificates carry a common expiry date, and that the Department issue a show cause order 18 months before that expiry date. If a challenger did not file within three weeks, the routes would be automatically renewed. Routes for which a meritorious challenge was received would be set down for an expedited hearing. A second proposal would renew these certificates automatically if the incumbent had fulfilled its fare/service obligations and no other carrier had applied for the route.

Most proponents of temporary experimental certificates favor a strong rebuttable presumption of renewal: the incumbent's authority should be renewed unless its performance has been significantly inferior to what another willing operator might realistically be expected to provide. In one carrier's view, once a carrier has performed well under a temporary certificate, the rationale behind experimental certificates will have been served—*i.e.*, its actual performance will have matched its proposal. Such merit having been demonstrated once, there would be no need to test that carrier further.

DOT Decision on Certificate Duration

After thoroughly reviewing the comments received in response to our NPRM, we have decided to finalize our proposal to continue the practice of awarding five-year temporary experimental certificates under section 401(d)(8) of the Act for limited-entry routes. We believe that this option strikes the best balance between an incumbent's need for sufficient time to develop its market and recoup its investment, on the one hand, and the public interest in the incumbent's continued responsiveness to the market's needs, on the other. It also preserves opportunities for new entrants that otherwise would probably not exist, and it gives the Department the greatest flexibility available under the Act to respond to changed circumstances, when necessary. Finally, we consider it highly unlikely that this option will result in protracted or costly renewal proceedings when the incumbent is performing satisfactorily.

We believe that the award of temporary certificates represents the best means to ensure that incumbents remain responsive to the needs of a particular market, absent the preferable opportunity to award authority on a multiple-permissive basis. A renewal proceeding acts as both a carrot and a stick: it encourages carriers to adhere to their fare and service proposals; it discourages complacency and exploitation of monopoly power.

In light of the data at hand, we also find no evidence to suggest that five years is an insufficient period of time for a carrier to develop a route and realize a reasonable return on its investment. Despite our specific request in the NPRM, no carrier provided documentation of either its development costs for any route or the time that it takes to recover those costs. The use of temporary certificates does not appear to have kept carriers from vigorously competing for route authority, and we have not yet seen any evidence that carriers have failed to expend the resources necessary to develop new routes. While opponents argue that fixed-term certificates reduce a carrier's incentive to develop a market, it is at least as logical that five-year experimental certificates would increase development incentives by raising the spectre that the route will otherwise be lost.

Another critical advantage we see in awarding five-year temporary experimental certificates is that new entrants will then have recurring opportunities to compete for limited-entry routes. We believe that, as a practical matter, carriers desiring to acquire new or additional international route authority would have much more limited opportunities for entry if permanent certificates became the norm. Given the realities of entry restrictions in many major foreign markets, temporary certificates represent the most viable substitute for unencumbered competitive forces, and our decision to continue to issue them is consistent, in this regard, with the pro-competitive policies of both the ADA and IATCA.

The five year term for limited-entry certificates also affords the Department an opportunity to periodically appraise each market's changing needs. This flexibility would be sacrificed were we to issue indefinite experimental certificates under section 401(d)(8) or permanent certificates under section

401(d)(1). With permanent certificates, the Department could replace an operating incumbent only under section 401(g)(1), which allows the Department to delete or suspend certificate authority only if such action is required by the public convenience and necessity.[4]

We would also lose flexibility if we were to begin awarding experimental certificates of indefinite duration under section 401(d)(8). In addition to the section 401(g) standard described above, section 401(d)(8) empowers us to revoke the certificate of a carrier that has not performed according to its original proposal. While this would give us some additional flexibility compared to permanent certificate authority, it does not ensure that the needs of a particular market will be reviewed on a regular basis. We believe that the public interest is better served by ensuring that each market's evolving needs will be reevaluated periodically.

As for the claimed disadvantages to five-year certificates, we think that the carriers' fears of unnecessary, protracted, and costly renewal proceedings are overstated. We anticipate handling uncontested renewal applications through expedited paper proceedings. Even when an incumbent is challenged, oral evidentiary hearings need not necessarily follow; the Department is free in renewal cases to conduct paper proceedings under the simplified procedures of section 401(p) when circumstances warrant and there are no material facts in dispute. Also, in a proceeding heard by an Administrative Law Judge, the judge may dispense with a hearing if he or she believes that the written record is sufficient to support a decision.

One opponent of temporary certificates has raised the spectre of hearings costing as much as the *Transatlantic Route Proceeding*. That proceeding was costly even by pre-deregulation standards and today, with statutory deadlines for the processing of cases, the chances of such an expensive case occurring are virtually nil.

It is important to keep in mind the fact that most limited-entry route authority is not challenged on renewal. Of all the transatlantic route authority at issue before the Department, only two routes have been the subject of competing applications, Houston-London and Chicago-London. This fact alone should quell the fears of those carriers who believe that renewal proceedings will be a never-ending series of contested cases.

[4] It also allows certificate revocation as a punitive measure for violations of the Act or Department rules or orders.

In our NPRM we expressed the tentative view that we should not automatically apply a rebuttable presumption in favor of the incumbent carrier. Instead, where a carrier seeking renewal of existing authority had performed satisfactorily during the term of its certificate, we proposed to consider its incumbency in that market as a positive decisional factor in the renewal proceeding. In those cases where it was determined that there were significant deficiencies in an incumbent's performance, it was our tentative position that we would not assess a negative weight to that factor—but would instead review all applications on a de novo basis.

Based upon the comments that discussed this issue, together with the experience we have gained in conducting carrier selection cases during the past 18 months, we have now decided to apply a rebuttable presumption in favor of renewal of existing certificate authority. Therefore, in cases where an incumbent carrier seeks to renew an international certificate in a limited-designation market, and where that carrier has performed well, taking into account all relevant factors (including fare and/or capacity restrictions in the market that have been imposed by foreign governments or bilateral agreements), there will be a presumption that the incumbent carrier will be the best applicant to provide service during the next five years. We will begin the use of this presumption with all route renewal cases instituted after the publication of this Final Rule and Policy Statement in the **Federal Register.** This presumption may be rebutted only upon a showing by a competitor that it will provide substantially superior service in the future so as to warrant its selection. As a general matter, there will be no rebuttable presumption for incumbents which have substantially deviated from their fare and service proposals without adequate justification. We recognize that markets do change over time and that a carrier's deviation from its proposal may be justified, e.g., by changed economic circumstances in the market or governmental constraints.

The specific criteria for determining the quality of an incumbent's service will, necessarily, vary according to the particular facts of each case. Individual markets differ significantly from each other, and traffic on any particular route is susceptible to substantial fluctuation over time. Therefore, it would not be practical to attempt to codify here the universe of factors that might be considered in evaluating an incumbent's record of service in an international market.

We believe that a presumption favoring incumbent carriers is justified as a matter of public policy wherever carriers have demonstrated, through actual performance, both their ability and willingness to offer good service. We are persuaded that a policy of merely considering prior good performance as a positive decisional factor, as we initially proposed, does not afford sufficient weight to the degree to which an incumbent's positive performance in a market lends credibility to its renewal proposal. The incumbent has, for several years, had to deal with the challenges posed by the market and has developed a track record in responding to the prevailing conditions and needs of the market. As past performance is usually the best evidence of a carrier's capabilities, we believe that an incumbent's favorable track record should be sufficient to outweigh a competing proposal that promises to offer equal or even marginally superior public benefits, but which is untested by actual experience in the market. Only where a competing applicant has demonstrated that it will offer substantially superior service might the Department determine that the benefits of that proposal outweigh the actual record of an incumbent that has served the market well.

Because each market is unique, we have chosen not to establish a fixed, general definition of "substantially superior service" in a given case. Instead, we intend to develop our standards over time as we review the cases that come before us. Nevertheless, we see merit in providing some broad guidelines. Thus, as an example, it is likely that we would consider a proposal of daily service in a market receiving three weekly flights to be substantially superior (assuming that we believe daily service to be economically and bilaterally feasible). Similarly, it is likely that we would consider a roundtrip APEX fare of $500 (assuming there is no foreign government policy known to us which would preclude this fare) to be substantially superior to an incumbent's $800 roundtrip APEX fare. However, it is not likely that we would consider incremental increases in services, *i.e.*, from 3 to 4 flights per week or incremental reductions in fares, *i.e.*, from $800 to $750, to represent substantially superior service. We emphasize that these are mere illustrations. We fully expect that each case will turn on its own facts.

We recognize that in those instances where a contested renewal application

is set for oral evidentiary hearing, the parties and the Government incur costs in terms of both time and money. Generally, we believe that those costs are outweighed by the benefits inherent in allowing other carriers to demonstrate that they would offer service that is substantially superior to that provided by the incumbent carrier. However, we cannot justify imposing the costs of the renewal process where only marginally superior service would be offered by the selection of a different carrier. Therefore, we will only consider replacing incumbents that are performing well in a market where a competing applicant will offer service that is substantially superior in quality.

This approach improves the credibility of the renewal process and our ability to rely on that process to authorize U.S. carrier service in limited-designation markets. This approach also provides the incentives necessary to encourage incumbent carriers to remain continuously responsive to the changing character of international markets. At the same time, it will ensure that opportunities for new entry remain available in those situations where the incumbent has failed to provide quality service, or where a competing applicant has shown that it will offer travellers in the market service that is substantially superior to that which the incumbent carrier has been providing.

Indefinite Experimental Certificates

The critical disadvantage we perceive in indefinite certificates is that our ability to replace incumbents that are no longer best serving the public interest could be curtailed, because the legal standard for removing an operating incumbent is higher than for declining to renew an incumbent's temporary authority. Furthermore, incumbents would be freed from the simulated potential competition that fixed-term certificates now provide, and opportunities for new entrants would be more limited. (Even if many international routes are open to unlimited entry, still, many of the more lucrative routes are not.) Finally, notwithstanding the higher standard for removal of an incumbent, incumbents would be vulnerable to challenge and removal at any time, thereby creating far more potential instability and uncertainty than exist with five-year certificates.[5] This in turn would require far more regulatory oversight than the current approach does. Thus, while indefinite experimental certificates might obviate the need for some automatic renewal proceedings, we believe, on balance, that the public interest would be best served through a regular review of an incumbent carrier's performance in a limited-entry market.

One commenter has suggested that implementation of this rule would deny incumbents of the various due process requirements of section 401(g). We do not agree with this interpretation of the Act. The award of temporary certificates is specifically provided for in section 401(d)(2). A temporary certificate by its very definition means that the entitlement ceases at the end of the term. Therefore, there is no interest which is being terminated if we chose a carrier other than the incumbent in a renewal proceeding.

We also disagree with the commenters that argued that temporary experimental certificates can only be used for an initial test period. Section 401(d)(8) provides, in part, that such certificates can be used if it is determined "that a test period is desirable in order to determine if projected services . . . fares . . . or other projected results will in fact materialize and remain for a sustained period of time." The Department will be making its decision in carrier selection cases based on the applicants' proposals and, to that extent, each time that a carrier's proposal is selected, there is a new need to have a test period to determine whether its fares and services will be realized for a sustained period.

We agree with the commenters that say that competition can best be created in limited-entry markets by altering restrictive bilateral regimes and effectively making them open markets. While we will continue our efforts to achieve that goal, the reality is that restrictive regimes exist and unfortunately will likely continue to exist in the future. We must therefore find alternative means of introducing or simulating competition in these markets, and the use of temporary experimental certificates, as described above, best meets this need.

Five-Year Temporary Experimental Certificates Converting to Indefinite or Permanent Certificates Upon Renewal

This option has all the disadvantages of indefinite experimental certificates after the incumbent's first five years: Upon renewal, it would remove all the performance incentives provided by temporary certificates. As we have already stated, we believe that continuing to simulate the threat of potential competition in limited-entry routes serves the public interest far better. Also, as with indefinite experimental certificates, we think that the carriers' interest in having route security and avoiding the costs of renewal proceedings are outweighed by the public's interest in ensuring a periodic review of service in limited-entry markets. A further disadvantage of this option is that, once the certificate becomes indefinite, absent a finding that the public convenience and necessity so required, that authority cannot be deleted even for fully unjustified and unexplained failure to adhere to fare and service proposals.

II. Withdrawal From a Route by a Carrier With Exemption Authority Before the Replacement Carrier's Entry

The Department also solicited comments on a proposed rule to minimize service gaps in limited-entry international routes. A number of carrier selection cases involve markets in which no U.S. carrier is providing service. Often, one of the applicants will be authorized to serve the route by a *pendente lite* exemption. If the exempted carrier is not subsequently selected for certificate authority, it may decide to leave the market before the newly authorized carrier is in a position to inaugurate service. If it is the only U.S. carrier in the market, the disruption in service to the communities involved can be significant.

The proposed rule would require any carrier providing service under a *pendente lite* exemption on a route that is at issue in a carrier selection proceeding to notify the Department at least 90 days before it ceases to serve that route. The rule would allow the exempted carrier to terminate service earlier if the replacement carrier initiates service before the 90-day period expires. At present all carriers have an exemption under 14 CFR 323.8 relieving them of their section 401(j) obligation to file notices when terminating, reducing or suspending service in foreign air transportation.[6] This rulemaking will

[5] Although a five-year temporary experimental certificate is subject to challenge at any time, challengers are more likely to make such a bid in the context of a renewal proceeding because the evidentiary burden that they must meet is lower in a renewal case than in a mid-term challenge.

[6] Although the Board issued an NPRM in 1982 (47 FR 35433) to limit this exemption by requiring an air carrier to give notice when it intends to terminate or suspend service to a foreign point, the Board terminated that rulemaking at the end of 1984 (50 FR 481), on the grounds that such notice was not necessary and discouraged carrier flexibility. The rule we are now adopting is far more narrow than the one rejected in 1984 and is directed at those few situations where there is a greater likelihood that a service disruption could occur.

scale back that exemption only to the extent necessary to address this problem.

Comments Supporting the Proposed Notice Requirement

Several commenters supported the proposal, considering it necessary to avoid unexpected service disruptions to the traveling public. One proponent, citing two instances in the past two years where exemption carriers abruptly left a market after losing carrier selection cases, states that the proposal addresses the most serious part of the problem and represents a minimal interference. Another stated that it is a narrowly-drawn rule applicable only in those situations where the exemption carrier has little incentive to remain. Another respondent supports the proposed rule, but states that it should be extended to all U.S. carriers serving limited-entry and open international markets where the carrier is the only U.S. carrier offering nonstop service on the route. It argues that the unexpected termination of service in these markets has the same potential to disrupt air services as it does in markets involved in a carrier selection case. One carrier suggests that DOT impose the notice requirement on a case-by-case basis, thus allowing each market to be judged on the need for and adequacy of notice. Finally, one respondent supported the proposal, but pointed out that the language of the regulation was somewhat ambiguous and could be interpreted as covering essential air service carrier selection cases.

Commenters Opposing the Proposed Notice Requirement

One respondent takes the view that imposing such a rule may constitute a taking of property without due process, unless the government agrees to subsidize the carrier for losses during the hold-in period. Another respondent stated that the effect of the rule would be to discourage carriers from seeking exemption authority during the pendency of a certificate case. It states that the newly certificated carrier should be required to enter the market quickly, rather than placing a burden on the losing carrier to remain.

DOT Decision on the Notice Requirement

We have decided to implement the proposed rule with the suggested clarification to indicate that it only applies to international carrier selection cases.

Conditioning an exemption to require the carrier to remain in the market temporarily does not constitute an unlawful taking of property; each carrier accepting authority will be on notice that the benefit is accompanied by the risk that it may be held in the market temporarily. If it is unwilling to accept the risk, it need not accept the authority. The number of situations where the exemption carrier loses a certification case, is losing money on the route, *and* cannot work out an acceptable transition with the successful carrier, are few. Consequently, we believe that few carriers are likely to be dissuaded from seeking exemptions as a result of the adoption of this rule.

We will not expand the scope of this rule as was suggested by some commenters. The limited exception we have created to our existing exemption from notice filing requirements will address the situation where it is most likely to be needed and, in our view, strikes a proper balance between the needs of the carriers and the communities involved. To do more would represent too great an intrusion into the freedom of carriers to enter and exit markets.

As a final matter, we reject the suggestion that we impose notice requirements on a case-by-case basis. In most instances it would be impossible to tell at the time the exemption is granted whether notice might be required. In fact, to impose a notice requirement in an individual case might create the erroneous impression that the exemption carrier was not expected to win the certification case. This might inhibit an exemption carrier from beginning service.

As noted in the NPRM, gaps in service may still occur under this rule, *e.g.*, if the replacement carrier needs more than 90 days to initiate service. Nevertheless, we believe that benefits afforded by further expanding the notice requirement are outweighed by the burdens it would impose on exemption carriers. Our solution represents a compromise between that concern and the public interest in minimizing service disruptions.

III. Carrier Selection Criteria

The Department also solicited comments on its intention to adopt the carrier selection criteria that had historically been developed by the CAB, as well as its practice of varying the weight accorded each criterion from case to case, depending on the particular circumstances of each proceeding. All of the commenters addressing the subject endorsed the existing selection criteria and the case-by-case approach to their application. A few commenters felt that certain criteria should be given greater weight or that a new criterion should be considered. One commenter argues that, in light of the Act's directive to strengthen the competitive position of U.S. carriers and the government's desire to improve the over-all U.S. balance of trade, a carrier's ability to attract traffic away from foreign carriers should be considered. In particular, it argues, DOT should focus more on support traffic behind the foreign gateway.

Another commenter states that DOT should give greater positive weight to incumbency where the incumbent has provided uninterrupted service in a market for many years and has invested substantial assets in an effort to develop the market. The same commenter said that DOT should not rule out consideration of a foreign government's possible response to fare or service proposals. It noted that where the foreign government's attitudes are restrictive and well known, a decision not to consider foreign government reaction could allow a challenger proposing unobtainable service or fares to win out over an incumbent presenting a realistic proposal. Another commenter suggests that DOT should give priority to establishing new gateways, particularly in the interior of the U.S., and in choosing gateways should consider which would most increase intergateway competition.

Another commenter stated that the views of civic parties should be given more attention and weight. The commenter also seeks clarification of our statement that we will not consider domestic hub dominance except in cases of excessive market power. Although not a subject for which comments had been requested, many commenters stressed their opposition to the use of lotteries and auctions, while no commenters supported either of these approaches.

DOT Policy on Selection Criteria and Their Application

The Department will retain, with the exception of its treatment of incumbency, the selection criteria as discussed and described in the NPRM. The major elements of consideration in carrier selection cases heard by the Department will include the factors listed below.

1. Market Structure

Market structure encompasses the impact that a route award will have on the overall level of competition in a particular market. In order to evaluate this issue, the Department looks at potential intergateway competition—the competitive effect of the proposed

service on flights offered to the same destination at possible alternative gateways. We also examine the degree to which each applicant might increase competition with existing services at the same gateway. Occasionally in vacation and resort markets, where traffic is highly discretionary, there may also be competition between different destinations.

2. Route Integration

The route integration criterion entails an assessment of each applicant's ability to flow traffic over the primary route to and from points behind the U.S. gateway or beyond the foreign gateway. This ability has figured significantly in carrier selection because it bears on both the economic viability of a carrier's proposal and the benefits it might bring passengers outside of the primary market.

3. Fare and Service Proposals

Carriers' fare and service proposals, to the extent they are credible, provide basic evidence as to the public benefits to be gained by selecting a particular applicant. Such public benefits include low or innovative fares, high frequency or capacity and a variety of service options. How the applicants' proposals compare with one another can bear directly on which carrier will be able to provide the greatest public benefits.

4. Incumbency

We have decided to apply a rebuttable presumption in favor of renewal of existing certificate authority. In cases where an incumbent carrier seeks to renew an international certificate in a limited-designation market, and where that carrier has performed well, taking into account all relevant factors (including fare and/or capacity restrictions in the market that have been imposed by foreign governments or bilateral agreements), there will be a presumption that the incumbent carrier will be the best applicant to provide service during the next five years. This presumption may be rebutted only upon a showing by a competitor that it will provide substantially superior service in the future. As a general matter, there will be no rebuttable presumption for incumbents which have substantially deviated from their fare and service proposals without adequate justification. We recognize that markets do change over time and that a carrier's deviation from its proposal may be justified, e.g., by changed economic circumstances in the market or governmental constraints.

This standard together with our rationale for adopting it are discussed in detail in the section setting forth our decision on certificate duration.

5. Ability To Enter a Market Quickly

Occasionally, in those cases where it is considered essential that service be inaugurated or resumed expeditiously, the ability of a carrier to enter the market quickly may be a factor to be considered in the selection process.

A fully detailed discussion of these criteria, along with a description of their historical development, can be found in the NPRM. While these criteria represent the major decisional elements in most selection cases, there may be other factors which the Department will wish to consider, depending on the particular circumstances of each proceeding.

6. Other Criteria Raised by Commenters

While most of the comments endorsed the criteria discussed in the NPRM, several raised issues dealing with specific selection criteria and the relative weight they should be afforded. One issue that was raised concerned the weight to be afforded arguments in a selection case concerning the reaction of foreign governments to the selection of a particular applicant, and the likelihood that the foreign government will accept the level of fares and frequencies that had been proposed. These questions are generally considered at the time that a particular case is instituted, and parties are advised at that time whether fares, frequency levels, projected capacity, or any other factors should be tailored to reflect our aviation relations with another country and/or whether such factors will be given less decisional weight for reasons of foreign aviation policy. Parties are free to consider the degree to which an applicant's fare or service proposal is realistic in light of the historic willingness of foreign governments to accept initiatives in these areas. On the other hand, we do not want to encourage parties in carrier selection cases to engage in speculative debates concerning the likelihood that future negotiations will yield changes in a foreign government's historic practices and attitudes regarding such issues as fare or capacity levels.

A second issue raised by the comments is whether the level of hub dominance resulting from the award of an international route should be considered in the selection process. Our view is that hub concentration is primarily an issue that the domestic market should address, and that our ability to respond to it through a single case dealing solely with international route authority is extremely limited. As a result, we can envision few circumstances where the degree of market share at a particular hub is so great as to make it of decisional consequence in the allocation of an international route. This is not to say that it does not play a role in other aspects of our analysis, such as market structure. We simply do not see it as an independent criterion in the ordinary case.

Another commenter stated that DOT should give greater weight to an applicant's ability to obtain support traffic behind the foreign gateway, as well its potential to divert traffic from the foreignflag service. The Board considered, and the Department will continue to consider, the support traffic which applicants can generate behind foreign points, insofar as it affects the viability of the proposed service by enlarging the revenue base of the carrier providing the primary market service. Furthermore, we are confident that our efforts to select the U.S. carrier that will be the most efficient and effective competitor will in fact have the effect of diverting traffic from foreign carrier competitors.

One commenter suggested that we should give priority to establishing new and interior gateways, and increasing the level of intergateway competition. New gateways are usually created as a result of bilateral negotiations, and not as part of the carrier selection process. However, we recognize that there are instances where we must select gateways from among competing proposals. In such cases, one of the criteria which has traditionally been afforded great weight has been the promotion of intergateway competition. This has resulted in the creation of new gateways in areas of the country which were previously unserved or underserved.

As a final matter, we note that the views of civic parties have historically been afforded substantial weight in decisions involving the selection of both carriers and gateways, and the Department fully intends to continue this policy in future selection cases.

List of Subjects in 14 CFR Parts 323 and 399

Administrative practice and procedure, Advertising, Air carriers, Antitrust, Archives and records, Consumer protection, Essential air service, Freight forwarders, Grant programs—transportation, Hawaii, Motor carriers, Puerto Rico, Railroads,

Reporting and recordkeeping requirements, Travel agents, Virgin Islands.

Issued in Washington, DC on November 18, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation amends Parts 323 and 399 of its Regulations (14 CFR Parts 323 and 399) as follows:

PART 323—[AMENDED]

1. The authority citation for Part 323 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1371, 1381 and 1389.

2. By amending the table of contents of Part 323 to add a new § 323.19 to read as follows:

Sec.

* * * * *

323.19 Withdrawal notice by exemption carriers in certain limited-entry markets.

3. By adding a new § 323.19 to read as follows:

§ 323.19 Withdrawal notice by exemption carriers in certain limited-entry markets.

As a condition on the exemption, an air carrier operating under exemption authority in an international market which is the subject of a carrier selection proceeding shall file a notice with the Department at least ninety days before it terminates service in that market. Once such a notice has been filed, the carrier may not terminate service in that market during the notice period unless the air carrier chosen in the selection proceeding enters the market and the Department grants the operating carrier permission to do so. The Department may allow earlier termination for good cause when in the public interest.

PART 399—[AMENDED]

4. The authority citation for Part 399 is revised to read as set forth below. All authorities shown for specific sections in Part 399 are removed.

Authority: 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502 and 1504, unless otherwise noted.

5. By amending the table of contents of Part 399 to include a new Subpart K to read as follows:

Subpart K—Policies Relating to Certificate Duration

Sec.

399.120 Duration of certificates in limited-entry markets.

6. A new § 399.120 Subpart K is added to read as follows:

Subpart K—Policies Relating to Certificate Duration

§ 399.120 Duration of certificates in limited-entry markets.

All certificate authority that the Department grants to U.S. air carriers in carrier selection proceedings will be awarded in the form of experimental certificates of five years' duration pursuant to section 401(d)(8) of the Federal Aviation Act. This provision does not alter or amend permanent certificates issued prior to January 1, 1985.

[FR Doc. 86-26758 Filed 11-28-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 86-205]

Ad Valorem User Fee; Amendments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations.

SUMMARY: This document amends the Customs Regulations to implement a provision of the Omnibus Budget Reconciliation Act of 1986 which authorizes the Customs Service to assess a merchandise processing user fee on formal entries of imported merchandise. This ad valorem user fee, which is to be based on the appraised Customs value of the merchandise, does not apply to articles provided for in schedule 8 of the tariff schedules or to products of least developed developing countries, eligible countries under the Caribbean Basin Economic Recovery Act, or U.S. insular possessions. The proceeds of the user fees are to be deposited in a dedicated account of the Treasury and, subject to authorization and appropriation, are to be used to offset Customs appropriations for the salaries and expenses of Customs incurred in conducting commercial operations. The amendments are being made on an interim basis due to the limited period of time available to initiate these changes before the law becomes effective. However, any written comments received will be considered before a final rule is issued.

DATES: Interim regulations effective on December 1, 1986. Written comments must be received by January 30, 1987.

ADDRESS: Written comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations Control Branch, Customs Services Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Thomas Banner, Commercial Compliance Division, (202-566-4136).

Legal Aspects: Arthur I. Rettinger, Office of the Chief Counsel, (202-566-2482).

SUPPLEMENTARY INFORMATION:

Background

User Fees—History

Until recently, Customs had no general authority to collect fees for the processing of persons, aircraft, vehicles, vessels and merchandise arriving in or departing from the U.S. However, it has had authority under certain circumstances to charge fees, i.e., fees charged when providing preclearance of passengers and private aircraft when such services are of special benefit to particular persons. Customs also had been authorized to receive reimbursement from carriers for overtime services provided during non-business hours, and reimbursement from local authorities for services provided to certain small airports. Customs also has authority to assess fees on operators of bonded warehouses and foreign trade-zones and on the entry of vessels into ports. Further, Customs has authority to collect certain navigation fees specified in § 4.98, Customs Regulations (19 CFR 4.98).

The Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) greatly extended Customs authority to assess fees. Section 13031 of Pub. L. 99-272 established a schedule of fees chargeable to users of various services provided by Customs in connection with the processing of persons, aircraft, vehicles, vessels and dutiable mail arriving in the U.S., as well as for the payment of an annual fee by customs brokers.

By T.D. 86-109, published in the **Federal Register** (51 FR 21152) on June 11, 1986, various parts of the Customs Regulations (19 CFR Chapter I), were amended on an interim basis to set forth the fees established by Pub. L. 99-272. The amendments were made on an interim basis due to the limited period of time available before the new law became effective. However, written comments were invited for consideration before final regulations are drafted. The numerous comments received have been analysed. However, by section 1893 of the Tax Reform Act of 1986 (Pub. L. 99-514), passed on October 22, 1986, several technical amendments were made to Pub. L. 99-272, and the

effect of these legislative changes necessitates several changes to the interim regulations. The final regulations implementing these fees will appear as a separate document in the **Federal Register.** The document will describe the changes made as a result of the technical amendments and the comments.

Other amendments were made to Pub. L. 99–272 by the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). Among these amendments is the establishment of an ad valorem user fee to be collected by Customs on formal entries of merchandise imported for consumption, or withdrawn from warehouse for consumption, beginning on December 1, 1986. This document sets forth interim regulations governing the ad valorem user fee.

Ad Valorem Fee

Section 8101 of Pub. L. 99–509 states that with certain exceptions, merchandise formally entered, or withdrawn from a warehouse, for consumption, is subject to an ad valorem fee based on the appraised customs value of the merchandise. The fee does not apply to informal entries of merchandise entered under the procedures set forth in § 143.21, Customs Regulations (19 CFR 143.21), and to merchandise which does not enter the commerce of the U.S. for consumption. The proceeds of the user fees are to be deposited in a dedicated account of the Treasury and, subject to authorization and appropriation, are to be used to offset Customs appropriations for the salaries and expenses of Customs incurred in conducting commercial operations.

Pursuant to section 8101, the fee that will be assessed is 0.22 percent ad valorem for merchandise formally entered, or withdrawn from a warehouse, for consumption, after November 30, 1986, and before October 1, 1987. After September 30, 1987, the fee will be 0.17 percent ad valorem or a lesser ad valorem rate determined by the Secretary of the Treasury as sufficient to provide the amount of revenue needed to conduct commercial operations for the upcoming fiscal year. The Secretary of the Treasury shall publish in the **Federal Register** the ad valorem rate for fiscal year 1988 by no later than the date that is 5 days after which funds are appropriated to Customs for salaries or expenses incurred in conducting commercial operations. The rate set shall apply for the processing of entries and withdrawals from warehouse for consumption made after the date that is 60 days after the date of such determination.

A slightly higher fee is assessed for the first 10 months of the ad valorem fee to ensure that there are adequate receipts to cover start-up costs and to cover any potential increases in the costs of Customs commercial operations. Unless reauthorized by Congress, fees are not to be charged after September 30, 1989.

Articles Not Subject to Fee

Pub. L. 99–509 provides that certain articles are to be exempt from the ad valorem fee. The exemptions are: (1) Articles provided for in schedule 8 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202); (2) products of insular possessions of the U.S.; and (3) products of any country listed in General Headnote 3(e) (vi) or (vii), TSUS. General Headnote 3(e)(vi) lists least developed developing countries. General Headnote 3(e)(vii) lists beneficiary countries of the Caribbean Basin Economic Recovery Act (CBERA)(19 U.S.C. 2701 *et seq.*). The fee applies to all other articles, even if duty-free or eligible for tariff preference.

Other Specifics of Fee

The ad valorem fee is to be paid by the importer of record of the merchandise and shall be based on the value of the merchandise as determined under section 402, Tariff Act of 1930, (19 U.S.C. 1401a).

Charges imposed by the ad valorem user fee are considered to be charges or exactions within the meaning of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). As such, they are final and conclusive upon all persons unless a protest is filed in accordance with the procedures set forth in Part 174, Customs Regulations (19 CFR Part 174).

Comments

Customs realizes that this document does not answer all questions pertaining to collection of the ad valorem user fee. Because of the limited time available to draft these regulations before the statutory effective date, the regulations basically follow the statutory language of Pub. L. 99–509. Additional regulations and directives will be prepared and disseminated as soon as possible. Comments are requested on the conforming or clarifying regulatory changes needed as a result of the statute or these interim regulations.

Before adopting the interim regulations as a final rule, Customs will give consideration to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

The statutory effective date for collection of the ad valorem user fee is December 1, 1986. In light of the limited deadline imposed upon Customs to implement these changes, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure is impracticable. For the same reason, pursuant to 5 U.S.C. 553(d)(3), we are dispensing with a delayed effective date. However, before adopting final regulations, consideration will be given to all written comments timely submitted.

E.O. 12291 and Regulatory Flexibility Act

Because the amendments do not meet the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, Customs has not prepared a regulatory impact analysis.

Because no notice of proposed rulemaking is required for these interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq .) do not apply.

Paperwork Reduction Act

No new recordkeeping or data collection burdens are imposed upon the public as a result of this amendment. Accordingly, it is not subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

List of Subjects in 19 CFR Part 24

Accounting, Taxes.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Amendments to the Regulations

Part 24, Customs Regulations (19 CFR Part 24), is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority for Part 24, Customs Regulations, is amended by adding the following citation to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 31 U.S.C. 9701.

Section 24.23 also issued under Pub. L. 99–272, Pub. L. 99–509; * * *.

2. Part 24 is amended by adding a new § 24.23 to read as follows:

§ 24.23 Ad valorem fee.

(a) *Fee.* Except for those types listed in paragraph (b), merchandise formally entered or withdrawn from a warehouse, for consumption, is subject to the payment to Customs of an ad valorem fee of 0.22 percent from December 1, 1986, through September 30, 1987. For the fiscal year beginning October 1, 1987, the fee will be the lesser of 0.17 percent ad valorem or an ad valorem rate provided by the Secretary of the Treasury pursuant to section 8101(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). The fee for the fiscal year beginning on October I, 1987, will be published in the **Federal Register**. The fee shall be based on the value of the merchandise as determined under section 402, Tariff Act of 1930 (19 U.S.C. 1401a).

(b) *Exemptions.* The following articles are not subject to the ad valorem fee:

(1) Articles provided for in schedule 8, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202).

(2) Products of insular possessions of the U.S.(General Headnote 3(a), TSUS).

(3) Products of beneficiary countries of the Caribbean Basin Economic Recovery Act. (General Headnote 3(e)(vii), TSUS.)

(4) Products of least developed developing countries. (General Headnote 3(e)(vi), TSUS.)

(c) *Payment.* The fee shall be due and payable to Customs by the importer of record of the merchandise at the time of deposit of estimated duties.

Michael Schmitz,

Acting Commissioner of Customs.

Approved: November 25, 1986.

Michael H. Lane,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86–26891 Filed 11–28–86; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F–0307]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of vinylidene fluoride-hexafluoropropene copolymer as an adjuvant in the production of olefin polymers intended to contact food. This action responds to a petition filed by Minnesota Mining & Manufacturing Co.

DATES: Effective December 1, 1986; objections by December 31, 1986. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 177.1520, effective December 1, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 19, 1986 (51 FR 29613), FDA announced that a petition (FAP 6B3902) had been filed by Minnesota Mining & Manufacturing Co., 3M Center, St. Paul, MN 55144, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of vinylidene fluoride-hexafluoropropene copolymer as an adjuvant (extrusion aid) in the production of olefin polymers intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of this food additive is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before December 31, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1520 is amended in paragraph (b) by alphabetically inserting a new item in the list of substances to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* *
Vinylidene fluoride-hexafluoropropene copolymer (CAS Reg. No. 9011-17-0) having a fluorine content of 65 to 66 percent and a Mooney viscosity of 28 to 38, as determined by a method entitled "Mooney Viscosity," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	For use only as an extrusion aid in the production of extruded olefin polymers at levels not to exceed 0.1 percent by weight of the polymer. The finished polymers may be used only in contact with nonalcoholic foods under the conditions described in § 176.170(c) of this chapter, table 2, under conditions of use B through H.

* * * * *

Dated: November 5, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-26478 Filed 11-28-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 4a

[T.D. 8108]

Temporary Income Tax Regulations Relating to Source of Income; Source of Interest and Dividends

AGENCY: Internal Revenue Service, Treasury.

ACTION: Removal of temporary regulations.

SUMMARY: This document removes Temporary Income Tax Regulations Relating to Source of Income published in the **Federal Register** on December 29, 1982 (47 FR 57919) concerning special rules for determining source of interest derived from resident alien individuals and domestic corporations and the source of dividends derived from domestic corporations.

DATES: The removal of the temporary regulations at § 4a.861-1 is effective December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document removes Temporary Income Tax Regulations Relating to Source of Income (26 CFR Part 4a) at § 4a.861-1 (T.D. 7865) published in the **Federal Register** on December 29, 1982 (47 FR 57919). The temporary regulations are being removed because they have been mooted by amendment of section 881(b) by section 130(a) of the Tax Reform Act of 1984. Section 881(b), as amended, provides generally that passive income paid from U.S. sources to a corporation organized in Guam or the Virgin Islands will be subject to U.S. tax if 25% or more in value of the corporation's stock is owned by foreign persons and if less than 20% of the recipient corporation's income is from Guam or Virgin Islands sources (as the case may be).

The notice of proposed rulemaking (INTL-64-86) published in the **Federal Register** on December 29, 1982 (47 FR 57972) which pertains to this subject is being withdrawn.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that removal of these temporary regulations is not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for removal of temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required.

Drafting Information

The principal author of this removal of temporary Income Tax Regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR Part 4a

Income taxes, Sources of income.

Adoption of Amendments to the Regulations

The Temporary Income Tax Regulations Relating to Source of Income (26 CFR Part 4a) are amended as follows:

Paragraph 1. The authority citation for Part 4a continues to read in part:

Authority: 26 U.S.C. 7805.

PART 4a—TEMPORARY INCOME TAX REGULATIONS RELATING TO SOURCE OF INCOME

PART 4a—[REMOVED]

Par. 2. Part 4a is removed.

Approved:

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

J. Roger Mentz,

Assistant Secretary of the Treasury.

November 15, 1986.

[FR Doc. 86-26909 Filed 11-28-86; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 290, 295, and 296

[T.D. ATF-243]

Implementing the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272)

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

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule implements Title XIII, Subtitle B of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, 100 Stat. 311).

This document amends temporary regulations (T.D. ATF-232, 51 FR 28078) in 27 CFR Parts 270, 275, 290, 295, and 296 which provided for the taxation and regulation of chewing tobacco and snuff pursuant to Pub. L. 99-272. In addition, detailed rules for the grandfathering of existing manufacturers of chewing tobacco and snuff into the current regulatory framework for other tobacco products were provided.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy Cook or Clifford A. Mullen,

Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 6235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202) 566-7531.

SUPPLEMENTARY INFORMATION: This document contains final regulations implementing the smokeless tobacco provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272). The final regulations provided by this document supersede the temporary rule on this subject which was published in the **Federal Register** on August 5, 1986 (51 FR 28078). A notice of proposed rulemaking cross referenced to the temporary rule was also published in the **Federal Register** on August 5, 1986 (51 FR 28106) and comments were received under the notice.

Temporary Rule Comments

Comments from four correspondents were received concerning the temporary rule. The comments were directed to three specific areas of the regulations—notice of tax classification of smokeless tobacco on packages, weight of the products on packages, and procedures for destruction of the products at the factory or for destruction of the products withdrawn from the market.

Notice of Tax Classification on Packages—27 CFR 270.216

One Commenter petitioned for final regulations which would allow smokeless tobacco products to be designated other than as "chewing tobacco" or "snuff" to avoid confusion to his customers. These customers selectively purchase smokeless tobacco products based on "cut," e.g., "long cut," "rough cut," "western cut," etc.

Other commenters requested that the final regulations provide for the use of geometric symbols in lieu of the designation "chewing tobacco" or "snuff" as proposed in the notice for smokeless tobacco. The commenters expressed the view that the designation "chewing tobacco" or "snuff" would cause confusion to customers, interfere with existing marketing plans, and pose an obstacle to the development of new products.

Weight of Product on Package—27 CFR 270.216

All commenters requested that the final rule not require the package weight to be marked on the consumer packages of either "plug," "twist," or "portion packaged" smokeless tobacco because of the lack of uniformity in the packaged weight of those products. ("Portion packed" products are those smokeless tobacco products such as snuff which are packaged in small, tea-bag-like, porous, in-mouth pouches.) As an alternative those commenters requested that shipping cases for those products be marked with the weight or average net weight of the contents. One commenter requested that cases for all smokeless tobacco products be marked with the actual weight of the product contained therein.

Procedures for Destruction of Products—27 CFR 270.253 or Withdrawal of Tobacco Products from the Market—27 CFR 270.311

One commenter requested separate procedures specific to smokeless tobacco manufacturers for the destruction of smokeless tobacco products entered into the factory record as manufactured or received, without salvaging the tobacco, and destruction of tobacco products withdrawn from the market. The commenter expressed the view that the procedures required for all tobacco products manufacturers would be unduly burdensome for smokeless tobacco manufacturers because of the relatively small volume of product withdrawn from the market by smokeless tobacco manufacturers. The special procedures requested for smokeless tobacco manufacturers would be based on an oral approval by ATF after oral notification by the manufacturer of the intended destruction. The oral request for destruction before removal from the factory, (27 CFR 270.253), would be supported by manufacturer's credit memoranda. In the case of a product withdrawn from the market, (27 CFR 270.311), the oral notification would be supported by the manufacturer's credit memorandum and ATF Form 3069 (5200.7), Schedule Of Tobacco Products, Cigarette Papers Or Tubes Withdrawn From the Market.

Analysis of Comments

On July 1, 1986, smokeless tobacco manufacturers began operating under the temporary rule. In the subsequent months the actual experience of the Bureau of Alcohol, Tobacco and Firearms (ATF) confirms industry statements that a change to the regulations is necessary with respect to package markings in order to prevent unnecessary burdens on the industry.

The temporary rule, 27 CFR 270.216, Notice for smokeless tobacco, requires every package of chewing tobacco or snuff, before removal subject to tax, to have thereon the designation "chewing tobacco" or "snuff" and a statement of the actual pounds and ounces of the product contained therein. The comments received by ATF indicate that by established industry practice, manufacturers often label and market their products using such terms as "smokeless tobacco" or "fine cut tobacco" rather than "chewing tobacco" or "snuff." The commenters asserted that a requirement that products be designated as "chewing tobacco" or "snuff" might cause confusion to consumers, and disrupt the sales and marketing plans of smokeless tobacco manufacturers.

The purpose of the required notice for smokeless tobacco is to protect the revenue. ATF's jurisdiction does not extend to the regulation of the labeling of smokeless tobacco products for purposes of consumer protection. It is necessary for the protection of the revenue and for the purpose of effective tax administration, that all packages of smokeless tobacco products bear a designation of the tax classification. However, ATF has determined that the use of alternative markings on packages of smokeless tobacco products, which clearly designate the tax classification of the product therein, would provide the same protection and security to the revenue without hindering effective tax administration.

Accordingly, ATF has determined that, without jeopardy to the revenue of relinquishing necessary administrative control 27 CFR 270.216 will be amended to provide for alternative markings to the designations "chewing tobacco" or "snuff" to be shown on the packages of smokeless tobacco products. However, geometric figures would not serve well as tax class designations because they might be difficult to distinguish from other decorative package features, unless elaborate and burdensome particulars as to their location, size, and color were specified in the regulations. As an alternative, packages of chewing tobacco may be designated "Tax Class C," and packages of snuff may be designated "Tax Class M." The regulations in 27 CFR 275.72 and 295.43 will be similarly amended.

ATF has also determined, from the comments received, that because of manufacturing and packaging methods, certain products such as "twist", "plug", and "portion packed" smokeless tobacco are subject to unavoidable variation in individual package weights. Therefore, for these products, it would be impractical and unreasonable to require that each package bear a statement of the actual pounds and ounces contained therein. However, the comments indicate that there is no such difficulty in determining the total weight of large quantities of these products,

when the products are placed in shipping cases.

Accordingly, ATF has determined that, without jeopardy to the revenue or relinquishing necessary administrative control, 27 CFR 270.216 will be amended to provide for alternative marking of the product weight of packages of smokeless tobacco. As amended, the regulation will provide that smokeless tobacco manufacturers may, instead of marking the product weight on each package, have the total weight of the product, and the number and tax class of packages of product contained therein, marked on the shipping cases containing tobacco products. The regulations in 27 CFR 275.272 and 295.43 will be similarly amended.

With respect to procedures for destruction of products at the factory, 27 CFR 270.253, or for destruction of products withdrawn from the market, 27 CFR 270.311, ATF has determined that the current regulations are not unduly burdensome to smokeless tobacco manufacturers. However, such manufacturers may request approval for alternative methods or procedures under existing regulations in 27 CFR 270.45. ATF has determined to re-examine the destruction procedures with a view to bringing the requirements for all tobacco products into conformity with those for the other commodities regulated by ATF. Accordingly, ATF will include destruction procedures among the topics covered in a forthcoming notice of proposed rulemaking applicable to all tobacco products.

Temporary Regulations Adopted As Final Regulations Without Change

Temporary regulations were promulgated as T.D. ATF–232 (51 FR 28078) as a result of changes necessary to implement the smokeless tobacco provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985. These regulations are hereby adopted as final regulations with no change, except as amended herein. The following is a list of sections in the temporary regulations which are adopted as final regulations with no change.

Part 270

The heading, table of contents, §§ 270.1, 270.11, 270.25, 270.26, 270.27, 270.41, 270.42, 270.44, 270.61, 270.61a, 270.69, 270.72, 270.104, 270.133, 270.161, 270.162, 270.165a, 270.166, 270.167, 270.168, 270.182, 270.183, 270.184, 270.186, 270.201, 270.202, 270.211, 270.212, 270.216a, 270.217, 270.231, 270.232, 270.233, 270.234, 270.235, 270.236, 270.251, 270.252, 270.253, 270.254, 270.255, 270.281, 270.282, 270.283, 270.284, 270.286, 270.287, 270.301, 270.311, 270.312, 270.331.

Part 275

The table of contents, §§ 275.1, 275.11, 275.21, 275.23, 275.25, 275.33, 275.40, 275.41, 275.50, 275.60, 275.62, 275.63, 275.71, 275.72a, 275.75, 275.81, 275.85, 275.85a, 275.86, 275.101, 275.105, 275.106, 275.107, 275.109, 275.110, 275.111, 275.112, 275.115a, 275.116, 275.117, 275.120, 275.121, 275.125, 275.135, 275.136, 275.137, 275.138, 275.139, 275.140, 275.141, 275.161, 275.162, 275.163, 275.165, 275.170, 275.171, 275.172, 275.173, 275.174.

Part 290

The heading, the table of contents, §§ 290.1, 290.2, 290.11, 290.61, 290.61a, 290.62, 290.63, 290.64, 290.65, 290.66, 290.67, 290.69, 290.70, 290.90, 290.112, 290.123, 290.142, 290.143, 290.147, 290.152, 290.153, 290.154, 290.181, 290.182, 290.183, 290.184, 290.185, 290.187, 290.188, 290.189, 290.190, 290.191, 290.192, 290.193, 290.194, 290.195, 290.196, 290.196a, 290.197, 290.198, 290.200, 290.201, 290.202, 290.203, 290.204, 290.205, 290.206, 290.207, 290.207a, 290.208, 290.210, 290.212, 290.213, 290.221, 290.222, 290.223, 290.224, 290.225, 290.226, 290.227, 290.228, 290.229, 290.230, 290.255, 290.264.

Part 295

The heading, the table of contents, §§ 295.1, 295.11, 295.23, 295.25, 295.31, 295.32, 295.33, 295.34, 295.35, 295.36, 295.37, 295.41, 295.42, 295.46, 295.51.

Part 296

The heading, the table of contents, §§ 296.71, 296.72, 296.73, 296.74, 296.75, 296.76, 296.77, 296.78, 296.79, 296.80, 296.161, 296.163, 296.164, 296.166, 296.167.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this document, because it was not required to be preceded by a general notice of proposed rulemaking under 5 U.S.C. 553, and because the revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any significant secondary or incidental effects, and any significant reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Executive Order 12291

This document is not a major rule within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

Paperwork Reduction Act

The requirements to collect information proposed in this final rule have been submitted to the Office of Management and Budget and approved under Sec. 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfer, excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Electronic fund transfer, Claims, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign-trade zones, Labeling, Packaging and containers, Penalties, Surety bonds Tobacco products, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Excise taxes, Labeling, Packaging and containers, Tobacco products.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco products.

Drafting Information

The principal authors of this document are Nancy F. Cook and Clifford A. Mullen of the Distilled Spirits

and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PARTS 270, 275, 290, 295 AND 296—[AMENDED]

Accordingly, the temporary regulation amending 27 CFR Parts 270, 275, 290, 295 and 296 which was published at 51 FR 28078–28092 is adopted as a final rule with the following changes:

Sec. A. The temporary regulations in 27 CFR Part 270 are amended as follows:

Paragraph 1. The authority citation for Part 270 continues to read as follows:

Authority: 5 U.S.C. 552(a), 26 U.S.C. 5701, 5703, 5704, 5705, 5711, 5712, 5713, 5721, 5722, 5723, 5741, 5751, 5753, 5761, 5762, 5763, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 270.216 is revised to read as follows:

§ 270.216 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff." As an alternative, packages of chewing tobacco may be designated "Tax Class C", and packages of snuff may be designated "Tax Class M".

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total number of the packages of product contained therein.

(Approved by the Office of Management and Budget under control number 1512–0488)

(Sec. 202, Pub. L. 85–859, 72 Stat. 1422 (26 U.S.C. 5723))

Sec. B. The temporary regulations in 27 CFR Part 275 are amended as follows:

Paragraph 1. The authority citation for Part 275 continues to read as follows:

Authority: 5 U.S.C. 552(a), 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7652(a), 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 275.72 is revised to read as follows:

§ 275.72 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff." As an alternative, packages of chewing tobacco may be designated "Tax Class C," and packages of snuff may be designated "Tax Class M."

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total number of the packages of product contained therein.

(Approved by the Office of Management and Budget under control number 1512–0488)

(Sec. 202, Pub. L. 85–859, 72 Stat. 1422 (26 U.S.C. 5723))

PART 295—[AMENDED]

Sec. C. The temporary regulations in 27 CFR Part 295 are amended as follows:

Paragraph 1. The authority citation for Part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 2. Section 295.43 is revised to read as follows:

§ 295.43 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff." As an alternative, packages of chewing tobacco may be designated "Tax Class C," and packages of snuff may be designated "Tax Class M."

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total number of the packages of product contained therein.

(Approved by the Office of Management and Budget under control number 1512–0488)

(Sec. 202, Pub. L. 85–859, 72 Stat. 1422 (26 U.S.C. 5723))

Signed: November 7, 1986.

Stephen E. Higgins,

Director.

Approved: November 24, 1986.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 86–26935 Filed 11–28–86; 8:45 am]

BILLING CODE 4810-31-M

POSTAL SERVICE

39 CFR Part 111

Disposal of Books and Sound Recordings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes the procedures for the return of books and sound recordings found loose in the mail by providing a central location for the approval of requests for their return. It also requires requesters to designate the location where they will pick up their items or wish to have them returned.

DATES: Effective date: January 1, 1987. Publishers and distributors of books and sound recordings should submit their requests for the return of such books and sound recordings prior to February 1, 1987, in order to be included in the first central file of requesters effective March 1, 1987, when all prior files will become obsolete.

FOR FURTHER INFORMATION CONTACT: Francis E. Gardner (202) 268–5178.

SUPPLEMENTARY INFORMATION: On November 19, 1985, the Postal Service published for comment in the **Federal Register** (50 FR 47564) proposed changes to the Domestic Mail Manual altering the rule governing the return of books and sound recordings. Interested persons were invited to submit comments on the proposed changes by December 19, 1985.

Five commenters responded to our invitation. Although the commenters generally favored the proposed changes, all objected on the ground of undue hardship to the proposal that publishers and distributors be required to pick up their merchandise at a designated dead parcel branch, since some mailers would

have to travel great distances to the nearest branch. They suggested that pick up be permitted at the point of entry in the mail stream, such as a bulk mail center, post office, or detached mail unit. We have changed the regulation as requested.

Another commenter recommended that the name of an approved publisher or distributor be kept in the central file of requesters for five years, instead of two as proposed, on the ground that the industry is fairly stable and not likely to change. We agree with this comment and have changed the regulation.

A commenter said that distributors should be allowed twenty days from a scheduled release date, or twenty days after being notified by the Postal Service, to pick up their merchandise, instead of ten, as proposed. We considered this comment, discussed it with the Mailers Technical Advisory Committee, and have decided to increase the period to 15 days, which we believe should be adequate.

For the above reasons and after careful consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 159—UNDELIVERABLE MAIL

2. In 159.56, revise .564 to read as follows:

.56 Dead Parcel Branches

* * * * *

.564 Disposal of Books and Sound Recordings. Books and sound recordings will be disposed of by sale, except for those that may be withheld from sale for release to a publisher or distributor under the following conditions:

a. A publisher or distributor may request, in the manner set forth below, that books and sound recordings bearing a particular trade name, company name or other organizational identification, be released to the requester or to the requester's representative. The requirements for such a request are:

(1) The requester must apply in writing to the General Manager, Customer and Field Support Division, Office of Classification and Rates Administration, USPS Headquarters, Washington, DC 20260–5361.

(2) The request must include a statement that the requester is the publisher or distributor of the books and sound recordings bearing the listed trade name, company name or other organizational identification. More than one trade name, company name or other organizational identification may be listed in the same request.

(3) The request must specify only one location where the books and sound recordings will be picked up. The specific pick-up facility may be changed at any time by submitting a written request to the General Manager, Customer and Field Support Division.

(4) After approval, a central file of requesters and the items specified for return will be maintained by the Customer and Field Support Division. All requesters will receive confirmation of their requests.

(5) An approval will remain in effect for five years or until cancelled in writing by either the requester or the Postal Service. (See 159.564i).

b. A book or sound recording will not be released to the requester even though it bears an applicable trade name, company name, or other organizational identification, if it does not appear to be new, or was involved in the settlement of a postal indemnity claim, or if it is known that the requester was not the mailer or addressee. Such books will be auctioned.

c. A request for release of books or sound recordings will not be granted whenever a written protest or a conflicting request from another party is presented to the General Manager, Customer and Field Support Division. Books and sound recordings involved in such a dispute will be sold at auction in the normal course of business, unless written notice from both parties advising of settlement of the dispute is received before the sale deadline (see 159.564i). Both parties to a dispute will be advised when a question over ownership occurs and when any settlement of the dispute is made.

d. Upon approval of a request by the General Manager, Customer and Field Support Division, facilities handling books and sound recordings will establish separations to the maximum extent practicable.

e. Release procedures at the point of customer mail entry (i.e., bulk mail center, post office or detached mail unit) are as follows:

(1) Books and sound recordings will be released to requesters or their authorized representatives at a time and in a manner mutually agreeable between the requester and the Postal Service consistent with the instructions in this section.

(2) Failure of requesters to pick up books and sound recordings within fifteen days of written notification or on a previously scheduled release date will result in return of the material to a dead parcel branch for auction and in the cancellation of the request.

f. If the designated release facility has a dead parcel branch, the release procedures are the same as above.

g. In order to pick up books and sound recordings at the designated facility, requesters or their representatives must present a letter from the requester authorizing the Postal Service to release such merchandise to the bearer. This letter of authorization must be executed in triplicate. Upon release the merchandise, all copies of the letter of authorization will be receipted in bulk by the person accepting delivery. One copy will be given with the merchandise, one copy will be mailed directly to the requester and the original will be retained by the releasing facility for one year.

h. Books and sound recordings separated for return at a location other than a designated release facility will be made up in individual shipments to the return point in packages, sacks, hampers, or other types of containers. Packages will be as large as possible, subject to the weight and size limitations for fourth-class mail in DMN Part 750. Each package will be sent under a penalty label to the designated point of release (bulk mail center, post office or detached mail unit). Sacks are subject to the 70 pound weight limitation. Hampers or other containers may be used if adequate security against pilferage can be maintained. Where hampers or other containers are used, arrangements must be made through the Transportation Management Service Center associated with the sending facility for suitable containment, labeling, movement, and security.

i. When a request is cancelled (see 159.564e(2)), the requester will be notified in writing by the dead parcel office, with a copy to the General Manager, Customer and Field Support Division. A cancelled request may not be renewed until six months after the date of cancellation. At that time, a written application must be resubmitted, which will be treated as if it were a new request. Books and sound recordings on hand at the time of a cancellation will be included in the next auction.

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

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–26897 Filed 11–28–86; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 412, 421, 456, 460, 461, 462, 463, 466, 473, 476, and 478

[HSQ–122–F]

Removal of Obsolete Rules; Peer Review Organizations; Medicare Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This document removes rules pertaining to Professional Standards Review Organizations (PSROs), which became obsolete as a result of amendments made to the Social Security Act (the Act) by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Those amendments established a new peer review program under which Utilization and Quality Control Peer Review Organizations (PROs) would assume responsibilities very similar to those previously carried out by PSROs.

Removal of the obsolete rules will preclude any possible confusion and make it unnecessary to include inoperative rules in future editions of HCFA's regulations (42 CFR Chapter IV).

EFFECTIVE DATE: These rules are effective December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Kay Terry, (301) 594–7909.

SUPPLEMENTARY INFORMATION: The Peer Review Improvement Act of 1982 (Title I, Subtitle C of TEFRA-Pub. L. 97 248) amended Part B of Title XI of the Act by establishing the Utilization and Quality Control Peer Review Organization (PRO) program. This program replaced the Professional Standards Review Organization (PSRO) program The responsibilities that PROs have assumed are similar to those exercised by PSROs. PROs review health care services funded under Title XVIII of the Act (Medicare) to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and of a quality that meets professionally recognized standards. Congress created the PRO program in order to redirect and simplify the peer review of services reimbursed by Medicare, and enhance the efficiency and cost effectiveness of that review.

In June of 1984, HCFA began awarding contracts to PROs. There are no longer any PSROs performing review functions in the Medicare program.

We have removed all portions of Subchapter D that dealt exclusively with PSROs, that is, Parts 460, 461, 463 and 478, Subpart B of Part 462, Subpart B of Part 466, Subpart A of Part 473, and Subpart A of Part 476. We have also amended Parts 462 and 466 by removing definitions of terms that are defined in Part 400 or are not used in the PRO regulations; made conforming changes in other definitions; removed § 405.1625–1 because it was based on statutory provisions applicable to PSROs that are not included in the current PRO provisions; conformed cross-references throughout 42 CFR Chapter IV and, in the conformed sections, corrected other outdated cross-references. Part 474, which contained a Subpart B pertaining to PSROs, was removed by final regulations published on September 30, 1986 (51 FR 34786).

Waiver of Notice and Delayed Effective Date

These amendments remove rules that have become obsolete because the PRO program has replaced the PSRO program, and conform cross-references in others. These changes affect neither the Medicare beneficiaries nor those that provide Medicare services to them. Accordingly, we find that notice and opportunity for public comment and delayed effective date are unnecessary.

Regulatory Impact Statement

Since we are merely removing obsolete rules and adding nothing new, there will be no impact, and the requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act do not apply.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 456

Administrative practice and procedure, Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 460

Health care, Health professions, Peer Review Organizations, Professional Standards Review Organizations (PSRO).

42 CFR Part 461

Health care, Health professions, Professional Standards Review Organizations (PSRO).

42 CFR Part 462

Grant programs-health, Health care, Health professions, Peer review organizations.

42 CFR Part 463

Claims, Health care, Health professions, Professional Standards Review Organizations (PSRO).

42 CFR Part 466

Grant programs health, Health care, Health facilities, Health professions, Peer review organizations.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer review organizations.

42 CFR Part 476

Health care, Health professions, Health records, Peer review organizations, Penalties, Privacy.

42 CFR Part 478

Health care, Health professions, Professional Standards Review Organizations (PSRO).

42 CFR Chapter IV is amended as set forth below:

I. Removal of Obsolete Rules

A. Part 405, Subpart P is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

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

Authority: Secs. 1102, 1814, 1835, 1871, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395h, 1395hh, and 1395tt).

§ 405.1625–1 [Removed]

2. Section 405.1625–1 is removed and the table of contents is amended to reflect this change.

PART 460—[RESERVED]

B. Part 460 is removed and reserved and the table of contents is amended to reflect this change.

PART 461—[RESERVED]

C. Part 461 is removed and reserved and the table of contents is amended to reflect this change.

D. Part 462 is amended as set forth below:

PART 462—PEER REVIEW ORGANIZATIONS

1. The authority citation for Part 462 is revised to read as follows:

Authority: Secs 1102, 1152, and 1153 of the Social Security Act (42 U.S.C. 1302, 1320c–1 and 1320–2).

2. Subpart A is amended as follows:

a. **§ 462.1 [Amended]**

The definitions of the following terms are removed: *"Act"*, *"Active practice"*, *"Conditionally designated PSRO"*, *"Fully designated PSRO"*, *"Governing body"*, *"HCFA"*, *"Nonprofit"*, *"PSRO"*, and *"PSRO area"*.

b. In the definition of *"Physician"*, the words "PSRO or" are removed wherever they appear.

Subpart B—[Reserved]

§§ 462.6–462.16 [Reserved]

3. Subpart B (§§ 462.6–462.16) is removed and reserved, and the table of contents is amended to reflect this change.

PART 463—[RESERVED]

E. Part 463 is removed and reserved and the table of contents is amended to reflect this change.

F. Part 466 is amended as set forth below:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for Part 466 is revised to read as follows:

Authority: Secs. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c–3 and 1395hh).

§ 466.1 [Amended]

2. Section 466.1 is amended as follows:

a. The definitions of the following terms are removed: *"Adverse determination"*, *"Assigned length of stay"*, *"Area"*, *"Automatic certification"*, *"Certified length of stay"*, *"Concurrent quality assurance"*, *"Concurrent review"*, *"Delegated hospital"*, *"Federal admission"*, *"Federal program patient"*, *"Hospital review committee"*, *"Independent admitting privilege"*, *"Length-of-stay norms"*, *"Length-of-stay projection"*, *"Medical care evaluation (MCE) study"*, *"Nondelegated hospital"* (which appears twice), *"Procedure review"*, *"PSRO"*, *"PSRO representative"*, *"PSRO review"*, and *"State survey agency"*.

b. The following definition is added, in alphabetical order:

"Initial denial determination" means an initial negative decision by a PRO, regarding the medical necessity, quality, or appropriateness of health care services furnished, or proposed to be furnished, to a patient.

c. In the definition of *"Admission review"*, the words "a PSRO or" are removed.

d. In the definition of *"Continued stay review"*, the words "PSRO or" are removed.

e. In the definition of *"Regional norms, criteria, and standards"*, "PRO area" is substituted for "PSRO area".

f. In the definition of *"Working day"*, the words "PSRO or" are removed.

Subpart B—[Reserved]

§§ 466.2–466.63 [Reserved]

g. Subpart B (§§ 466.2–466.63) is removed and reserved and the table of contents is amended to reflect that change.

F. Part 473 is amended as follows:

PART 473—RECONSIDERATIONS AND APPEALS

1. The authority citation for Part 473 is revised to read as follows:

Authority: Secs. 1102, 1154, 1155, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–4, 1395cc, 1395hh, and 1395pp).

Subpart A—[Reserved]

§§ 473.1–473.6 [Reserved]

2. Subpart A (§§ 473.1–473.6) is removed and reserved and the table of contents is amended to reflect this change.

G. Part 476 is amended as set forth below:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PRO INFORMATION

1. The authority citation for Part 476 is revised to read as follows:

Authority: Secs. 1102, 1154(a), 1156(a), and 1160 of the Social Security Act (42 U.S.C. 1302, 1320c–3(a), 1320c–5(a), and 1320c–9).

§§ 476.1–476.4 [Reserved]

2. Subpart A (§§ 476.1–476.4) is removed and reserved and the table of contents is amended to reflect this change.

PART 478—[REMOVED]

H. Part 478 is removed and the table of contents is amended to reflect that change.

II. Correction of Cross-References

References to PSROs are removed or changed to refer to PROs, as appropriate, and outdated references to the Act and to Subchapter D of this chapter are also corrected, as follows:

1. § 400.200 [Amended]

§ 400.200 is amended by removing the definition for "PSROs."

2. § 405.160 [Amended]

Paragraph (d), which pertains only to PSROs, is removed and reserved.

3. § 405.162 [Amended]

In paragraph (b)—

a. The phrase "PSRO and" is removed from the paragraph heading.

b. The phrase "a Professional Standards Review Organization (PSRO) or" is removed from the first sentence.

c. Reference to "§ 405.472" is changed to "Part 412, Subpart C".

d. Reference to "Part 463" is changed to "Part 466".

e. Reference to "§ 463.17(a)" is changed to "§ 466.70(d)".

In paragraph (c)—

a. Reference to "§§ 405.470 through 405.477," is changed to "Part 412 of this chapter,".

b. Reference to "§ 405.475" is changed to "Part 412, Subpart F, of this chapter".

4. § 405.310–1 [Amended]

In the section heading, "PSRO" is changed to "PRO", and in the text—

a. "Professional Standards Review Organization (PSRO)" is changed to "PRO".

b. Reference to "Part 463" is changed to "Part 466".

c. Reference to "§§ 463.15 through 463.18" is changed to "Part 466, Subpart C".

5. § 405.704 [Amended]

In paragraph (b)(11), the words "PSRO or" are removed.

6. § 405.1902 [Amended]

In paragraph (c)—

- "Professional Standards Review Organization (PSRO)" is changed to "PRO" and reference "1861(k) and 1865 of the Act" is changed to read "and 1861(k) of the Act".
- Reference to "section 1155(a) of the Act" is changed to "section 1154 of the Act and Part 466 of this chapter".
- The last sentence is removed.

7. § 405.1913 [Amended]

In paragraph (f)(9), "planning or conditional Professional Standards Review Organization (PSRO)" is changed to "PRO".

8. § 405.2100 [Amended]

In paragraph (a), last sentence, "Professional Standards Review Organizations" is changed to "PROs".

9. § 405.2110 [Amended]

In paragraph (b), "PSRO" is changed to "PRO".

10. § 405.2112 [Amended]

In paragraphs (a)(7) and (b)(6) and (b)(8), "PSRO" is changed to "PRO".

11. § 405.2114 [Amended]

In paragraph (b), "PSRO" is changed to "PRO" wherever it appears.

12. § 412.92 [Amended]

In paragraph (a)(2)(ii), the words "PSRO or" are removed.

13. § 421.100 [Amended]

In § 421.100(a)(3), "Professional Standards Review Organization (PSRO)" and "PSRO" are changed to "PRO", and "Part 463" is changed to "Part 466".

14. § 421.200 [Amended]

In § 421.200(a)(1)(iii), "Professional Standards Review Organization (PSRO)" and "PSRO" are changed to "PRO", and "Part 463", is changed to "Part 466".

15. § 456.2 [Amended]

In paragraph (b), "or" is inserted after paragraph (b)(1), paragraph (b)(2) is removed, and paragraph (b)(3) is redesignated as (b)(2).

16. § 456.144 [Amended]

Paragraph (c)(1) is changed from "PSROs" to "PROs".

17. § 456.244 [Amended]

Paragraph (c)(1) is changed from "PSROs" to "PROs".

18. § 456.344 [Amended]

Paragraph (c)(1) is changed from "PSROs" to "PROs".

19. § 456.650 [Amended]

In paragraph (c), "or" is inserted after paragraph (c)(1), paragraph (c)(2) is removed, and paragraph (c)(3) is redesignated as (c)(2).

20. § 456 654 [Amended]

In paragraph (a)(4), the words "or to a PSRO" and "or PSRO" are removed.

(Catalog of Federal Domestic Assistance Program No. 13.773—Medicare—Hospital Insurance.)

Dated: September 4, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 30, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-26763 Filed 11-28-86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 64

[Docket No. FEMA 6738]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the fourth column of the table.

ADDRESSEE: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706. Phone: (800) 638-7418.

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

SUPPLEMENTARY INFORMATION: National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

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

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

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

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Georgia: Heard	Centralhatchee, town of	130257A	Oct. 6, 1986, Emerg	July 8, 1977.
Pennsylvania: Washington	West Pike Run,[1] township of	422157A	Oct. 25, 1974, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Oct. 6, 1986, Rein.	Dec. 6, 1974 and Sept. 1, 1986.
Michigan: Lake	Lake, township of	260691	Oct. 10, 1986, Emerg	Do.
Illinois: Lake	Third Lake, village of	1703928	Dec. 26, 1975, Emerg.; Feb. 1, 1980, Reg.; Feb. 1, 1980, Susp.; Oct. 3, 1986, Rein.	Sept. 6, 1974, Mar. 19, 1976 and Feb. 1, 1980.
Pennsylvania:				
Beaver	South Beaver,[1] township of	422329A	Dec. 11, 1975, Emerg.; Sept. 1, 1986, Reg., Sept. 1, 1986, Susp.; Oct. 14, 1986, Rein.	Jan. 10, 1975 and Sept. 1, 1986.
Indiana	Brush Valley,[1] township of	421710A	Mar. 23, 1977, Emerg.; Aug. 19, 1986, Reg.; Aug. 19, 1986, Susp.; Oct. 14, 1986, Rein.	Jan. 3, 1975 and Aug. 19, 1986.
Dauphin	Conewago, township of	422406A	Feb. 10, 1981, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp.; Oct. 14, 1986, Rein.	Dec. 27, 1974 and Apr. 30, 1986.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Erie	Waterford, township of	422419A	Mar. 22, 1976, Emerg.; Feb. 17, 1982, Reg.; Feb. 17, 1982, Susp.; Oct. 14, 1986, Rein.	Jan. 24, 1975 and Feb. 17, 1982.
Crawford	Spring,[1] township of	421570	Mar. 1, 1977, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Oct. 14, 1986, Rein.	May 31, 1974, July 9, 1976 and Sept. 1, 1986.
Virginia: Rockingham	Unincorporated area	510133B	July 2, 1974, Emerg.; Sept. 29, 1986, Reg.; Sept. 29, 1986, Susp.; Oct. 14, 1986, Rein.	Nov. 15, 1974, June 23, 1978 and Sept. 29, 1986.
Pennsylvania:				
Allegheny	Forest Hills,[1] borough of	420035B	Oct. 15, 1973, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Oct. 14, 1986, Rein.	May 10, 1974, Sept. 10, 1976 and Sept. 1 1986.
Susquehanna	Silver Lake,[1] township of	422091A	Mar. 18, 1976, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Oct. 14, 1986, Rein.	Jan. 10, 1975 and Sept. 1, 1986.
Missouri:				
Gasconade	Morrison, city of	290142B	May 30, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.; Oct. 16, 1986, Rein.	May 30, 1975, Oct. 3, 1975 and Sept. 18, 1986.
Stoddard	Bernie, city of	290422B	Mar. 26, 1975, Emerg.; July 17, 1986, Reg.; July 17, 1986, Susp.; Oct. 10, 1986, Rein.	Mar. 29, 1974, Nov. 28, 1975 and July 17, 1986.
Georgia: Quitman	Georgetown, town of	130379	Oct. 17, 1986, Emerg	Feb. 10, 1978.
Tennessee: Carroll	Bruceton, town of	470244	do	July 2, 1976.
Wisconsin:				
Grant	Bagley,[1] village of	550145B	July 25, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.; Oct. 17, 1986, Rein.	Aug. 30, 1974, May 21, 1976 and June 17, 1986.
Washington	Slinger,[1] village of	550587	Oct. 16, 1986, Emerg	Oct. 21, 1977.
Illinois:				
Pulaski	Ullin,[1] village of	170568B	May 8, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Oct. 23, 1986, Rein.	Apr. 12, 1974, May 14, 1976 and Sept. 27, 1985.
Effingham	Altamont,[1] city of	170228	Jan. 28, 1976, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.; Oct. 23, 1986, Rein.	Mar. 22, 1974, June 11, 1976, June 22, 1979 and Sept. 4, 1985.
Stark	Bradford,[1] village of	170745A	Sept. 30 1975, Emerg.; Sept. 4, 1986, Reg.; Sept. 4, 1986 Susp.; Oct. 23, 1986, Rein.	Dec. 20, 1974 and Sept. 4, 1986.
Greene	Greenfield,[1] city of	170252B	July 5, 1979, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.; Oct. 23, 1986, Rein.	Feb. 22, 1974, July 16, 1976 and June 17, 1986.
Pennsylvania: Beaver	Darlington,[1] township of	422312	Mar. 11, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Oct. 28, 1986, Rein.	Dec. 13, 1974 and Sept. 1, 1986.
New Hampshire: Grafton	East Kingston,[1] town of	330203A	July 16, 1976, Emerg.; Apr. 2, 1986, Reg.; Apr. 2, 1986, Susp.; Oct. 27, 1980, Rein.	Feb. 28, 1978 and Apr. 2, 1986.
Pennsylvania: Schuylkill	Kline,[1] township of	422010A	Dec. 26, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Oct. 30, 1986, Rein.	Nov. 8, 1974 and Sept. 1, 1986.
Missouri: Montgomery	Unincorporated areas[2]	290242A	Oct. 29, 1986, Emerg	Nov. 2, 1983.
Tennessee: Montgomery	Rhineland, town of	290243B	Oct. 24, 1986, Emerg.; Oct. 24, 1986, Reg	Jan. 21, 1977, Aug. 16, 1977 and Sept. 4, 1986.

[1] Minimal conversions.
[2] Declared disaster area.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region III			
Pennsylvania: Windber, borough of, Somerset County	422046A	October 17, 1986, suspension withdrawn	Jan. 31, 1975 and Oct. 17, 1986.
Region V			
Michigan: Huron, township of Wayne County	260545B	do	June 30, 1978 and Oct. 17, 1986.
Region VII			
Iowa:			
Muscatine County, unincorporated areas	190836B	do	May 31, 1977 and Oct. 17, 1986.
West Liberty, city of, Muscatine County	190215B	do	Jan. 16, 1974, Apr. 30, 1976, and Oct. 17, 1986.
Kansas: Syracuse, city of, Hamilton County	200124C	do	Jan. 9, 1974, Nov. 14, 1975, Oct. 2, 1979, and Oct. 17, 1986.
Missouri: Carroll County, unincorporated areas	290057B	do	Jan. 5, 1984 and Oct. 17, 1986.

Issued: November 21, 1986.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 86-26896 Filed 11-28-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-129; RM-5286]

Radio Broadcasting Services; Ozark, MO

AGENCY: Federal Communications Commission.

S-094999 0031(02)(28-NOV-86-12:34:09)

ACTION: Final rule.

SUMMARY: This document allots Channel 225A to Ozark, Missouri, as that community's first FM service, with a site restriction 7.2 kilometer (4.5 miles) north of the community, in response to a request from Ozark Entertainment Network.

With this action, this proceeding is terminated.

EFFECTIVE DATE: December 26, 1986; The window period for filing applications will open on December 29, 1986, and close on January 26, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No 86-129, adopted October 20, 1986, and released November 19, 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 Steet, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b) the table of allotments is amended, under Missouri, by adding Ozark, Channel 225A.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26911 Filed 11-28-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-22; RM-5151, 5322]

Radio Broadcasting Services; Pocatalico and Dunbar, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 254A to Pocatalico, WV, and Channel 233A to Dunbar, WV, at the request of Mountaineer Communications Corporation and West Virginia Rural Radio Company, respectively. The allotments could provide each community with its first local FM service. Channel 254A requires a site restriction of 3.1 kilometers (1.9 miles) northeast of Pocatalico and Channel 233A requires a site restriction of 2.7 kilometers (1.7 miles) north of Dunbar. The allotment to Pocatalico is contingent upon Station WSIP-FM, Paintsville, Kentucky, receiving a license in accordance with a construction permit reclassifying its facilities from a full Class C channel to a Class C1 channel, which is currently pending. Therefore, the filing window dates for Channel 254A at Pocatalico, West Virginia, will be announced at a future date to follow the licensing of Station WSIP-FM, accordingly. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 26, 1986; The window period for filing applications for Channel 233A at Dunbar, WV will open on December 29, 1986, and close on January 26, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-22, adopted October 24, 1986, and released November 19, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the table of allotments, the entry for Dunbar, West Virginia is amended to add Channel 233A and the entry for Pocatalico, West Virginia is amended to add Channel 254A.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26912 Filed 11-28-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-374; RM-5015]

Television Broadcasting Services; Twin Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 35 to Twin Falls, Idaho, as its second commercial television service at the request of Ambassador Media Corp. and denies a joint counterproposal by King Broadcasting Company and American Community Broadcasting, Inc. to assign Channel 68 to Twin Falls, in lieu of Channel 35. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 26, 1986.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-374, adopted October 24, 1986, and released November 19, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. In § 73.606(b), the table of assignments, in the entry for Twin Falls, Idaho, Channel 35 is added.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26913 Filed 11-28-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 230, and 253

Department of Defense Federal Acquisition Regulation Supplement; DoD Profit Policy

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: Comments are solicited on this interim rule which revises the DoD profit policy on negotiated defense contracts.

The interim rule reforms DoD's method of establishing prenegotiation profit objectives on negotiated defense contracts.

DATES: This policy is effective on all applicable contracting actions awarded under solicitations issued on or after October 18, 1986. Comments on the interim rule should be submitted in writing to the address shown below no later than December 31, 1986, to be

considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: Lieutenant Colonel Richard J. Wall, USAF, Chairman, Joint Implementation Committee, ODASD(P)/CPF, Room 3C800, Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Richard J. Wall, USAF, Chairman, Joint Implementation Committee, (202) 695–9764.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule concerning DoD's profit policy is being issued in compliance with section 9105 of the Department of Defense Appropriations Act of 1987. This policy is effective on all applicable contracting actions awarded under solicitations issued on or after October 18, 1986. It also supersedes the proposed DoD profit policy published in the **Federal Register** on September 18, 1986 (51 FR 33087, September 18, 1986), for public comment. The interim rule is identical in structure to the rule proposed on September 18. However, the profit factors for performance risk and facilities capital employed have been modified. The guidance furnished by the Under Secretary of Defense for Acquisition to the Secretaries of the Military Departments and Directors of the Defense Agencies reads as follows:

The Office of the Secretary of Defense, with the participation of the Military Services and the Defense Logistics Agency, has developed a new profit policy to be used when negotiating defense contracts. This effort has been directed by the Deputy Secretary of Defense in response to the reforms recommended by DoD's Defense Financial and Investment Review (DFAIR). The revised profit policy includes not only these reforms, but it also adopts a number of other initiatives recommended by the Military Services/Agencies, Executive Branch, Congress, and the General Accounting Office.

The new profit policy is reflected in a completely restructured Weighted Guidelines Method for establishing the contracting officer's prenegotiation profit objectives. The major revisions to this method accomplish the following: (1) Eliminate separate profit policies for manufacturing, research and development, and service contracts; (2) decrease the emphasis placed on contract cost; (3) redirect the performance risk assessment to technical, management, and cost considerations rather than individual elements of cost; (4) integrate contract financing with contract type risk assessment; (5) increase and redistribute the proportion of prenegotiation profit objective to be based on facilities capital; and (6) remove contractor general and administrative expenses as a profit determinant.

The corresponding revisions to the DoD Federal Acquisition Regulation Supplement (DFARS) were published in the **Federal Register** for public comment on September 18, 1986, with a planned implementation date of January 1, 1987. However, as a result of the Department of Defense Appropriations Act of 1987, DoD is compelled to issue an interim rule immediately, effective on all solicitations issued on or after October 18, 1986. The Department still intends to consider the views expressed through the public comment process, as well as practical application problems discovered with field implementation.

It is expected that the profit policy revisions will result in lower prenegotiation profit objectives overall. This expectation has been built into the DoD's budget estimates for the future and is the principal reason given for legislative action in this area. Therefore, management officials must take care to ensure that the new guidelines are applied without regard to historical profit levels that may have been higher. Exceptions to applying the Weighted Guidelines Method should be granted only in truly extraordinary circumstances.

The profit policy revisions also entail a major overhaul to the DoD's profit reporting systems. The DD Form 1499 (Report of Individual Contract Profit Plan) has been eliminated. Instead, the DD Form 1547 (Record of Weighted Guidelines Method Application) will serve as the source document for DoD's profit reporting systems under the new procedures established in DFARS Subpart 4.6 and DoD Instruction 7730.27, "Reporting of Planned and Negotiated Contract Profits." Because of the importance in assessing the new policy with current information, it is necessary to supplement these reporting systems. Therefore, for Fiscal Year 1987 (October 1, 1986 to September 30, 1987) the contracting offices listed in DFARS 4.673–3 shall send a copy of each completed DD Form 1547 exceeding $500,000 where the new Weighted Guidelines Method was used to the Directorate of Cost, Pricing, and Finance; Office of the Deputy Assistant Secretary of Defense for Procurement; the Pentagon; Washington, DC 20301–8000; Attention—Profit Report. The forms should be forwarded within 30 days after the completion of contract negotiations. The Military Services are authorized to collect the forms on a centralized basis.

B. Determination To Issue a Temporary Regulation

A determination has been made under the authority of the Secretary of Defense that the regulations promulgated by the Military Departments must be issued as temporary regulations in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended.

C. Regulatory Flexibility Act Information

The interim rule reforms DoD's method of establishing prenegotiation profit objectives on negotiated defense contracts. The interim rule will apply only to those small businesses which meet the criteria for applying a structured approach to developing prenegotiation profit objectives. Since the threshold is $100,000 and applies to negotiated contracts, the small business involvement is not expected to be significant as the majority of contracts awarded at this level are to other than small businesses. Therefore, Regulatory Flexibility Act Requirements do not apply.

D. Paperwork Reduction Act Information

The changes to the Weighted Guidelines Method are expected to reduce the volume of paperwork. First, the DD Form 1547 and DD Form 1499 are combined into one form. Second, the volume of data elements collected udner DoD's management information system on profit are reduced. The DD Form 1861 has been expanded into two parts, but this will not have a major impact. The new portion of the DD Form 1861 will be completed only once a year from available information. The forms have been revised as necessary, and OMB approval on the information collection requirements has been obtained.

List of Subjects in 48 CFR Parts 204, 215, 230, and 253

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204, 215, 230, and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 215, 230, and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Sections 204.673 and 204.673–1 through 204.673–4 are revised to read as follows:

204.673 Record of Weighted Guidelines Method Application (DD Form 1547).

204.673–1 Purpose.

The DD Form 1547 is the principal source document for maintaining a DoD-wide management information system on profit and fee statistics, as required under DoD Instruction 7730.27, "Reporting of Planned and Negotiated Contract Profit Rates," (see 215.970). The management information system is extensively used within the Office of the

Secretary of Defense to serve a wide variety of purposes ranging from evaluating profit and fee policies to responding to information requests received from all Branches of the Government, Congress, and the public.

204.673-2 Responsibilities.

The Heads of the Military Departments shall develop the necessary policies, procedures, and internal controls for implementing this reporting system. The contracting officer is responsible for properly preparing the DD Form 1547 and forwarding a copy of it to the designated office within 30 calendar days after the date of contract award. The contracting officer is also responsible for the correction of any errors detected by the system's auditing processes.

204.673-3 Applicability.

For the field contracting offices specified below, a copy of the completed DD Form 1547 shall be forwarded to the office designated for all contract actions valued $500,000 or more where the contracting officer employed either the Weighted Guidelines Method (215.970), an alternate structured approach (215.971), or the Modified Weighted Guidelines Method (215.972). Offices located outside the United States, its possessions, and Puerto Rico are exempt from this reporting requirement.

(a) *Army*

(1) Selected Field Contracting Offices—

(i) Army Materiel Command;

(ii) Strategic Defense Command;

(iii) Defense Supply Service, Washington, DC; and

(iv) U.S. Army Corps of Engineers.

(2) Designated Office—HQDA (DALO-CSZ-SM), Washington, DC 20310-0600 through intermediate offices if shown below.

(i) For Army Materiel Command field contracting offices, send through Army Materiel Command, ATTN: AMCPP-SC, 5001 Eisenhower Avenue, Alexandria, Virginia 22333-0001; and

(ii) For U.S. Army Corps of Engineers contracting offices, send through Office of the Chief of Engineers, HQDA (DAEN-PRP), Washington, DC 20314-1000.

(b) *Navy*

(1) Selected Field Contracting Offices—

(i) Naval Air Systems Command;

(ii) Naval Sea Systems Command;

(iii) Space and Naval Warfare Systems Command;

(iv) Naval Facilities Engineering Command; and

(v) The following field offices of the Naval Supply Systems Command: Navy Aviation Supply Office, Philadelphia; Navy Ships Parts Control Center, Mechanicsburg; Naval Regional Contracting Center, Long Beach; and Naval Regional Contracting Center, Philadelpl ia.

(2) Desi,gnated Office: Commander, Naval Supply Systems Command (SUP 024B), Washington, DC 20376.

(c) *Air Force*

(1) Selected Field Contracting Offices—

(i) Air Force Systems Command; and

(ii) Air Force Logistics Command.

(2) Forwarding Office—HQ AFLC/LMSC/SORS, Wright-Patterson Air Force Base, Ohio 45433.

204.673-4 Procedures

(a) All elements of the DD Form 1547 shall be completed by the contracting officer as instructed in 215.970-2, 215.971-3, and 215.972-2.

(b) Completed forms shall be sent to the designated office, as an unclassified document, within 30 days after contract award. Classified information shall not be entered into the management information system on profit. The designated office will perform the necessary audit tests to ensure that the information on the DD Form 1547 is accurate. Use of mechanized or automated systems is desirable.

(c) The designated offices shall transmit the DD Form 1547 information in the manner and format specified in DoD Instruction 7730.27.

(d) The reporting requirements of this part have been assigned RCS: A&L(Q) 1751.

204.673-5 [Removed]

3. Section 204.673-5 is removed.

PART 215—CONTRACTING BY NEGOTIATION

3. Subpart 215.9, consisting of sections 215.900 through 215.973, is revised to read as follows:

Subpart 215.9—Profit

Sec.

215.900 Scope of subpart.
215.902 Policy.
215.903 Contracting officer responsibilities.
215.905 Profit-analysis factors.
215.905-1 Common factors.
215.970 Weighted Guidelines Method.
215.970-1 Procedures for establishing profit objectives.
215.970-2 Instructions for completing DD Form 1547.
215.971 Alternate approaches to Weighted Guidelines Method.
215.971-1 Recognized Profit Factors.
215.971-2 Offset policy for facilities capital cost of money.
215.971-3 Instructions for completing DD Form 1547.
215.972 Modified Weighted Guidelines Method for nonprofit organizations.
215.972-1 Procedures for establishing fee objectives.
215.972-2 Instructions for completing DD Form 1547.
215.973 Cost-plus-award-fee contracts.

Subpart 215-9—Profit

215.900 Scope of subpart.

This subpart prescribes additional policies and procedures which DoD contracting officers shall use in developing prenegotiation profit or fee objectives (hereinafter collectively called "profit objectives") on negotiated defense contracts.

204.902 Policy.

(a)(1) The Weighted Guidelines Method described in 215.970 is DoD's structured approach for performing a profit analysis. Its purpose is to achieve uniformity and consistency in the manner DoD contracting officers develop prenegotiation profit objectives. This method ensures that the key factors which motivate efficient contract performance and encourage facilities capital investment in the defense industrial base are the main determinants of profit objectives. The contracting officer shall use the Weighted Guidelines Method in performing a profit analysis prior to the negotiation of any contract action requiring cost analysis (see 215.805-3), including contract actions involving existing contracts. Exceptions to this requirement are set forth in 215.902(a)(2). It is DoD's policy that the Weighted Guidelines Methods or alternate structured approaches under authorized exceptions be applied by the contracting officer in a credible manner. Practices which produce an arbitrary profit objective or accomplish a profit analysis on an after-the-fact basis are unacceptable.

(2) The Weighted Guidelines Method is not required for the types of contract actions listed immediately below as (i) through (viii). In such cases, an alternate structured approach which specifically addresses performance risk, contract type risk (including contractor working capital), and contractor facilities capital shall be used (see 215.971-1). The contracting officer shall also adhere to the offset policy for facilities capital cost of money described in 215.971-2.

(i) Architect-engineering contracts;

(ii) Management contracts for operation and maintenance of Government facilities;

(iii) Construction contracts,

(iv) Contracts primarily requiring delivery of material supplied by subcontractors;

(v) Termination settlements;

(vi) Cost-plus-award-fee contracts;

(vii) Contracts not expected to exceed $500,000; and

(viii) Although it is intended that the Weighted Guidelines Method be applied to most contract actions, there may be unusual situations where this method may not produce a reasonable overall prenegotiation profit objective. An alternate structured approach may be used by the contracting officer, provided that approval has been obtained in writing from the head of the contracting activity.

(S–70) The prime contractor should be encouraged to use the Weighted Guidelines Method or a similar structured approach in developing profit objectives on negotiated subcontracts.

215.903 Contracting officer responsibilities.

(e) The contractor should be encouraged to present on a voluntary basis the details of proposed profit amounts in the format described in 215.970, if application of the Weighted Guidelines Method is anticipated. This would facilitate a more complete discussion of the individual factors which will determine the overall profit objective. The contracting officer is not expected to attempt to reach agreement with the contractor on either the individual factors or the total profit amount.

(S–70) The contracting officer's price negotiation memorandum shall describe the profit analysis performed, whether it be accomplished through the Weighted Guidelines Method or an alternate structured approach.

(S–71) The contracting officer is responsible for the accuracy and timeliness of profit reporting under DoD's management information system (see 204.673). In general, such reporting should be accomplished within 30 calendar days after the date of contract award. The contracting officer is also responsible for the correction of any errors detected by the system's auditing processes.

215.905 Profit-analysis factors.

215.905–1 Common factors.

The Weighted Guidelines Method and alternate structured approaches provide sufficient means for the contracting officer to consider the common profit analysis factors. It is not necessary for the contracting officer to give consideration to the common factors beyond these means.

215.970 Weighted Guidelines Method.

The Weighted Guidelines Method requires application of a DD Form 1547, "Record of Weighted Guidelines Method Application" (see 253.303–70–DD–1547). This method is DoD's structured approach to be used by the contracting officer for (a) performing the profit analysis necessary to develop a prenegotiation objective, (b) summarizing profit amounts subsequently negotiated as part of the contract price, and (c) serving as the principal source document for reporting profit statistics through DoD's management information system. The Weighted Guidelines Method expressly takes into account the contractor's degree of performance risk in producing the goods or services purchased under the contract action, the contract type risk assumed by the contractor under varied contract and incentive arrangements, the level of working capital needed for contract performance, and the nature of facilities capital to be employed by the contractor. The considerations that must be made by the contracting officer when developing a profit objective are described below. The normative value for each profit factor is the value to be assigned by the contracting officer in the majority of contract actions. However, a different value may be assigned by the contracting officer, within the designated range of minimum and maximum values, if considered appropriate under the conditions described.

215.970–1 Procedures for establishing profit objectives.

(a) *Performance risk (designated range 3% to 5%; normal value 4%).* This factor addresses the contractor's degree of performance risk in producing the goods and services purchased under the contract. It is to be evaluated by the contracting officer within three broad categories of consideration: technical, management, and cost. The normative value for each of these categories is 4%, although the contracting officer may assign a higher or lower value within a designated range of 3% to 5%. The overall value to be assigned for performance risk shall be the arithmetic average of the three categories (each has equal weighting). The profit amount for performance risk is computed by multiplying the composite value assigned times total contract costs, *excluding* general and administrative (G&A) expenses, contractor independent research and development/bid and proposal (IR&D/B&P) expenses, and facilities capital cost of money. Each category is discussed below along with a description of above and below normal conditions.

(1) *Technical considerations.* This category focuses on the technical risks assumed by the contractor in fully satisfying the requirements specified by the contract. The contracting officer's evaluation should address the technology being applied by the contractor, program maturity, performance specifications and tolerances, and delivery schedule. The contracting officer may, however, consider other factors which substantially bear on the contractor's ability to meet the technical aspects of the contract. The contracting officer is expected to carefully review the contract requirements and focus on the critical performance elements in the statement of work and related specifications. The normative value to be assigned in developing a composite value for technical considerations is 4%. Conditions which might justify higher or lower values are discussed immediately below in (a)(1) (i) and (ii).

(i) *Above normal conditions.* The contracting officer may assign a value up to 5% if the contractor is either developing or applying advanced technologies. Higher technical risk might be present on a new weapon system, particularly if performance or quality specifications are tight. Manufacturing specifications that have stringent tolerance limits might also impose an above normal condition for technical considerations. The extent of a warranty or guarantee pledged by the contractor should also be considered. Contractors who are willing to accept an accelerated delivery schedule to meet DoD requirements should be considered for higher profit under this factor.

(ii) *Below normal conditions.* If the technical considerations reflect a low degree of performance risk, the contracting officer may assign a value of not-less-than 3%. For example, a relatively simple requirement where there is little application of complex technology would justify a lower profit assignment. This would generally be the case on a relatively mature weapon system or one where the contractor is employing commercial specifications. Follow-on effort to existing contracts should also be an indication of lower technical risk, if design has remained stable.

(2) *Management considerations.* This category considers the management effort involved on the part of the contractor to integrate the many resources necessary to meet contract requirements. Resources include raw materials, labor, technology, and capital.

The contracting officer's assessment should not only embrace a broad perspective of the contractor's management and internal control systems but also management involvement that is expected on the individual contract action. The contracting officer should consider the degree of cost mix as an indication of the types of resources applied and value-added by the contractor. The cost elements should not, themselves, be a basis for profit assignment. In evaluating management efforts, the contracting officer should use reviews made by the field contract administration office or other pertinent DoD field offices. The contracting officer should also give consideration to the contractor's support of federal socioeconomic programs, such as support to small business concerns and labor surplus areas. The normative value to be assigned in developing a composite value for management considerations is 4%. Conditions which might justify higher or lower values are discussed immediately below in (a)(2) (i) and (ii).

(i) *Above normal conditions.* The contracting officer may assign a value up to 5% if the size or nature of the item or service being acquired requires a substantial amount of management involvement. This might be the case on a contract action where the value-added by the contractor is both considerable and reasonably difficult. Additional profit should be assigned for management considerations if the contractor has a proven record of significant active participation to the federal socioeconomic programs.

(ii) *Below normal conditions.* If there is a low degree of management involvement, then the contracting officer may assign a value of not-less-than 3%. A comparably mature program where many end item deliveries have been previously made might justify a lower profit assignment. If minimum value-added is accomplished by the contractor, a lower profit should be assigned. A lower profit would be appropriate if reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems which relate to significant elements of contract performance (e.g., quality assurance, property control, safety, security).

(3) *Cost considerations.* This category focuses on cost aspects beyond those addressed under contract type risk. The principal areas for evaluation are the expected reliability of cost estimates, cost reduction initiatives, and cost control. Other factors which bear on the contractor's ability to meet the cost targets, such as foreign currency exchange rates and inflation rates, may also be considered. The contracting officer should examine a reliability of the contractor's estimating system. Cost reduction initiatives are those actions taken by the contractor to reduce program costs. Some examples may be the existence of competition advocacy programs, spare pricing reforms, and value engineering. The cost control assessment should address the contractor's overall record of meeting cost goals. The normative value to be assigned in developing a composite value for cost considerations is 4%. Conditions which might justify higher or lower values are discussed immediately below in (a)(3) (i) and (ii).

(i) *Above normal conditions.* A value up to 5% may be assigned by the contracting officer if cost considerations reflect above normal circumstances. Higher profit should be assigned in those instances where contractors provide fully documented and reliable cost estimates. Higher profit should also be assigned if the contractor has an aggressive cost reduction program that has demonstrable benefits to the individual contract action. The degree of subcontract competition should influence this evaluation. The contracting officer should also consider higher profit on contracts awarded to a contractor with a proven record of cost control.

(ii) *Below normal conditions.* If little effort has been made to initiate cost reduction programs, the contracting officer may assign a value of not-less-than 3%. A lower profit assignment should be made if the contractor has a marginal cost estimating system. A lower profit assignment would be appropriate if contractor proposal submissions are inadequate or late. If the contractor has a record of cost overruns or other indications of unreliable cost estimates and lack of cost control, the contracting officer might be justified in a lower profit assignment.

Example

The following example demonstrates the method for assigning a composite factor for performance risk. Suppose Acme Manufacturing is to be awarded a negotiated contract to develop a prototype end item for a major weapon system. Through analysis performed by the contracting officer, the following values were assigned for each category of consideration: technical = 4.6% (advanced technology), management = 4.3% (somewhat high degree of management involvement), and cost = 3.7% (somewhat unrealiable cost estimating system). To compute a composite value, the sum of these factors (12.6%) is divided by 3 to yield 4.2% overall. This percentage would be applied to total allowable costs, *excluding* G&A expenses, IR&D/B&P expenses, and facilities capital cost of money.

(4) *Adjustment for low facilities capital.* It is recognized that there are some R&D and service contractors that have minimum facilities capital but are still faced with substantial performance risk. It is DoD's intent that its profit policies recognize the effort involved in creating and sustaining an organization of highly skilled technicians that perform scientific, analytical, and specialized support services. For such contractors, the contracting officer may assign a value for performance risk up to 7% based on an overall assessment. The contractor would still be permitted profit for facilities capital employed and facilities capital cost of money. This assignment must be approved by a management level above the contracting officer and is restricted to those contracts that meet all of the criteria specified below.

(i) Contracts which have facilities capital employed allocations for buildings and equipment in an amount less than 4% of total contract costs (*including* G&A expenses and IR&D/B&P expenses);

(ii) Contracts with business segments where it would not be in DoD's interests to place substantial emphasis on facilities capital investment; and

(iii) Contracts involving highly skilled and complex effort, such as state-of-the-art R&D or highly specialized technical services to Government-owned equipment or facilities. This would not be expected to include janitorial services, security services, or professional service contracts for studies or general services.

(b) *Contract type risk.* This profit factor focuses on the degree of cost responsibility accepted by the contractor under varying contract structures and incentive arrangements. The recognition under the Weighted Guidelines Method gives the highest value to a firm fixed-price contract and the lowest value to a cost-plus-fixed-fee contract. The guidelines below describe the considerations that should be applied to each contract type, along with conditions that would indicate above or below normal risk. The amount of profit for contract type risk is computed by multiplying the value assigned by the contracting officer times total allowable costs *excluding* G&A expenses, IR&D/B&P expenses, and facilities capital cost of money. An adjustment to the profit factor for contract type risk shall be made on all firm fixed-price and fixed-price incentive contracts as shown in

215.970–1(c) to take working capital requirements into account.

(1) *Firm fixed-price contract (designated range 5% to 7%; normal value 6%).* The firm fixed-price contract presents the highest degree of contract type risk for the contractor. Although this contract type is normally applied on mature product lines with reasonably predictable cost estimates, many factors can affect the degree of risk assumed by the contractor. These factors include length of contract, economic environment, availability of cost history, extent of effort subcontracted under fixed-price arrangements, and protection provided by the contracting officer under other contract provisions (e.g., economic price adjustment). The normative value is 6%, but the contracting officer may assign a higher or lower value if risk is substantially more or less than normal, as shown immediately below in (b)(1)(i) and (ii).

(i) *Above normal conditions.* A value up to 7% may be assigned by the contracting officer if there is a reasonably high degree of cost uncertainty under this contract type. For example, higher than normal contract type risk might occur if there is minimal cost history on effort to be performed by the contractor. Above normal risk might also be present on long-term contracts, particularly if there is considerable economic uncertainty and no provision protecting the contractor.

(ii) *Below normal conditions.* A value of not less than 5% may be assigned by the contracting officer if the risk is substantially lower than normal. For example, a very mature product line with a large volume of cost history would be expected to have less risk. Contracts with short periods of performance should be assigned lower profit values for contract type risk. In addition, the contracting officer should give full consideration to protection afforded the contractor under other contract provisions.

(2) *Fixed-price incentive contracts (designated range 3% to 5%; normative value 4%).* The profit factor for fixed-price incentive contracts not only focuses on the degree of contract type risk, but it also recognizes the contractor's willingness to accept performance and cost incentives. The normative value is 4%. Adjustments within the designated range would be affected by the same considerations that affect risk on firm fixed-price contracts. However, additional considerations are necessary with respect to the type of incentive or combination of incentives, using the guidance shown immediately below in (b)(2)(i) and (ii).

(i) *Above normal conditions.* A value up to 5% may be assigned if an incentive provision or combination of incentive provisions (e.g., cost and performance incentives) places a higher degree of risk on the contractor than normal. This might include performance incentives on tasks with relatively difficult levels of achievement or task critical to contract completion. This might also include cost incentives where the contractor assumes a large percentage of the over-target cost risk (e.g., contractor share is 50% or more). This would also include consideration of ceilings above which the contractor accepts full responsibility (e.g., 120% or less). Above normal risk should also include consideration of the guidance contained for firm fixed-price contracts.

(ii) *Below normal conditions.* A minimum value of not less than 3% may be assigned where cost risk assumed by the contractor under an incentive provision or combination of incentive provisions is lower than normal. For example, a lower value might be assigned if the contractor accepts minimum responsibility for over-target cost risk (e.g., contractor share is then 30% or less; ceiling is 125% or more). Below normal risk should also include consideration of the guidance contained for firm fixed-price contracts. Fixed-price contracts with redeterminable provisions should be considered as an incentive contract with below normal contract type conditions.

(3) *Cost-plus-incentive-fee contracts (designated range 1% to 3%; normative value 2%).* The profit factor for cost-plus-incentive-fee contracts also addresses the contractor's willingness to accept performance and cost incentives. The contracting officer should consider the impact of multiple incentives. The normative value for cost-plus-incentive-fee contracts is 2%, but the contracting officer may adjust this value within the designated range using the same guidance as described immediately above in (b)(2)(i) and (ii) for fixed-price incentive contracts. However, it must be recognized that some factors affect the contractor's cost responsibility more on fixed-price type contracts than on cost type contracts. Examples include contract length, economic environment, and program maturity.

(4) *Cost-plus-fixed-fee contracts (designated range 0% to .5%; normative value 0%).* There is generally no contract type risk associated with a cost-plus-fixed-fee contract; therefore, the normal value has been set at 0%. A value up to .5% may be assigned by the contracting officer if the contractor's cost responsibility as influenced by technical considerations is more than normal.

(5) Regardless of contract type, the contracting officer shall consider the extent of costs already incurred by the contractor under an undefinitized contract action. The profit value for the portion of costs incurred should be 0% because the contractor has minimum risk. The remaining portion of effort to be performed under a definitive contract may receive profit values equating to the contract type.

(6) Time and material contracts; labor-hour contracts; overhaul contracts priced on a time and material basis; and firm fixed-price-level-of-effort-term contracts shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit value for contract type risk.

(7) In determining contract type risk, it is appropriate to consider additional risks associated with contracts for foreign military sales (FMS) which are not funded by United States appropriations. For example, a contract containing an offset arrangement with the foreign country may expose the contractor to additional risk. The contracting officer may recognize additional risk if the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items. If an additional risk factor is recognized, the total profit factor for cost risk shall not exceed the designated range limits established for each contract type. The additional assigned value for contract type shall not apply to FMS sales made by United States Government inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

(c) *Working capital adjustment factor (as computed; upward adjustment limit 3%.)* This adjustment shall be made by the contracting officer on all fixed-price type contracts in order to consider contractor working capital needs. No profit adjustment is to be made for working capital requirements on cost type contracts. The working capital adjustment factor employs a formula approach that takes into account the amount of contract effort financed by the contractor, interest rate, and length of contract. The formula is based on the same method for computing simple interest (Interest = Principal x Rate x Time). The working capital adjustment factor is computed as follows (see reference for detailed description):

	Reference
Costs financed by contractor	(1)
Multiplied by interest factor	(2)
Annual working capital costs	(3)
Multiplied by contract length	(4)
Contract working capital costs	(5)
Less adjustment baseline	(6)
Working capital adjustment	(7)

(1) *Costs financed by contractor.* This represents all allowable costs, *including* contractor G&A expenses and IR&D/B&P expenses (but not facilities capital cost of money), that are financed by the contractor. The contractor's share of financing requirements is generally computed by multiplying total allowable costs times the portion not covered by progress payments. The portion not covered by progress payments will typically be 100% minus the customary progress payment rate (see 232.501–1). For example, if the contract provides for progress payments at 80%, then the contractor's share of financing would be 20% (100% minus 80%). At 85% progress payments the contractor's share would be 15% (100% minus 85%). On fixed-price contracts with either no progress payments, limited progress payments (e.g., first article financing), or flexible progress payments (252.232–7004), the contractor's share shall be computed as 100% minus the customary progress payment rate for large businesses. The amount of costs financed by the contractor may be reduced by other factors, as well. For example, the contracting officer should reduce costs financed by contractor when there is a minimum cash investment in a subcontract (e.g., 100% reimbursement of subcontractor progress payments) or when the contract includes provisions for advance payments.

(2) *Current interest factor.* The interest factor shall be 7.5%. This rate is subject to change by the Assistant Secretary of Defense for Acquisition and Logistics or designee, as economic conditions warrant. No other interest rate or factor is authorized.

(3) *Annual working capital costs.* Multiply costs financed by contractor (1) by the interest factor (2).

(4) *Contract length factor.* This factor represents the length of contract, as determined by the contracting officer. It is not the period of time between contract award and close-out. Instead, it is the period of actual effort for performing the substantive portion of the work required under the contract. It should not include periods for performance contained in option provisions. Periods of little or no effort should be excluded from contract length. A composite length factor should be developed for contracts with multiple deliveries. In order to translate contract length into the mid-point of effort in terms of years, the number of months must be divided by 24 (by 2 to get mid-point of effort and by 12 to convert months to years).

(5) *Contract working capital costs.* Multiply the annual working capital costs (3) by the contract length factor (4).

(6) *Adjustment baseline.* The adjustment baseline reflects the Office of the Secretary of Defense's policy on the portion of working capital costs that may be recognized in the prenegotiation profit objective. The baseline amount is computed by multiplying total allowable contract costs, *including* G&A expenses and IR&D/B&P expenses (but not facilities capital cost of money), times 2.5%. This computation shall not be subject to modification by the contracting officer. Considerations applied in arriving at costs financed by the contractor in (1) shall not be applied in establishing baseline amounts.

(7) *Working capital adjustment.* The adjustment baseline (6) is subtracted from the contract working capital costs (5). The net result is applied to the contract type risk amount. To the extent that the contract working capital costs exceed the adjustment baseline, the contract type risk amount is increased. Conversely, if the contract working capital costs are less, then the difference is subtracted from the profit amount for contract type risk. The following examples are used to demonstrate the method for computing the working capital profit factor.

Example 1

Suppose Acme Manufacturing is to be awarded a negotiated contract for four assemblies costing $500,000 each (profit is to be excluded). The period of performance is 40 months with all assemblies being delivered at the end of the contract. Acme Manufacturing will receive progress payments at 80% and the current interest factor is 7.5%.

Costs financed by contractor	[1] $400,000
Multiplied by current interest factor (percent)	7.5
Annual working capital costs	$30,000
Multiplied by contract length factor (years)	[2] 1.67
Contract working capital costs	$50,000
Less adjustment baseline	[3] (50,000)
Working capital adjustment	[4] $0

[1] $2,000,000 multiplied by (100% minus 80%).
[2] 40 months divided by 24.
[3] $2,000,000 multiplied by 2.5%.
[4] No adjustment needed to contract type risk amount.

Example 2

Suppose ACME Manufacturing delivered the four assemblies over a period of time (e.g., one each in the 34th, 36th, 38th, and 40th month). In this case the contract length factor should be weighted by the different delivery events. Assuming equal deliveries, the contract length factor should be 1.54 (weighted average contract length of 37 divided by 24).

Costs financed by contractor	[1] $400,000
Multiplied by current interest factor (percent)	7.5
Annual working capital costs	$30,000
Multiplied by contract length factor (years)	[2] 1.54
Contract working capital costs	$46,200
Less adjustment baseline	[3] (50,000)
Working capital adjustment	[4] $(3,800)

[1] $2,000,000 multiplied by (100% minus 80%).
[2] 37 months divided by 24.
[3] $2,000,000 multiplied by 2.5%.
[4] $3,800 subtracted from contract type risk amount.

Example 3

Suppose 20% of ACME Manufacturing's effort involves subcontractor deliveries that commence immediately prior to ACME's four deliveries to the Government (e.g., contractor had no unreimbursed investment). The costs financed by the contractor should be proportionately reduced.

Costs financed by contractor	[1] $320,000
Multiplied by current interest factor (percent)	7.5
Annual working capital costs	$24,000
Multiplied by contract length factor (years)	[2] 1.67
Contract working capital costs	$40,000
Less adjustment baseline	[3] (50,000)
Working capital adjustment	[4] $(10,000)

[1] $2,000 multiplied by (100% minus 80%) reduced by 20%.
[2] 40 months divided by 24.
[3] $2,000,000 multiplied by 2.5%.
[4] $10,000 subtracted from contract type risk amount.

(d) *Facilities capital employed.* This profit factor recognizes the facilities capital to be employed by the contractor in the performance of the contract. The amount of recognition is differentiated among asset categories in proportion to the potential for productivity. The amount of profit is computed by multiplying the value assigned by the contracting officer times the net book value of facilities capital employed in each asset category, as derived in DD Form 1861–2, "Contract Facilities Capital Cost of Money." In addition to the net book value of facilities capital employed, the contracting officer may consider facilities capital that is part of an approved investment plan, if the contractor submits reasonable evidence that achievable benefits to the Government will result from the investment and unrecorded investment is included in the forward pricing structure covering periods when the

planned facilities will have been acquired and used.

(1) The normative values of profit recognition, along with the designated range of minimum and maximum values, for each asset category are shown below.

Asset type	Normative value (percent)	Designated range (percent)
Land	0	0 to 0.
Buildings	10	5 to 15.
Equipment	30	25 to 35.

(2) The contracting officer's assessment should relate the usefulness of the facilities capital to the goods or services being acquired under the individual contract action, as well as to the broader perspective of defense programs. The contracting officer should compare the direct and identifiable benefits of facilities capital employed to productivity or other industrial base considerations. The assessment should consider the economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs. The contracting officer should consider any special protection provisions that may be included in the contract which reduce the contractor's risk of investment recovery (termination protection clauses, capital investment indemnification). Typically, the normative value should be assigned by the contracting officer. However, a higher or lower value may be justified as indicated immediately below in (d)(2) (i) and (ii).

(i) *Above normal conditions.* The contracting officer may assign a higher than normative profit (up to 5 percentage points more) where facilities capital investments are a substantial benefit to defense contracts. For example, a higher value might be justified for new investment in robotic technology which reduces unit costs of production. Investments in new equipment for research and development applications might also justify a higher profit assignment. Investments that are program unique and the contractor assumes a higher degree risk of recovery might represent above normal conditions.

(ii) *Below normal conditions.* Conversely, the contracting officer might assign a lower profit (up to 5 percentage points less) where the capital employed provides little tangible benefit to defense contracts. This might be the case for allocations of capital which are predominantly applied to commercial product lines. A lower profit assignment might be justified on furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums, etc. Old facilities or extensive idle facilities should be considered.

(3) The contracting officer should ensure that increase in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, take-overs, sales of corporate entities, or similar actions.

215.970-2 Instructions for completing DD Form 1547.

The DD Form 1547 not only assists the contracting officer in establishing profit objectives under the Weighted Guidelines Method, it also serves as the principal source document for reporting profit statistics to DoD's management information system. It is essential that this form be prepared accurately on all contract actions employing the Weighted Guidelines Method.

(a) *General guidance.* The items contained on the DD Form 1547 shall be completed as shown below. All amounts are those related to the price of the contract action without regard to funding status (e.g., amounts obligated). Amounts related to options for additional quantities shall be handled as a separate contract action when exercised. Items marked with an asterisk (*) do not have to be completed by field contracting officers that have been exempted from the profit reporting requirement (204.673-3). All dollar values shall be expressed to nearest whole value (e.g., $200,008.55 = $200,009). All factors and percentages shall be expressed to nearest hundredth (e.g., 1.67 years or 7.50%). In some cases, the information required will be identical to information provided on the related DD Form 350, "Individual Contracting Action Report."

(1) *Item 1—Report Number* *. For each field contracting office identified in Item 5 below that is designated for profit reporting, a control system shall be established for consecutively numbering completed DD Forms 1547. A number does not have to be assigned until contract negotiations have been completed. This number is intended to identify the specific DD Form 1547 in DoD's management information system and will be used for follow-up actions. The contracting office shall assign a four-digit number starting with 0001 at the beginning of each fiscal year. This four-digit number shall be followed by a dash and the last two digits of the fiscal year (e.g., 0004-87 for 4th action in fiscal year 1987). Numbers less than 1000 shall still be assigned four digits (e.g., 0004, 0055, 0123).

(2) *Item 2—Basic Procurement Instrument Identification No. (PIIN).* This is a four-part designation in the manner prescribed in 204.671-5(b)(1) for completing DD Form 350. The parts are as follows:

Subitem A—Purchasing Office;
Subitem B—Fiscal Year (FY);
Subitem C—Type Procurement Instrument Code (TPIC); and
Subitem D—Procurement Instrument (Serial Number (PRISN).

(3) *Item 3—Supplemental Procurement Instrument Identification No. (SPIIN).* Enter supplemental agreement or other modification number in the manner prescribed for the DD Form 350 in 204.671-5(b)(2).

(4) *Item 4—Date of Action* *. Enter the date when the price of the contract action was negotiated (e.g., 87-03 for March 1987).

(5) *Item 5—Name of Purchasing Office* *. Enter the identifying code of contracting office using the same code as reported on the related DD Form 350.

(6) *Item 6—Federal Supply Class or Service* *. Enter the appropriate Federal Supply Class or Service Code in accordance with instructions shown in 204.671-5(b)(8)(i).

(7) *Item 7—DoD Claimant Code* *. Enter the appropriate code for the DoD Procurement Coding Manual, Volume 1, Section III, that describes the commodity or services being acquired under the contract.

(8) *Item 8—Type of Contract Code.* Enter the appropriate code as shown on the DD Form 1547.

(9) *Items 9 thru 15—Cost Category.* Enter the dollar values for the contracting officer's prenegotiation objectives for each applicable cost category. The amount for G&A expenses in Item 14 shall also include contractor IR&D/B&P expenses.

(10) *Item 16—Type Effort Code.* Enter the appropriate code as shown on the DD From 1547.

(11) *Item 17—Weighted Guidelines Use Code* *. Enter the appropriate code as shown on the DD Form 1547.

(12) *Items 18 thru 25—Weighted Guidelines Profit Factors.* Enter whole dollar values and factors and percentages to nearest hundredth, as appropriate.

(13) *Items 26 thru 29—Negotiation Summary.* Enter dollar values for contractor proposed, contracting officer prenegotiation objective, and negotiated amounts.

(14) *Items 30 thru 33—Contracting Officer Approval.* All forms shall be signed by the contracting officer. Includ

complete commercial telephone number (e.g., area code) so that follow-up actions can be accomplished quickly.

(b) *Special guidance.* (1) While it is recognized that fixed-price type contract actions are negotiated on the basis of total price, the negotiation summary portion of the DD Form 1547 shall be prepared showing the contracting officer's best estimates of cost and profit.

(2) Where multiple profit rates apply to a single negotiation, a consolidated DD Form 1547 shall be prepared.

(3) The profit analysis for indefinite delivery-type contracts is generally based on the annual requirements. The DD Form 1547 summarizing cost and profit estimates for the annual requirement shall be submitted with the first delivery order that exceeds $100,000.

215.971 Alternate approaches to Weighted Guidelines Method.

As provided in 215.902(a)(2), alternate structured approaches may be used in lieu of the Weighted Guidelines Method. The contracting officer shall adhere to the provisions on profit factors and offset policy described below. See also guidance on cost-plus-award-fee contracts in 215.973.

215.971-1 Recognized profit factors.

The basic structure of the Weighted Guidelines Method establishes a uniform approach for examining the three components of profit: Performance risk, contract type risk (including working capital), and facilities capital employed. Alternate approaches should also consider these factors using the general principles described in 215.970.

215.971-2 Offset policy for facilities capital cost of money.

The values of the profit factors used in the Weighted Guidelines Method have been adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (231.205-10). Reductions have been made directly to the profit factors for performance risk. In order to assure that this policy is applied to all DoD contracts which allow facilities capital cost of money, similar adjustments shall be made to contracts which use alternate structured approaches. Therefore, the contracting officer shall reduce the overall prenegotiation profit objective derived from alternate structured approaches by 1% of total cost or the amount of facilities capital cost of money, whichever is less.

215.971-3 Instructions for completing DD Form 1547.

For all selected field contracting offices identified in 204.673-3, the contracting officer shall report Items 1 through 8, 16 and 17, and 26 through 33 on all contract actions of $500,000 or more. A DD Form 1547 is necessary, even where an alternate structured approach is used because it is the principal source document for DoD's management information system on profit. Profit amounts in the negotiation summary shall be net of offset for facilities capital cost of money (215.971-2). Only the base fee shall be reported on cost-plus-award-fee contracts.

215.972 Modified Weighted Guidelines Method for nonprofit organizations.

215.972-1 Procedures for establishing fee objectives.

It is DoD's policy to establish the fee objective on defense contracts with nonprofit organizations in a manner that will stimulate efficient contract performance. To achieve this, the contracting officer shall use the Modified Weighted Guidelines Method described below. For purposes of applying this method, a nonprofit organization is a business entity which operates exclusively for charitable, scientific, or educational purposes; whose earnings do not benefit any private shareholder or individual; whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(a) The contracting officer shall use the guidelines described in 215.970 but make the following adjustments to the fee objective:

(1) The performance risk fee factor shall be reduced by 1% of total costs, *excluding* G&A expenses and IR&D/B&P expenses.

(2) The designated range for the contract type risk fee factor on a cost-plus-fixed-fee shall be −1% to 0% of total costs, *excluding* G&A expenses and IR&D/B&P expenses, for contracts with nonprofit organizations or elements that have been identified by the Secretary of Defense or Secretary of a Department, or their designees, as receiving sustaining support on a cost-plus-fixed-fee basis from a particular Department or Agency of the Department of Defense.

(b) In addition to the fee amounts computed in 215.972-1(a) above, the contracting officer shall consider the need for fee on contracts to be awarded to a nonprofit organization designated as a Federally Funded Research and Development Center (FFRDC). Such consideration shall include the FFRDC's proportion of retained earnings, as established under generally accepted accounting methods, that is relatable to DoD contracted effort. The need for fee may be based on the FFRDC's facilities capital acquisition plans, working capital funding as assessed on operating cycle cash needs, contingency funding, and provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

215.972-2 Instructions for completing DD Form 1547.

A DD Form 1547 shall be prepared on all contract actions using the Modified Weighted Guidelines Method if the applicability criteria specified for structured approaches in 215.902 are met. The instructions contained in 215.970-2 should be applied. Fee amounts included in the negotiation summary shall be net of offsets and need for fee considerations.

215.973 Cost-plus-award-fee contracts.

The policies and procedures for establishing fee provisions on cost-plus-award-fee contracts are contained in 216.404-2. Although these procedures prohibit application of the Weighted Guidelines Method to cost-plus-award-fee contracts, and similarly the general guidance on alternate structured approaches contained in 215.971-1, the offset policy for facilities capital cost of money shall apply. Therefore, the contracting officer shall reduce the base fee on cost-plus-award-fee contracts by the lesser of (1) 1% of total costs or (2) the amount of facilities capital cost of money.

PART 230—COST ACCOUNTING STANDARDS

5. Subpart 230.70, consisting of sections 230.7001 through 230.7007, is revised to read as follows:

Subpart 230.70—Facilities Capital Employed for Facilities in Use

Sec.

230.7001 Policy.
230.7002 Definitions, measurement, and allocation.
230.7003 Estimating business unit facilities capital and cost of money.
230.7004 Contract facilities capital estimates.
230.7005 Preaward facilities capital applications.
230.7006 Postaward facilities capital applications.
230.7007 Administrative procedures.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7001 Policy.

(a) It is the policy of the Department of Defense to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contract purposes.

(1) The risk aspect of facilities capital employed shall be recognized as a part of profit when the profit objective is established in accordance with the guidelines set forth in 215.970–1(d).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis (See FAR 31.205–10(a)).

230.7002 Definitions, measurement, and allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital" (see Appendix O), establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB-CMF with instructions. This Subpart adopts techniques of CAS 414 as the approved methods of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Subpart from the same data bank and programs.

230.7003 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form SASB–CMF. Three elements are required to develop cost of money factors: Business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92–41. These elements are discussed below.

(a) *Business unit facilities capital data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of:

(1) The net book value of facilities recorded on the accounting records of the business unit,

(2) The capitalized value of leases (see FAR 31.205–2 and FAR 31.205–36), and

(3) The net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403.

Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see FAR 31.205–17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB–CMF and the same rate must be used on the DD Form 1861–2, "Contract Facilities Capital Cost of Money" (see 230.7004 below). Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred cost will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in the pre-negotiation profit objectives. Actual CMF's are required when it it necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and FAR 31.205–10.

230.7004 Contract facilities capital estimates.

(a) After the appropriate Forms CASB–CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. Two forms have been provided for linking the Form CASB–CMF and DD Form 1547, "Record of Weighted Guidelines Method Application": DD Form 1861–1, "Facilities Capital Cost of Money—Distribution of Asset Types," and DD Form 1861–2. This is necessary to provide the degree of differentiation sought in the profit to be established for varying asset types (land, buildings, equipment). An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Both DD Form 1861–1 and DD Form 1861–2 provide for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB–CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB–CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, the Contract Facilities Capital Employed can be determined by *dividing* the contract Cost of Money by that same rate. Both DD Form 1861–1 and DD Form 1861–2 have been designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and

Capital Employed which is carried forward to DD Form 1547.

230.7005 Pre-award facilities capital applications.

Facilities Capital Cost of Money and Capital Employed as determined above, are applied in establishing cost and price objectives as follows:

(a) *Cost of money.*—(1) *Cost objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with the profit guidelines set forth in 215.970–1(d).

230.7006 Post-award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead pool rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205–10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Forms CASB-CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

230.7007 Administrative procedures.

(a) Contractor submission of Forms CASB–CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (See FAR 15.809), and evaluated as complementary documents and procedures. Separate forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) The contracting officer using the Weighted Guidelines Method under 215.970 will complete DD Form 1861–1 and DD Form 1861–2 only after evaluating the contractor's cost proposal and establishing negotiation objectives on cost. These forms are, however, a prerequisite to completing the DD Form 1547. Computer generated forms for completing DD Form 1861–1 and DD Form 1861–2 are acceptable, provided all essential data elements are adequately identified. The contracting officer may also request completion of these forms in connection with normal field pricing support under 215.805 by the cognizant contract administration office.

(c) A final Form CASB–CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates and be evaluated as complementary documents and procedures.

PART 253—FORMS

253.270 [Amended]

6. The list of forms following section 253.270 is amended by removing 253.303–70–DD1499 DD Form 1499: Report of Individual Contract Profit Plan; by revising 253.303–70–DD–1547, the title for DD Form 1547 to read "Record of Weighted Guidelines Method Application" in lieu of "Weighted Guidelines Profit/Fee Objective"; by removing 253.303–70–DD–1861: Contract Facilities Capital and Cost of Money; and by adding 253.303–70–DD–1 DD Form 1861–1: Facilities Capital Cost of Money—Distribution of Asset Types and 253.303–70–DD–1861–2 DD Form 1861–2: Contract Facilities Capital Cost of Money.

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48 CFR Parts 232 and 252

Department of Defense; Federal Acquisition; Regulation Supplement; Progress Payments

AGENCY: Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: This is an interim rule for lowering the progress payment rate, as required by section 9105 of the Department of Defense Appropriations Act of 1987 (Pub. L. 99–591).

DATES: This rule is effective on all solicitations issued after October 18, 1986. Comments on the interim rule should be submitted in writing to the address shown below no later than December 31, 1986, to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: Lieutenant Colonel Richard J. Wall, USAF, ODASD(P)/CPF, Room 3C800, Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Richard J. Wall, USAF, Chairman, DoD Contract Finance Committee, (202) 695–9764.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9105 of the Department of Defense Appropriations Act of 1987 required the Department to lower current progress payment rates on: (1) Contracts which provide for progress payments based on either (2) modifications to existing contracts for additional supplies or services not contemplated by the existing contracts. This action is effective on all solicitations issued after October 18, 1986.

B. Determination To Issue a Temporary Regulation

A determination has been made under the authority of the Secretary of Defense that the regulations promulgated by the Military Departments must be issued as temporary regulations in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended.

C. Regulatory Flexibility Act Information

This rule implements legislative direction contained in the Department of Defense Appropriations Act of 1987. It will impact small business entities, because progress payment rates will be lowered. A Regulatory Flexibility Analysis has been prepared and is available from the Chief Counsel for Advocacy, Small Business Administration, Washington, DC. For those contracts falling below the weighted guidelines threshold, it is anticipated that the increase in financing costs would not be significant. However, for those contracts that will be subject to the Weighted Guidelines Method, the impact of this rate reduction will be offset as a result of application of the new profit policy which is being concurrently implemented. Under the new profit policy, the contracting officer will be able to consider progress payment levels in the determination of the prenegotiation profit objective.

D. Paperwork Reduction Act Information

This rule changes rates of progress payments only and not existing procedures; therefore, additional paperwork burden is not involved.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. Section 232.070 is added to read as follows:

232.070 Definition.

"Contract action", as used in this part, means an action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

3. Section 232.102 is added to read as follows:

232.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion will be confined to contracts for construction, shipbuilding, and ship conversion, alteration, or repair. Agency procedures must ensure that payments are commensurate with work accomplished, which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

4. Section 232.111 is amended by adding paragraphs (S–71) and (S–72) to read as follows:

232.111 Contract clauses.

(a) * * *

(S–71) The contracting officer shall insert the clause at 252.232–7005, Payments Under Fixed Price Construction Contracts, in lieu of FAR clause 52.232–5, in solicitations and contracts for construction when a fixed-price contract is contemplated.

(S–72) The contracting officer shall insert the clause at 252.232–7006, Payments Under Fixed-Price Architect-Engineer Contracts, in lieu of FAR clause 52.232–10, appropriately modified with respect to payment due dates, in fixed-price architect-engineer contracts.

5. Section 232.501–1 is revised to read as follows:

232.501–1 Use of customary progress payments.

(a) The customary progress payment rate applicable to DoD contracts awarded to large businesses is 75 percent and 80 percent for small businesses. The customary progress payment rate applicable to Foreign Military Sales requirements is the same as that applicable to DoD requirements. The customary progress payment rate for flexible progress payments is the rate determined by use of either the CASH II, CASH III, or CASH IV computer program as applicable in accordance with the requirements of 232.502–1 (S–71).

232.502 [Amended]

6. Section 232.502–1 is amended by removing in the third sentence of paragraph (S–71)(1) the words "(i.e., 90% or 95%)"; by changing in the third and fourth sentences of paragraph (S–71)(2) the percentage figures to read "25%" in lieu of "5%"; by changing the first word of the fifth sentence of paragraph (S–71)(2) to read "The" in lieu of the word "This"; by changing in the first sentence of paragraph (S–71)(4) the designation "CASH II" to read "CASH IV"; by changing in the first sentence of paragraph (S–71)(7) the percentage figures to read "27%" and "23%" in lieu of "7%" and "3%" respectively; by changing in the second sentence of paragraph (S–71)(7) the percentage figures to read "25%" in lieu of "5%"; and by changing in paragraph (S–71)(9) the clause designation "FAR 52.232–16" to read "252.232–7007".

7. Section 232.502–4 is amended by adding paragraphs (S–72) through (S–74) to read as follows:

232.502–4 Contract clauses.

* * * * *

(S–72) The contracting officer shall insert the clause at 252.232–7007, Progress Payments, in lieu of FAR clause 52.232.16 and its Alternates I and II, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

(S–73) If the contract is with a small business concern, the contracting officer shall use the clause at 252.232–7007, Progress Payments, with its Alternate I.

(S–74) If the contract is a letter contract, the contracting officer shall use the clause with its Alternate II.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7004 [Amended]

8. Section 252.232-7004 is amended by changing the date of the clause of read "OCT 1986" in lieu of "APR 1984"; by changing in the third sentence of the clause the percentage rate to read "twenty-five percent (25%)" in lieu of "five percent (5%)"; and by changing in the fourth sentence of the clause the percentage rates to read "twenty-seven percent (27%)" and "twenty-three percent (23%)" in lieu of "seven percent (7%)" and "five percent (5%)" respectively.

9. Sections 252.232-7005 through 252.232-7007 are added to read as follows:

252.232-7005 Payments under fixed-price construction contracts.

As prescribed in 232.111(S-71), insert the following clause:

Payments Under Fixed-Price Construction Contracts (APR 1986) (Dev.)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets standards of quality established under the contract, as

approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if—

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) In making these progress payments, the Contracting Officer may retain a maximum of ten percent (10%) of the approved estimated amount until final completion and acceptance of the contract work. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize payment to be made in full without retention of a percentage. However, by the time the work is substantially complete, the Contracting Officer shall have retained an amount that the Contracting Officer considers adequate protection of the Government and may then release to the Contractor all or a portion of any excess amount. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment may be made for the completed work without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(f) The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15).

(g) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contracting, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

§ 252.232-7006 Payments under fixed-price architect-engineer contracts.

As prescribed in 232.111(S-72), insert the following clause:

Payments Under Fixed-Price Architect-Engineer Contracts (APR 1986) (Dev.)

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of ninety percent (90%) of the approved amount, less all previous payments; *Provided*, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. If the Government exercises the option under the Option for Supervision and Inspection Services clause, progress payments as provided in (a) and (b) above will be made for this portion of the contract work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

252.232-7007 Progress payments.

(a) As prescribed in 232.502-4(S-72), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs. A different customary rate for other than small business concerns may be substituted in accordance with 232.502-4(S-73) for the progress payment and liquidation rate indicated.

(b) If an unusual progress payment rate is approved for the prime contractor (see FAR 32.501-2), the rate approved shall be substituted for the customary rate in the paragraph (a)(1).

(c) If the liquidation rate is changed from the customary progress payment rate (see FAR 32.503-8 and FAR 32.503-9), the new rate shall be substituted for the rate in paragraphs (a)(4), (a)(5), and (b).

(d) If advance and progress payments are authorized in the same contract, the words "less any unliquidated advance payments" may be deleted from paragraph (a)(4) of this clause.

(e) If an unusual progress payment rate is approved for a subcontract (see FAR 32.504(b) and FAR 32.501-2), paragraph (j)(4) shall be modified to specify the new rate, the name of the subcontractor, and that the new rate shall be sued for that subcontractor in lieu of the customary rate.

Progress Payments (OCT 1986)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the contractor requests a smaller amount, each progress payment shall be computed as: (i) Seventy-five percent (75 percent) of the Contractor's cumulative total costs under this contract, as shown by records maintained by the Contractor for the purpose of obtaining payment under Government contracts, plus (ii) progress payments to subcontractors (see

paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) The following conditions apply to the timing of including costs in progress payment requests:

(i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(ii) Costs for the following may be included when incurred, even if before payment, when the Contractor is not delinquent in payment of the costs of contract performance in the ordinary course of business:

(A) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract.

(B) Direct labor, direct travel, and other direct in-house costs.

(C) Properly allocable and allowable indirect costs.

(iii) Accrued costs of Contractor contributions under employee pension, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

(A) The Contractor's practice is to contribute to the plans quarterly or more frequently; and

(B) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(iv) If the contract is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than—

(A) Five million dollars ($5 million); or

(B) The value of the work-in-process inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this contract).

(3) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1)(i) above:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(4) The amount of unliquidated progress payments may exceed neither: (i) The progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(5) The total amount of progress payments shall not exceed seventy-five percent (75 percent) of the total contract price.

(6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by paragraphs (a)(4) or (5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or seventy-five percent (75%) of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's: (i) Failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) *Title.* (1) Title to the property described in this paragraph (d) shall vest in the Government. Investiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, investiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (d)(2)(ii) above; and

(iv) Drawing and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall: (i) Exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of liquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of Loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the

unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) *Control of Costs and Property.* The Contractor shall maintain an accounting system and controls adequate for the property administration of this clause.

(g) *Reports and Access to Records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) *Special Terms Regarding Default.* If this contract is terminated under the Default clause: (i) The Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of rights.* (1) No payment or vesting of title under this clause shall: (i) Excuse the Contractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights to remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause: (i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Progress Payments to subcontractors.* The amounts mentioned in (a)(1)(ii) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to: (i) The unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Contractor has approved for current payment in the ordinary course of business.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately six (6) months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four (4) months.

(3) The terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of the clause at 252.232–7007, Progress Payments, for any subcontractor that is a large business concern, or that clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of section 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (A) the Contractor defaults or (B) the subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the subcontract is the customary rate used by the Contracting Agency, depending on whether the subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Government to the Contractor under this contract.

(6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(7) The Contractor shall pay the subcontractor's progress payment request under subparagraph (j)(1)(ii) above, within a reasonable time after receiving the Government progress payment covering those amounts.

(8) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provision in this contract, progress payments may not exceed eighty percent (80%) of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1 including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a), and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purpose of progress payment liquidation, as described in paragraph (b), progress payments for undefinitized contract actions shall be liquidated at eighty percent (80%) of the amount invoiced for work performed under the indefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed eighty percent (80%) of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified by separate actions.

(End of clause)

Alternate I (OCT 1986).

If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of eighty percent (80%) for small business concerns, delete paragraphs (a)(1) and (a)(2) from the basic clause, and substitute the following paragraphs (a)(1) and (a)2):

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as: (i) Eighty percent (80%) of the Contractor's total costs incurred under this contract whether or not actually paid, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205–10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid thirty (30) days after the end of of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

Alternate II (OCT 1986)

If the contract is a letter contract, add paragraphs (l) and (m) shown below. The amount specified in paragraph (m) shall not exceed eighty percent (80%) applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(l) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b), be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by

deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (1) and (2) above.

(4) If the method of liquidating progress payments provided above does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(m) The amount of unliquidated progress payments shall not exceed ——— (specify dollar amount).

[FR Doc. 86-27017 Filed 11-28-86; 8:45 am]

BILLING CODE 3810-01-M

Proposed Rules

Federal Register
Vol. 51, No. 230
Monday, December 1, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-1]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB), GmbH, Model BK 117A-1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires installation of a revised V_{NE} (never-exceed speed) placard reducing V_{NE} for certain portions of the approved altitude and temperature flight envelope where the MBB BK 117A-1 helicopter has exhibited unstable static longitudinal control characteristics. The proposed amendment is needed to permit removal of the V_{NE} restrictions when the manufacturer's stick position augmentation system (SPAS) is installed in affected aircraft. The SPAS eliminates the static longitudinal control position instability.

DATES: Comments must be received on or before January 2, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments delivered must be marked: Docket No. 85-ASW-1. Comments may be inspected in Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between 8 a.m. and 4:30 p.m., weekdays, except Federal holidays.

The applicable service information may be obtained from Messerschmitt Bolkow-Blohm, GmbH, Abt. Drehflugler, Postfach 801140, D-8000 Munchen 80, Federal Republic of Germany.

A copy of the applicable service information is contained in the Rules Docket, Office of the Regional counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Larry F. Plaster, Aerospace Engineer, Rotorcraft Standards Staff, ASW-110, Aircraft Certification Division, Southwest Region, FAA, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-5119.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specifed above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 85-ASW-1." The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39-4989 (50 FR 4198), Ad 85-02-04, which currently requires installation of a revised V_{NE} placard to reduce V_{NE} in those portions of the MBB Model BK 117A-1 helicopter flight envelope where the aircraft has exhibited static longitudinal instability. After issuing Amendment 39-4989, the FAA has determined that the manufacturer has developed a SPAS which eliminates the unstable static longitudinal control motion. Installation of the SPAS would allow removal of the airspeed restrictions imposed by the original AD.

This proposed amendment provides an optional means of compliance and imposes no additional burden. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By amending Amendment 39-4989, Ad 85-02-04, by adding the following new paragraph:

* * * * *

(d) The requirements of this AD do not apply when the MBB stick position augmentation system (SPAS) is installed in accordance with MBB Helicopter Service Bulletin No. BK 117-40-7.

Issued in Fort Worth, Texas, on November 17, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86-26851 Filed 11-28-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 456

Ophthalmic Practice; Final Staff Report, Presiding Officer's Report, and Invitation for Comment

AGENCY: Federal Trade Commission.

ACTION: Publication of Final Staff report, Presiding Officer's Report, and invitation for comment.

SUMMARY: Federal Trade Commission's Staff and Presiding Officer have released to the public their respective reports in the rulemaking proceeding on Ophthalmic Practice Rules. The Final Staff Report contains a summary and analysis of the evidence in the rulemaking record and the staff recommendation on the proposed trade regulation rule. The Presiding Officer's Report contains a recommended decision based upon his findings and conclusions as to all relevant and material evidence. Interested persons and the public are invited to submit written comments on both the Final Staff Report and the Presiding Officer's Report. The Commission has not reviewed or adopted either of these reports.

DATE: Comment period will end on February 13, 1987.

ADDRESSES: Copies of the Presiding Officer's Report and the Final Staff Report may be obtained from the Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Telephone: 202–326–2222. Comments received in response to this notice may be reviewed there as well.

Written comments should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. These comments should be submitted on 8½ by 11 inch paper, and those in excess of four pages in length should be accompanied by three copies.

FOR FURTHER INFORMATION CONTACT: Henry B. Cabell, Presiding Officer, at the above address. Telephone: 202–326–3642.

SUPPLEMENTARY INFORMATION: The Staff Report and the Presiding Officer's Report in the Ophthalmic Practice Rules proceeding have been placed in the rulemaking record [Public Record No. 215–63]. During the post record comment period which will end on February 13, 1987, the public, including persons interested in this proceeding, is invited to submit comments on these reports. Such comments should be confined to information already in the rulemaking record, and may include a request for review by the Commission of any rulings or other determinations made by the Presiding Officer. Additionally, participants in this rulemaking may request an opportunity to make a oral presentation to the Commission pursuant to 16 CFR 1.13(i).

The inclusion in comments of further evidence or factual material not presently in the rulemaking record may result in rejection of the comment as a whole.

The Commission has not yet reviewed the rulemaking record in this proceeding or determined whether or not to promulgate a rule. Any decision by the Commission in this matter will be based solely upon the contents of the rulemaking record, including the material submitted in response to this notice.

List of Subjects in 16 CFR Part 456

Trade practices, Ophthalmic practice rules.

Henry B. Cabell,

Presiding Officer.

[FR Doc. 86–26865 Filed 11–28–86; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 16

[Docket No. 86N–0358]

Regulatory Hearing Before the Food and Drug Administration

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing regulatory hearings before the agency to provide that the Commissioner may deny such a hearing, in whole or in part, upon a determination that no genuine and substantial issue of fact has been raised by the submission of the person requesting the hearing. The proposed amendment would also authorize the presiding officer for such a hearing to issue a summary decision, subject to appeal to the Commissioner, on any issue in the hearing with respect to which the presiding officer determines, based on the material submitted by the parties, that there is no genuine and substantial issue of fact in dispute.

DATES: Written comments by January 30, 1987. FDA intends that any final rule based on this proposal would become effective 30 days after the date of publication of a final rule.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857 .

FOR FURTHER INFORMATION CONTACT: Tenny P. Neprud, Jr., Division of Regulations Policy (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION:

I. Background

Part 16 of FDA's regulations (21 CFR Part 16) governs regulatory hearings held before the agency to determine whether any, or what type of, regulatory action should be taken with respect to a particular matter involving a specified firm, individual, or product. These informal hearings involve consideration of whether the agency should take direct regulatory action, administratively or through court proceedings, against a particular firm, individual, or product subject to any of the laws administered by the agency. Such a hearing does not involve the type of factual issues that are litigated in a formal evidentiary public hearing under 21 CFR Part 12, the policy issues usually considered in a public hearing before the Commissioner under 21 CFR Part 15, or any other general matter such as the development of a regulation.

II. Proposed Amendment to Part 16

Under § 12.24(a) (21 CFR 12.24(a)), the Commissioner has a number of alternatives for a formal evidentiary public hearing filed under § 12.22. First, the Commissioner may modify or revoke the regulation or order involved. Second, the Commissioner may order a formal evidentiary public hearing or, if requested, an alternative form of hearing on the matter. Third, the Commissioner may deny any hearing as unjustified and let the regulation or order stand unmodified.

To justify a hearing, the person requesting it must demonstrate that there is a genuine and substantial issue of fact for resolution at the hearing (see § 12.24(b)(1), (2), and (6)). If there are only policy or legal issues involved, § 12.24(b)(1) provides that a hearing will not be granted on the matter. Furthermore, the Commissioner has authority to deny a hearing when it appears from the submission of the person requesting the hearing that no substantial issue of fact is in dispute. *Pineapple Growers Ass'n of Hawaii* v. *FDA*, 673 F.2d 1083 (9th Cir. 1982);

Weinberger v. *Hynson, Westcott & Dunning*, 412 U.S. 609 (1973).

Although Part 12 reflects this well-settled principle (see § 12.24(b)(1)), Part 16 does not. As a result, certain situations have arisen in connection with Part 16 where even though no material fact was in dispute, FDA proceeded with a hearing.

One such situation arose in the context of an investigational device exemption under 21 CFR Part 812. The question in the case was whether an arrangement between a sponsor and a clinical investigator amounted to commercialization of the investigational device, and, therefore, violated FDA's regulations. A written agreement between the sponsor and the investigator embodied the terms under which the investigation was conducted. Both FDA and the private party acknowledged that the facts were not in dispute, but because there was no provision in Part 16 for the presiding officer to issue summary decision, the presiding officer determined that the hearing should continue. It would have been useful for the presiding officer to have had the authority either to issue a summary decision in such a case or to hold the hearing.

In addition, FDA routinely grants hearings under Part 16 on whether an emergency permit is justified under 21 CFR Part 108. These hearings are held on short schedules (see 21 CFR 108.5(a)(1) and 108.10(c)) and are extremely resource-intensive for the agency. Yet, in the absence of a summary judgment provision, FDA holds such a hearing even if the person requesting the hearing fails to demonstrate in his or her request that a genuine and substantial issue of fact exists.

FDA believes that regulatory hearings in these circumstances result in inefficient use of agency resources. For this reason, the agency is proposing to amend Part 16 to expressly authorize the Commissioner to deny a hearing and the presiding officer to issue a summary decision. These amendments would conform Part 16 to the existing state of the law.

Proposed § 16.26(a) would provide for administrative summary judgment. If the Commissioner determines from the submission of the person requesting a hearing that no genuine and substantial issue of fact is in dispute, the Commission may deny a hearing, in whole or in part, and resolve the legal or policy issues using the undisputed facts. Should the Commissioner determine that a hearing is not justified, the Commissioner is required to give written notice to the parties explaining why the hearing was denied.

Proposed § 16.26(b) would apply only after a hearing has been granted by the Commissioner. This provision would permit the presiding officer to issue a summary decision on any issue, if he or she determines from the material submitted that there is no genuine and substantial issue as to any fact respecting that issue. The presiding officer's decision would be subject to review by the Commissioner under proposed § 16.26(b).

The authority that would be granted the Commissioner by these proposed revisions could also be exercised by another FDA decisionmaker to whom the authority to issue a final decision on the matter had been redelegated (e.g., the Director, Center for Devices and Radiological Health, with respect to investigational device exemptions).

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

IV. Economic Impact

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

V. Request for Comments

Interested persons may, on or before January 30, 1987, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 16

Administrative practice and procedures.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 16 be amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR Part 16 is revised to read as follows:

Authority: 15 U.S.C 401 et seq., 1451 et seq.; 21 U.S.C. 41–50, 141–149, 321 et seq., 467f(b), 679(b), 821 et seq., 1031 et seq.; 42 U.S.C. 201 et seq., 257a; 21 CFR 5.10.

2. By adding new § 16.26 to read as follows:

§ 16.26 Denial of hearing and summary decision.

(a) A request for a hearing may be denied, in whole or in part, if the Commissioner of Food and Drugs or the FDA official delegated the final decision making authority on the matter determines that no genuine and substantial issue of fact has been raised by the material submitted. If the Commissioner or his or her delegate determines that a hearing is not justified, written notice of the determination will be given to the parties explaining the reason for denial.

(b) After a hearing commences, the presiding officer may issue a summary decision on any issue in the hearing if the presiding officer determines from the material submitted in connection with the hearing, or from matters officially noticed, that there is no genuine and substantial issue of fact in dispute. The Commissioner or his or her delegate may review such decision of the presiding officer at the request of a party or on his or her own initiative.

Dated: November 13, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-26862 Filed 11-28-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 4a

[INTL-64-86]

Source of Interest and Dividends; Withdrawal of Notice of proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the source of interest derived from resident alien individuals and domestic

corporations and the source of dividends derived from domestic corporations that appeared in the Federal Register on December 29, 1982 (47 FR 57972)

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL–64–86), 202–566–6384, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking under section 861 that appeared in the Federal Register on December 29, 1982 (47 FR 57972).

The proposed regulations are being withdrawn because they have been mooted by amendment of section 881(b) by section 130(a) of the Tax Reform Act of 1984. Section 881(b), as amended, provides generally that passive income paid from U.S. sources to a corporation organized in Guam or the Virgin Islands will be subject to U.S., tax if 25% or more in value of the corporation's stock is owned by foreign persons and if less than 20% of the recipient corporation's income is from Guam or Virgin Islands sources (as the case may be).

Temporary regulations under § 4a.861–1 published in the Federal Register on December 29, 1982 (47 FR 57919) which pertain to this subject are being removed by a document published elsewhere in this issue [T.D. 8108].

Drafting Information

The principal author of this document is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document both in matters of substance and style.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR Parts 1 and 4a relating to the source of interest derived from resident alien individuals and domestic corporations and the source of dividends derived from domestic corporations under section 861 of the Internal Revenue Code of 1954 and published in the Federal Register on December 29, 1982 (47 FR 57972) are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–26910 Filed 11–28–86; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 48 and 52

Federal Acquisition Regulation (FAR); Value Engineering

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule (Extension of comment period).

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to the Federal Acquisition Regulation (FAR) Part 48, Value Engineering. FAR Coverage was published as a proposed rule for public comment on September 2, 1986 (51 FR 31197). The original date for submission of comments was November 3, 1986. The Councils have decided to extend the period for public comment on FAR coverage for Value Engineering to accommodate the requests of interested parties.

DATE: Written comments on the proposed FAR coverage for Value Engineering should be submitted to the FAR Secretariat by February 3, 1987, for consideration in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–33 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

Dated: November 24, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 86–26854 Filed 11–28–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 61111–6211]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement amendment 2 to the Fishery Management Plan for the Pacific Coast Groundfish Fishery (FMP) which governs domestic and foreign fishing for groundfish in the fishery conservation zone off the coasts of Washington, Oregon, and California. The amendment eliminates the special quota for sablefish in Monterey Bay, provides a process for making changes to gear requirements, and imposes marking requirements on fixed gear. The intended effect is to make management of the groundfish resource more responsive and efficient.

DATE: Comments on the amendment and the proposed rule must be received by January 10, 1987.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Services, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731. Copies of the amendment, combined with the environmental assessment and the regulatory impact review/regulatory flexibility analysis are available from the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206–526–6150, E. Charles Fullerton at 213–514–6196, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on January 4, 1982. Final implementing regulations were published October 5, 1982 (47 FR 43964). The first amendment to the FMP was implemented July 29, 1984 (49 FR 27518). The second amendment to the FMP was initiated in July 1985 when a

"scoping session" was held by the Council. Subsequent Council discussions identified seven issues requiring further analyses and possible modifications to the FMP. A draft amendment was prepared and mailed to interested parties on August 8, 1986, analyzing four of the seven issues; consideration of three issues requiring clarification was postponed indefinitely. Five public hearings were held on August 27 and 28, 1986.

After considering the comments received at the public hearings and Council meetings, and from its Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Groundfish Management Team, the Council made its final selection of preferred options at its September 17, 1986, meeting in Portland, Oregon. The Council selected the status-quo option for one issue, declining at this time to propose allowing retention (until landed) of unsorted catches, which could include prohibited species, taken in the shore-based fishery for Pacific whiting. consequently this issue does not appear in the final amendment and will be reconsidered in a future amendment. The remaining three issues, their impacts, and the rationale for the Council's recommended changes are summarized below.

Issue 1. Deletion of a separate OY (quota) For Sablefish Caught in Monterey Bay

Sablefish currently are managed under a coastwide optimum yield (OY) quota which includes a 2,500 metric ton (mt) OY quota for the Monterey Bay subarea (36°30'to 37°00' N. latitude) Information available at the time the FMP was written indicated that sablefish in the Monterey Bay subarea were a separate stock and so separate quota was designated to protect that stock. However, more recent data indicate there is not a closed population in the subarea and a separate OY is not needed.

The Council considered two options: Option 1 (status quo)—maintain the separate OY quota for sablefish caught in Monterey Bay, and Option 2—delete this quota.

The Council selected Option 2 because it is based on the best scientific information available.

The proposed revisions resulting from selection of this option result in deletion of § 663.21(a)(2), subsequent renumbering of that section, and deletion of references to Monterey Bay in the regulations at § 663.27(b)(3).

Issue 2. Gear Regulations Flexibility

Changes in gear regulations can now be made without amending the FMP only if the changes are designed to reduce biological stress on the resource, otherwise, a time consuming and expensive plan amendment must be used. However, it is clear that there is a need to change gear regulations in a timely manner for reasons other than stress on a resource. Two gear changes have been made by plan amendment since 1982, one to remove an obsolete footrope requirement, and the other to add gear marking requirements. Another gear marking requirement is being considered in this amendment. No gear changes have been proposed to reduce stress on the resource.

The Council considered two options: Option 1 (status quo)—maintain current procedures for changing gear regulations, and Option (2)—provide a framework mechanism for changing gear regulations for reasons not related to conservation and without a plan amendment.

The Council selected Option 2 because it allows greater efficiency and flexibility while providing for full public review and comment, minimizes costs to industry by providing for phase-in periods, and makes the FMP more responsive to public concerns. The proposed language incorporating Option 2 is found in a new § 663.22(d).

Issue 3. Marking Requirements for Set Nets and Commercial Vertical Hook-and Line Gear.

Current regulations include specific marking requirements for traps, pots, and longlines, all of which are types of fixed gear. These require the terminal end(s) to be marked at the surface with a pole and flag, light, radar reflector, and a buoy identifying the owner in order to prevent gear conflicts between fixed and mobile gears and to aid in retrieval of lost gear by making fixed gear more visible. Two more types of fixed gear have become common: set nets (off California south of 38°00'N. latitude) and commercial vertical hook-and-line gear (also known as Portuguese longlines).

The Council considered two options: Option 1 (status quo)—do not impose marking requirements on set nets and commercial vertical hook-and-line gear, and Option 2—impose marking requirements on these two gears, consistent with other marking requirements for fixed gear.

Option 2 was selected so that Federal marking requirements for fixed gear will be consistent coastwide, gear conflicts minimized, and retrieval of lost gear facilitated. The proposed implementing language is found at § 663.26 in paragraphs (d) and (g) and the former paragraph (g) "Recreational fishing" is redesignated as a new paragraph (h).

Changes To The Proposed Rule

A new § 663.25 gear adjustments is added instead of the paragraph amendment to § 663.22 proposed by the Council because the proposed adjustments to fishing gear can occur anytime during a year.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council (and received by the Secretary prior to November 14, 1986) within 30 days of receipt of the FMP amendment and regulations. At this time, the Secretary has not determined that the FMP amendment this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment is available from the Council at the address listed above.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed rule, together or separately, would not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or a significant, adverse effect on employment, investment, productivity, innovation, or competition (within the United States or abroad). The Council prepared a regulatory impact review which concludes that the economic impacts of the proposed rule are expected to be slight (less than $1 million) and beneficial to U.S. industry; productivity could be slightly enhanced; the overall impact on investment would be small; an increase in imports is not expected; any change to the cost of goods and services would be negligible; and the proposed rule would not change the competitive structure of the west coast fishing industry. A copy of this review is available from the Council at the address above.

This proposed rule is exempt from the advance review procedures of E.O.

12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a sustantial number of small entities. Deletion of the separate OY for sablefish in Monterey Bay (Issue 1) has a potential cost savings, although data have not been monitored separately. The framework provision to change gear regulations (Issue 2) is designed to minimize cost to the industry as long as this is consistent with the goals of the FMP. At the time an action is proposed for implementation under this framework provision, NOAA will determine whether the proposed change to gear regulations will have a significant economic impact on a substantial number of small entities, and, if so, will prepare initial and final regulatory flexibility analyses. The proposed requirement to mark set nets and commercial vertical hook-and-line gear the same as other fixed gear is expected to have an initial incremental cost of about $230 and $106 per vessel, respectively; lines, buoys, poles and probably flags are already in use. The cost of this change is expected to be offset by reductions in gear conflicts and lost gear. As a result, the regulatory flexibility assessment which was prepared in conjunction with the regulatory impact review states that the total impact of these proposed regulations is expected to be beneficial but minor.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Dated: November 25, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 663 is proposed to be amended as follows:

PART 663—[AMENDED]

1. The authority citation for 50 CFR Part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The Table of Contents is amended by removing the title at § 663.25 "Season [Reserved]" and inserting a new title "Gear adjustments".

§ 663.21 [Amended]

3. Section 663.21 is amended by removing paragraph (a)(2) in its entirety and redesignating paragraph (a)(3) as paragraph (a)(2).

4. A new § 663.25 is added to read as follows:

§ 663.25 Gear adjustments.

(a) *Changes to gear restrictions.* Except as otherwise provided by section 305(e) of the Magnuson Act, after receiving a recommendation and written report by the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 at any time during the year to change domestic or foreign gear restrictions if it is determined that the change is consistent with the objectives of the Pacific Coast Groundfish Plan and would result in significant improvements in the groundfish fishery. Significant improvements may exist when:

(1) Sustainable landings are increased;

(2) The value of landings are increased;

(3) Gear conflicts are reduced;

(4) Fishing efficiency is increased; and

(5) Another condition exists which promotes achievement of the objectives of the Pacific Coast Groundfish Plan, which may be based on consideration of changes in catch composition, yield per recruit, cost to the fishing industry, impacts on other management measures and other fisheries, and any other relevant biological or socio-economic information.

(b) Changes to gear restrictions may include, but are not limited to, definitions of legal gear, mesh size specifications, codend specifications, marking requirements, and other gear specifications included in this part, 50 CFR 611.70, and the FMP.

(c) A public hearing will be held before any determination that a change to the gear restrictions is consistent with the objectives of the FMP and would result in significant improvements in the groundfish fishery, and before publishing any notice changing gear restrictions. Implementation of changes to the gear restrictons will be scheduled so as to minimize the costs to the fishing industry, insofar as this is consistent with achieving the goals of the change.

5. In § 663.26, paragraph (c) is revised, paragraph (g) is redesignated as paragraph (h), and a new paragraph (g) is added read as follows:

§ 663.26 Gear restrictions.

* * * * *

(c) *Set nets.* (1) Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. latitude.

(2) Set nets must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

* * * * *

(g) *Commercial vertical hook-and-line (Portugese longline).* Commercial vertical hook-and-line gear (Portuguese longline) must be marked at the surface with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

* * * * *

6. In § 663.27, paragraph (b)(3) is revised to read as follows:

§ 663.27 Catch restrictions.

* * * * *

(b)* * *

(3) Sablefish. When it is determined that 90 percent of the OY will be reached the Secretary will publish a notice in accordance with § 663.23 dividing the 10 percent balance of OY equally (5 percent apiece) between trawl gear and fixed gear, and establishing a

percentage trip limit for trawl gear. The trip limit will be based on the most recent data available for the season and will equal the average percentage of sablefish in all trawl landings containing sablefish from the fishery management area but in no event will the trip limit exceed 30 percent by weight of all fish on board. If the Secretary determines that either trawl or fixed gear will take its 5 percent balance of OY, the Secretary will publish a notice of closure under § 663.23 prohibiting retention and landing of sablefish taken by that gear type in the fishery management area. The provisions at § 663.21(b) prohibiting landings when OY is reached will apply even if fixed or trawl gear has not landed its 5 percent balance of OY.

[FR Doc. 86-26952 Filed 11-25-86; 5:03 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 230
Monday, December 1, 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

Federal Grain Inspection Service

Designation Renewal of the Alva Agency, OK and the State of Connecticut

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Alva Grain Inspection Department (Alva) and Connecticut Department of Agriculture (Connecticut, as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: January 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Alva's and Connecticut's designations terminate on December 31, 1986, and requested applications for official agency designation to provide official services within specified geographic areas in the July 1, 1986, **Federal Register** (51 FR 23802). Applications were to be postmarked by July 31, 1986. Alva and Connecticut were the only applicants for designation in their respective geographic areas and each applied for designation renewal in the area currently assigned to that agency.

FGIS announced the applicant names and requested comments on the same in the September 2, 1986, **Federal Register** (51 FR 31153). Comments were to be postmarked by October 17, 1986. No comments were received regarding Alva's and Connecticut's designation renewal.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Alva and Connecticut are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective January 1, 1987, and terminating December 31, 1989, Alva and Connecticut will provide official inspection services in their entire specified geographic areas, previously described in the July 1 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agencies at the following addresses:

Alva Grain Inspection Department, 129 College, P.O. Box 501, Alva, OK 73717

Connecticut Department of Agriculture, 165 Capitol Avenue, Hartford, CT 06106

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: November 20, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–26742 Filed 11–28–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Alton, IL, Grand Forks, ND, and McCrea, IA Agencies

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Alton Grain Inspection Department (Alton), Grand Forks Grain Inspection Department (Grand Forks), and John R. McCrea Agency (McCrea).

DATE: Comments to be postmarked on or before January 13, 1987.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within a specified geographic area in the October 1, 1986, **Federal Register** (51 FR 35015). Applications were to be postmarked by October 31, 1986. Alton, Grand Forks, and McCrea were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources

Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: November 20, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–26743 Filed 11–28–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Bloomington, IL and Plainview, TX Agencies

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Bloomington Grain Inspection Department and Plainview Grain Inspection and Weighing Service, Inc.

DATE: Applications to be postmarked on or before December 30, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647, South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Bloomington Grain Inspection Department (Bloomington), P.O. Box 3428, Bloomington, IL 61702, and Plainview Grain Inspection and Weighing Service, Inc. (Plainview), 1100 North Broadway Street, P.O. Box 717, Plainview, TX 79072, were each designated under the Act as an official agency to provide inspection functions on June 1, 1984.

Each official agency's designation terminates on May 31, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Bloomington in the State of Illinois pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by State Route 18 east to U.S. Route 51; U.S. Route 51 south to State Route 17; State Route 17 east to Livingston County; the Livingston County line east to the ICG Railroad line;

Bounded on the East along the ICG Railroad line southwest to Pontiac, which intersects with a straight line running north and south through Arrowsmith to the southern McLean County line;

Bounded on the South by the southern McLean County line; the eastern Logan County line south to State Route 10; State Route 10 west to State Route 121; and

Bounded on the West by State Route 121 north to Interstate 74; Interstate 74 northwest to State Route 116; State Route 116 north to State Route 26; State Route 26 north to State Route 18.

The following location, outside of the foregoing contiguous geographic area, is presently assigned to Bloomington and is part of this geographic area assignment: Bunge Corporation, Pontiac, Livingston County.

Exceptions to the described geographic area are the following locations situated inside Bloomington's area which have been and will continue to be serviced by the following official agencies:

1. Gibson City Grain Inspection Department to service Farm Service, Arrowsmith, McLean County.

2. Springfield Grain Inspection Department to service East Lincoln Farmers Grain Co., Lincoln, Logan County.

The geographic area presently assigned to Plainview in the State of Texas pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern Deaf Smith County line east to U.S. Route 385; U.S. Route 385 south to FM 1062; FM 1062 east to State Route 217; State Route 217 east to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River southeast to the Briscoe County line; the northern Briscoe County line; the northern Hall County line east to U.S. Route 287;

Bounded on the East by U.S. Route 287 southeast to the eastern Hall County line; the eastern and southern Hall County lines; the eastern Motley County line;

Bounded on the South by the southern Motley and Floyd County lines; the western Floyd County line north to FM 37; FM 37 west to FM 400; FM 400 north to FM 1914; FM 1914 west, including Hale Center, to FM 179; FM 179 south to FM 37; FM 37 west to U.S. Route 84; U.S. Route 84 northwest to FM 303; and

Bounded on the West by FM 303, not including Sudan, north to U.S. Route 70; U.S. Route 70 west to the Lamb County line; the western and northern Lamb County lines; the western Castro County line; the southern Deaf Smith County line west to State Route 214; State Route 214 north to the northern Deaf Smith County line.

Interested parties, including Bloomington and Plainview, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning June 1, 1987, and ending May 31, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: November 20, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-26744 Filed 11-28-86; 8:45 am]

BILLING CODE 3410-EN-M

Designation of the Schaal Agency in the Belmond, IA, Geographic Area

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation of Lewis D. Schaal, doing business as D.R. Schaal Agency, as the official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Belmond, Iowa, geographic area.

EFFECTIVE DATE: January 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced the cancellation of designation of David R. Schaal, doing business as D.R. Schaal Agency, effective December 31, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the July 1, 1986, **Federal Register** (51 FR 23802). Applications were to be postmarked by July 31, 1986. Lewis D. Schaal (Schaal), who proposed to do business as D.R. Schaal Agency, was the only applicant for designation and applied for designation in the entire area available for assignment.

FGIS announced the applicant name and requested comments on the same in the September 2, 1986, **Federal Register** (51 FR 31153). Comments were to be postmarked by October 17, 1986. No comments were received regarding Schaal's designation.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Schaal is able to provide official services in the geographic area for which FGIS is designating it. Effective January 1, 1987, and terminating December 31, 1989, Schaal will provide official inspection services in the entire specified geographic area, previously described in the July 1 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agency at the following address: D.R. Schaal Agency, 219 River Avenue North, P.O. Box 213, Belmond, IA 50421.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: November 20, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-26745 Filed 11-28-86; 8:45 am]

BILLING CODE 3410-EN-M

COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

Meeting

The Commission on Executive, Legislative and Judicial Salaries will meet Thursday, December 4, 1986 at 2:30 p.m. at 734 Jackson Place NW., Washington, DC.

It is anticipated that the meeting will be closed in accordance with section 10(d) of the Federal Advisory Committee Act and Title 5 U.S.C. 552b(c)(9)(B). A request for determination as to the closing of this meeting has been presented to the Director, Office of Personnel Management for approval.

Due to the Commission's need to promptly address the issues before it, it is not feasible to delay the meeting or to give earlier notice.

For further information, contact Patsy Semple at (202) 275-6834.

James L. Ferguson,

Chairman.

[FR Doc. 86-27012 Filed 11-28-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than Decmber 31, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December, for the following periods:

	Period
Antidumping Duty Proceeding:	
Low-Fuming Brazing Copper Wire and Rod from New Zealand	8/02/85-11/30/86
Steel Wire Strand from Japan	12/01/85-11/30/86
Polychloroprene Rubber from Japan	12/01/85-11/30/86
Large Electric Motors from Japan	12/01/85-11-30-86
Cellular Mobile Telephones and Subassemblies from Japan	6/11/85-11-30-86
Tuners from Japan	12/01/85-11-30-86
Clear Sheet Glass from Italy	12/01/85-11-30-86
Photo Albums and Filler Pages from S. Korea	7/16/85-11-30-86
Photo Alumbs and Filler Pages from Hong Kong	7/16/85-11-30-86
Elemental Sulphur from Canada	12/01/85-11-30-86
Certain Carton Closing Staples and Staple Machines from Sweden	12/01/85-11-30-86
Animal Glue and Inedible Gelatin from Sweden	12/01/85-11-30-86
Animal Glue and Inedible Gelatin from W. Germany	12/01/85-11-30-86
Animal Glue and Inedible Gelatin from Yugoslavia	12/01/85-11-30-86
Animal Glue and Inedible Gelatin from Netherlands	12/01/85-11-30-86
Countervailing Duty Proceeding:	
Litharge, Red Lead and Lead Stabilizers from Mexico	1/01/85-12-31-85
Toy Balloons and Playballs from Mexico	1/01/85-12/31/85
Cement from Costa Rica	10/01/85-09/30/86
Polypropylene Film from Mexico	1/01/85-12/31/85
Pectin from Mexico	1/01/85-12/31/85

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be sumitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by December 31, 1986.

If the Department does not receive by December 31, 1986 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 24, 1986.

Gilbert B. Kaplan,

Deputy Assistance Secretary, Import Administration.

[FR Doc. 86-26929 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications For Duty-Free Entry of Scientific ICP Mass Spectrometers; University of CA, Los Alamos National Laboratory et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC.

Docket Number: 86-163R. Applicant: University of California, Los Alamos National Laboratory, Los Alamos, NM 87545. Intended Use: See notice at 51 FR 15820.

Docket Number: 86-308. Applicant: University of Cincinnati, Cincinnati, OH 45221-0172. Intended Use: See notice at 51 FR 34238.

Instrument: ICP Mass Spectrometers, Model PlasmaQuad.

Manufacturer: VG Instruments Inc., United Kingdom.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides simultaneous qualitative and semi-quantitative data for major, minor and trace constituents and abundance sensitivity of at least 10^{-5} for both high and low mass. The capability is pertinent to each applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-26931 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of CA, Los Alamos National Laboratory

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-314: Applicant: University of California, Los Alamos National Laboratory, Los Alamos, NM 87545. Instrument: Excimer/Dye Laser System, Model HE-IL. Manufacturer: Lumonics Inc., Canada. Intended Use: See notice at 51 FR 34680.

COMMENTS: None received.

DECISION: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

REASONS: The foreign article provides high output energy (450 mJ at 340 nm) and high energy conversion efficiency (8% at 340 nm 0.1 cm^{-1} linewidth). This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 86-26932 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application For Duty-Free Entry of Scientific Instrument; University of CA, Los Alamos National Laboratory

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 86-316. Applicant: University of California, Los Alamos National Laboratory, Los Alamos, NM 87544. Instrument: Mass Spectrometer, Model VG 354 with Accessories. Manufacturer: VG Isotopes Limited, United Kingdom. Intended Use: See notice at 51 FR 34680.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a fully automated multiple (5) collector system capable of providing an external precision on Neodymium (300 ng) of 0.003%. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-26933 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-05-M

Consolidated Decision on Applications For Duty-Free Entry of Scanning Tandem F-P Interferometers; University of Illinois, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 85-041. Applicant: University of Illinois, Urbana Champaign Campus, Urbana, IL 61801. Intended Use: See notice at 49 FR 50419.

Docket No.: 86-291. Applicant: City College-C.U.N.Y., New York, NY 10031. Intended Use: See notice at 51 FR 29953. Instrument: Interferometer.

Manufacturer: Dr. J.R. Sandercock, Switzerland.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of measuring Brillouin and Raman Spectra from opaque materials. The capability of each of the foreign instruments described is pertinent to each applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-26934 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-004]

Carbon Steel Wire Rod From South Africa; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 9, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from South Africa. The review covers the period January 1, 1983 through September 30, 1984 and eight programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 32931) the final results of its last administrative review of the countervailing duty order on carbon steel wire rod from South Africa (47 FR 42396, September 27, 1982). On October 10, 1985, the petitioners, Continental Steel Company, Georgetown Steel Corporation, Raritan River Steel Company, North Star Steel Texas, Inc., the Atlantic Steel Company, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on November 27, 1985 (50 FR 48825) and the preliminary results of administrative review on October 9, 1986 (51 FR 36259). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

On October 7, 1985, we revoked the order effective October 1, 1984 (50 FR 40886).

Scope of Review

Imports covered by the review are shipments of South American carbon steel wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983 through September 30, 1984 and eight programs: (1) Export Incentive Program—Categories A, B and D; (2) government assumption of finance charges; (3) government equity participation; (4) loans from the General Levy and Import Subsidy Scheme; (5) Industrial Development Corporation loans; (6) preferential rail rates; (7) government loan guarantees; and (8) a homeland development/regional decentralization program. During the period of review, the South African Iron and Steel Corporation ("ISCOR") was the only known exporter of South African wire rod to the United States.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, we determine the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1983 through June 30, 1983, 0.39 percent *ad valorem* for the period July 1, 1983 through June 30, 1984, and 0.35 percent *ad valorem* for the period July 1, 1984 through September 30, 1984. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department therefore will instruct the Customs Service not to assess countervailing duties on any shipments of this merchandise exported on or after January 1, 1983 and exported on or before September 30, 1984. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10)

November 21, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR 86-26930 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-009]

Industrial Nitrocellulose From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 22, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers one exporter of this merchandise to the United States and the period May 13, 1983 through July 31, 1984.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Craig Daugherty or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1986 the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 18819) the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). We began this review under our old regulations. After the promulgation of our new regulations, the respondent, Societe Nationale des Poudres et Explosifs ("SNPE"), requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of industrial nitrocellulose containing between 10.8 and 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes, and printing inks. Industrial nitrocellulose is currently classifiable under item 445.2500 of the Tariff Schedules of the United States Annotated.

The review covers one exporter of French industrial nitrocellulose to the United States and the period May 13, 1983 through July 31, 1984.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from both the petitioner and the respondent.

Petitioner's Comments

Comment 1. The Department should use constructed value to calculate foreign market value because there is no verified evidence that SNPE had a viable home market during the period, since SNPE refused to allow the Department to verify its third-country sales.

Department's Position. As noted in the verification report, SNPE did not permit the Department to verify prices of third-country sales; however, we did verify the quantity of third-country sales and that SNPE had sufficient above-cost home market sales for the home market to be viable for comparison purposes.

Comment 2. To determine whether SNPE had a viable home market, the Department should define the scope of "such or similar" merchandise prior to testing for below-cost sales in the home market.

Department's Position. We agree. The Department first determined whether SNPE's total home market sales of such or similar merchandise were at least 5 percent of SNPE's total third-country sales. We then retested the viability of SNPE's home market after disregarding below-cost sales.

Comment 3. For those grades of nitrocellulose which are sold in the United States but not in the home market, for comparison purposes the Department should use the physically most similar merchandise sold in the home market. If home market sales of the most similar merchandise are insufficient, the Department should base foreign market value on constructed value

Department's Position. When merchandise which is identical to the merchandise sold in the United States is not sold in the home market, the Department compares U.S. sales to contemporaneous home market sales of what we determine to be the most similar merchandise. In determining the most similar merchandise we may select from a range of similar merchandise. For each U.S. sale during the period there were sufficient above-cost home market sales of either such or similar merchandise for comparison purposes.

Comment 4. The Department must use the best information available to calculate the profit component of constructed value since SNPE's profit was unverified. The best information available is that all of SNPE's profit was earned on sales of nitrocellulose.

Department's Position. Since we did not use constructed value in determining foreign market value, the issue is moot.

Comment 5. The Department understated SNPE's cost of production by including only the actual interest expenses incurred between the date of shipment and the date of payment. The Department should have used an imputed interest expense based on SNPE's average interest rate and the time period between the date of sale and the date of payment.

Department's Position. In computing the cost of production we prefer actual expenses over imputed expenses (*see Tool Steel from the Federal Republic of Germany, Correction to Early Determination of Antidumping Duty* (51 FR 10071, March 24, 1986)), unless we determine that the firm's actual expenses do not accurately reflect the actual experience of the firm. In this case, we found that the actual expenses found in SNPE's records did accurately reflect the experience of the firm.

Comment 6. The Department understated SNPE's cost of production by omitting the imputed rent costs for equipment used but not owned by SNPE.

Department's Position. The cost of capital equipment can be reflected either in a lease charge or in combined charges for depreciation, repair, and maintenance. In its financial records SNPE includes charges for repair and maintenance of the equipment, which we included in SNPE's cost of production. There are no depreciation charges in SNPE's financial records since, among other reasons, had SNPE owned the equipment, it would have already been fully depreciated. Therefore, all actual costs of this equipment are included in SNPE's cost of production.

Comment 7. While the Department did include in SNPE's cost of production the expenses relating to two subsidies (employee training and capital equipment purchases), the Department understated SNPE's cost of production by omitting expenses relating to research and development, pollution control, and labor, which are paid by the Government of France.

Department's Position. We included in SNPE's cost of production the net value of two subsidies since SNPE's accounting records include them. However, SNPE did not receive any research and development assistance related to industrial nitrocellulose. Further, all costs of the capital equipment purchased through government assistance for pollution control (depreciation, repair, and maintenance costs) are included in SNPE's cost of production. Finally, all actual labor costs relating to SNPE employees with civil service status are included in SNPE's cost of production, since we used SNPE's actual cost of production, not SNPE's theoretical cost (*see Tool Steel from the Federal Republic of Germany, Correction to Early Determination of Antidumping Duty*, (51 FR 10071, March 24, 1986)).

Comment 8. The Department understated SNPE's cost of production by omitting expenses relating to travel and lodging for employees temporarily assigned to the Bergerac plant, which produces industrial nitrocellulose.

Department's Position. These travel and lodging expenses are not related, either directly or indirectly, to the cost of producing industrial nitrocellulose. We consider these to be factory overhead expenses of the plants where the workers are normally based, and consider the cost of production ofnitrocellulose to include the amount of travel and lodging expenses of Bergerac workers temporarily assigned to plants other than Bergerac.

Comment 9. In determining the extent of below-cost sales, the Department improperly compared SNPE's full-year 1983 cost of production with SNPE's sales prices between May and December 1983. The Department should have compared such sale prices with SNPE's cost of production between May and December.

Department's Position. As required by section 773(b) of the Tariff Act, we investigated whether SNPE made sales over an extended period of time at prices which would permit the recovery of all costs within a reasonable period of time. It is our normal practice in administrative reviews to calculate the cost of production over a one year period. We may make exceptions to this practice when the review period spans

more than one accounting period of the firm or when costs vary significantly within the year. In this case, the petitioner has not demonstrated that the costs for the period January through April 1983 vary significantly from the costs for the period May through December 1983. See also, response to comment 10.

Comment 10. Since the Department calculated foreign market value on a monthly basis, the Department should calculate SNPE's cost of production on a monthly basis when determining whether home market sales were made below the cost of production.

Department's Position. Only in unusual economic circumstances, such as hyperinflation or when the cost of production fluctuates dramatically from month to month, is it appropriate to compute a very short-term cost of production. No such circumstances existed in France during the review period.

Comment 11. The Department should allocate all production costs common to industrial and military nitrocellulose to the cost of production of industrial nitrocellulose because SNPE refused to provide requested financial data which would confirm that SNPE had properly allocated such expenses.

Department's Position. Within the context of verification the Department thoroughly investigated the allocation of common costs between industrial and military nitrocellulose. We verified that SNPE had correctly allocated such common costs.

Comment 12 The Department should use the depreciation expenses reflected in SNPE's cost accounting records to compute its cost of production, rather than the depreciation expenses found in its financial statements.

Department's Position. We accept the accounting practices of a respondent as long as they are the respondent's usual accounting practices, they are consistent with the generally accepted accounting principles of that country, and they reasonably reflect the actual experience of the firm. Since French law prohibits the use in financial reporting of certain SNPE cost accounting practices relating to depreciation, SNPE's normal accounting practice for depreciation is found in its financial statements, not in its cost accounting records.

Comment 13. The Department should require SNPE to allocate SG&A expenses by sales revenue, not by "added cost".

Department's Position. We disagree. We accepted SNPE's use of "added costs" to allocate SG&A expenses because it is SNPE's normal accounting practice, it is consistent with the generally accepted accounting principles of France, and it reasonably reflects the actual experience of the firm.

Comment 14. The Department should allocate home market selling and advertising expenses only over sales to unrelated parties, because SNPE incurs no selling expenses on sales of industrial nitrocellulose to the Government of France. Sales of military nitrocellulose should also be excluded from the allocation base because SNPE refused to provide requested data on these products.

Department's Position. We have reconsidered this issue since the fair value investigation and have determined that SNPE incurs no such selling and advertising expenses at the Bergerac sales office on sales of military nitrocellulose to the French Government. While we included in the allocation base certain sales of military nitrocellulose to customers other than the Government of France, we excluded from the allocation base sales of military nitrocellulose to the Government of France. The Department did not include in the allocation base any sales of industrial nitrocellulose to the Government of France, since SNPE did not make any such sales.

Comment 15. The Department should investigate whether the prices SNPE paid for inputs from government-owned entities are charged to all French consumers of those inputs.

Department's Position. To examine the arm's-length nature of transactions between SNPE and related parties, the Department compared the prices paid by SNPE for inputs from related suppliers to prices paid by SNPE for the same inputs from unrelated suppliers. In some cases no unrelated supplier existed.

In these cases, SNPE provided other information concerning the arm's-length nature of the transaction, as described in our verification report. The Department is satisfied that all such transactions were made at arm's length.

Comment 16. The Department should not deduct from SNPE's cost of production its provision for doubtful accounts.

Department's Position. We agree. Provisions for doubtful accounts are estimated SG&A expenses not yet incurred by SNPE. SNPE reported its estimated expenses for 1984 in its questionnaire response. By the date of verification, SNPE had audited its accounting records for this period, and reported its actual expenses for doubtful accounts. We included these actual expenses in SNPE's cost of production. However, SNPE's cost accounting records accumulate these expenses as "added costs". We therefore deducted expenses for doubtful accounts (an SG&A item) from added costs only for the purpose of allocating SG&A expenses.

Comment 17. The Department should calculate SNPE's U.S. credit expense from the date of sale, not from the date of shipment, as required by *Atlantic Steel Co.* v. *United States*, 10 CIT _____, 7 ITRD 2503 (1986).

Department's Position. We disagree. In *Atlantic Steel*, the Court agreed with the ITA's conclusion that there was a direct relationship between the credit costs incurred prior to shipment and the sales under investigation because the orders were filled in advance of shipment. SNPE does not fill orders in advance of shipment. It is not possible to identify particular merchandise in SNPE's inventory prior to shipment with any particular sale. Therefore, we have calculated credit expenses from the date of shipment, not the date of sale *(see Nylon Impression Fabric from Japan, Final Determination of Sales at Not Less Than Fair Value*, 51 FR 15816, April 28, 1986).

Comment 18. The Department should investigate whether SNPE could have agreed to reimburse the importer of record for antidumping duty cash deposits.

Department's Position. The petitioner has not presented, nor does the Department have, any information indicating that SNPE is reimbursing the importer of record for cash deposits of estimated antidumping duties.

Comment 19. For any entries for which SNPE posts an antidumping duty cash deposit, the Department should adjust foreign market value to account for the imputed credit cost that SNPE incurs in posting such cash deposits.

Department's Position. See comment 18.

Comment 20. For any entries for which SNPE ultimately becomes liable for antidumping duties, the Department should subtract those amounts from United States price as required by § 353.55(a) of the Commerce Regulations. The Department should make an identical adjustment to United States price for any countervailing duties ultimately paid by SNPE.

Department's Position. As provided by § 353.55(a) of the Commerce Regulations, prior to appraisement the Customs Service will assess additional antidumping duties in the amount of any such duties for which SNPE ultimately becomes liable. Further, § 353.55(a) of the Commerce Regulations pertains only to antidumping duties.

Comment 21. The Department should have based foreign market value on a

VAT-inclusive price, and should have increased the United States price by the VAT amount which was rebated by reason of exportation to the extent that the VAT is added to or included in the price of industrial nitrocellulose when sold in France, but failed to do either.

Department's Position. As directed by the Court of International Trade ("the CIT") in *Zenith* v. *United States* (April 24, 1986), we are now attempting to formulate a methodology for calculating the amount of indirect taxes passed through in the home market, which should then be added to the United States price. Because the remand in Zenith is still before the CIT, we have followed our traditional methodology for the reasons stated in our final determination of sales at less than fair value on Grand and Upright Pianos from Korea, (50 FR 37561, September 16, 1985), and have subtracted the full amount of these taxes from foreign market value. Further, we note that the combined effect of adding the VAT to the selling price in the home market and adding the rebated VAT to the United States price would change the margin calculations by less than 0.03 percent, and would, therefore, be insignificant.

Comment 22. The Department should add the countervailing duty rate to the dumping margin to determine whether SNPE's unfair trading practices are *de minimis*

Department's Position. There is no express authority for the Department to add the final rates of countervailing and antidumping duty to determine the extent of unfair trading practices. Although the Department has the inherent authority to do whatever is necessary to administer the unfair trade laws in a fair manner *(see Smith-Corona Group* v. *United States,* 713 F.2d 1568 (Fed. Cir. 1983)), accounting for the simultaneous interaction between countervailing duties and antidumping duties is provided for in § 53.10(d)(1)(iv) of the Commerce Regulations, making the adding of final duty rates redundant. This section requires an addition to the United States price in the amount of any countervailing duty imposed on the merchandise to offset an export subsidy. However, since the countervailing duty rate during the period, if any, is unknown, and any addition to the United States price would merely lower an already *de minimis* dumping margin, no adjustment to United States price is appropriate.

Comment 23. The Department should consider as a direct selling expense, and therefore make an adjustment to foreign market value for, the amount of attorneys' fees and related expenses incurred by SNPE in connection with this antidumping duty proceeding.

Department's Position. We disagree. We do not consider legal fees paid in connection with an antidumping proceeding to be directly related to sales *(see Certain Steel Pipes and Tubes from Japan,* (48 FR 1206, January 11, 1983)).

Respondent's Comments

Comment 1. In computing SNPE's cost of production, the Department incorrectly allocated SNPE's R&D expenses generally rather than allocating them on a product-specific basis.

Department's Position. The Department was unable to verify that SNPE's accounting system recorded R&D costs in a manner that would permit the allocation of R&D expenses on a product-specific basis. Therefore, we allocated R&D expenses generally.

Comment 2. The Department incorrectly computed SNPE's financing expenses by failing to make adjustments for financing expenses unrelated to industrial nitrocellulose and for financing income.

Department's Position. SNPE was unable to substantiate the amount of financing expenses unrelated to nitrocellulose. Further, SNPE was unable to demonstrate that such financing income was directly related to industrial nitrocellulose.

Comment 3. The Department overstated SNPE's cost of production by including depreciation expenses found in SNPE's financial statements. The Department should have used a straight-line depreciation method only, since any other method distorts SNPE's actual costs.

Department's Position. SNPE deviated from its normal accounting practice to report depreciation expenses based only on a straight-line methodology. The Department used SNPE's normal methodology, as found in SNPE's financial statements, to compute depreciation.

Final Results of the Review. Based on our analysis of the comments received, the preliminary results remain unchanged, and a de minimis margin of 0.17 percent exists for the period May 13, 1983 through July 31, 1984.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, since the margin is less than 0.5 percent and, therefore, *de minimis,* the Department waives the estimated antidumping duty cash deposit requirement. This waiver applies to shipments of French industrial nitrocellulose entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next 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).

Dated: November 24, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-26927 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 28, 1986 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers four manufacturers/exporters of this merchandise to the United States and two consecutive periods from September 1, 1981 through August 31, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Fortress Allatt Ltd. Based on our analysis of the comments received and correction of clerical errors we have changed the margins from those presented in the preliminary results for Fortress Allatt Ltd.

EFFECTIVE DATE: December 1, 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) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 30685) the preliminary results of its administrative review of the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 44811, September 7, 1977). We began this review under our old regulations. After promulgation of our new regulations, Blaw Knox Construction Equipment Company, the petitioner, and Fortress Allatt Ltd., a manufacturer/exporter, requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of replacement parts for self-propelled bituminous paving equipment. The review covers four manufacturers/exporters of this merchandise to the United States and to consecutive periods from September 1, 1981 through August 31, 1983. Since National Paver Parts was acquired by Fortress in 1983 and ceased to exist as a corporate entity, we will not separately cover National Paver Parts in future reviews.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.53(d) of the Commerce Regulations. We received written comments from Fortress.

Comment 1. Fortress contends that the preliminary results of review showed a margin of 0.067 percent for September 1, 1981 to August 31, 1982, and that it should have been 0.66 percent.

Department's Position: The preliminary results of review showed a margin of 0.67 percent for the first period, not 0.067 percent. We agree that the margin should have been 0.66 percent.

Comment 2. Fortress contends that our currency conversion table was missing an entry for a quarterly rate that adversely affected the margin calculations for that quarter.

Department's Position. We agree and have corrected the error.

Comment 3. Fortress argues that its computer tape contained several erroneous U.S. sale dates that adversely affected its margins.

Department's Position. We agree that several dates were incorrect and produced erroneous results in the currency conversion and duty rate calculations for those sales. We have made the appropriate corrections.

Comment 4. Fortress argues that by comparing sales to distributors in the United States to sales to end-users in the home market, margins were created, or larger margins resulted, from the Department's failure to make an appropriate level-of-trade adjustment. Fortress states that since discounts are granted to distributors in both markets, an appropriate adjustment would be to apply the discount granted to the distributor on the U.S. sale as a discount to the end-user in calculating foreign market value.

Department's Position. We disagree. It is our policy to make comparisons at the same level of trade when they exist in both markets. However, when, as here, there are sales of a particular part to distributors in the United States and there are no sales of the same part to distributors in the home market, we used the weighted-average price of that part to end-users in the home market, which was the nearest comparable commercial level of trade. (*See* 19 CFR 353.19.) Distributors in both markets are granted discounts of five, fifteen, or twenty-five percent without any fixed bases. However, we cannot simply assume that on sales of identical parts to distributors in both markets, the same discount would be granted. Also, Fortress did not satisfactorily quantify any price differences related to sales at different levels of trade.

Comment 5. Fortress contends that we lack statutory or regulatory authority for deducting imputed interest on ESP sales. Even if we have the statutory authority, then we computed the expense incorrectly. The cost of carrying inventory is generally viewed as a function of interest, turnover time, and cost of the merchandise to the seller, not the sales value. Therefore, any deduction for this expense should be based on the transfer price to the U.S. subsidiary, which was list price less a discount.

If the interest cost is treated as an indirect selling expense, it must be added to the other U.S. indirect selling expenses and included in the ESP cap. Finally, Fortress contends that imputed interest costs in Canada exceeded imputed interest costs in the United States.

Department's Position. The Department has the authority to consider imputed interest as an indirect selling expense, based on section 1677a(e)(2) of the Tariff Act and § 353.10(e)(2) of the Commerce Regulations. *See also Portable Electric Typewriters from Japan* (48 FR 40761, September 9, 1983). Such an adjustment is necessary to properly account for overhead costs incurred while the merchandise is in inventory.

We have now calculated the interest expense based on the price to the U.S. subsidiary and have included the imputed interest in indirect selling expenses which increased the ESP cap. Since we already verified that indirect expenses in the home market exceeded those in the United States we deducted home market indirect expenses from foreign market value up to the amount deducted from the United States price. We did not calculate any imputed interest on the home market sales since Fortress did not sell through subsidiaries with warehouse facilities in the home market.

Comment 6. Fortress contends that the deduction for commissions should have been calculated as a percentage of the invoice price, which was net of discounts, rather than as a percentage of the starting price before discounts, since commissions were actually computed and paid in both markets in this manner.

Department's Position. We agree and have changed our calculations accordingly.

Comment 7. Fortress states that the Canadian Federal Sales Tax ("FST") is included in the price of all end-user home market sales. Thus the correct calculation of FST should have been the home market price less that price divided by 1.09, rather than 9 percent of the price. Also, FST should be calculated based on the full invoice price, not the price less the commission, since this was the amount of FST actually paid.

Department's Position. We agree and have changed our calculations accordingly.

Comment 8. Fortress contends that for ESP sales we should have applied the deductions for U.S. inland freight and for duty (in percentage terms) against the discounted list price rather than against the list price before discount.

Department's Position. We disagree in part. Fortress reported and we verified U.S. inland freight as a percentage of the list price before discounts. We agree, however, that duty was based on the list price less discount, and we have changed our calculations accordingly.

Final Results of the Review

Based on our analysis on the comments received and the correction of clerical errors, we have revised our preliminary results for Fortress and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Fortress	9/1/81-8/31/82	0.53
	9/1/82-8/31/83	.59
General Construction	9/1/81-8/31/82	.00
Equipment Manufacturing	9/1/82-8/31/83	.59
National Paver Parts	9/1/81-8/31/83	1.05
Parker Hannifin	9/1/81-8/31/82	[1] 20.12
	9/1/82-8/31/83	20.12

[1] No shipments during the period.

The Department will instruct the Customs Service to 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 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 August 31, 1983 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 0.59 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled bituminous paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next 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).

Dated: December 24, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26928 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by John Bianchi From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeal.

On September 5, 1986, John Bianchi (Appellant) sent a letter to the Department of Commerce in which he stated his intention to appeal from an objection by the New York Department of State (State) to Appellant's dock/waiting area project adjacent to his restaurant on Reynolds Channel in Hempstead, New York, F-86-224 U.S. Army Corps of Engineers/NY District Permit Application No. 86-352-L3. On September 17, 1986, Appellant's counsel filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A) and the Department of Commerce's implementing regulations, 15 CFR 930, Subpart H. The additional information contained in the September 17 letter and the one sent on October 29, perfected the appeal, but were filed subsequent to the time period specified in 15 CFR 930.125 for submitting such information. The State objected to the project as inconsistent with New York State's coastal management program because of the use of the dock for a non-water dependent use and its size and configuration.

The Appellant requests that the Secretary find that his project may be approved by the Corps of Engineers despite the objection by the State because the project is "consistent with the objectives or purposes of the CZMA," a statutory ground set forth in section 307(a)(3)(A) for overriding a state's objection. In order to make this determination, the Secretary must find that the project furthers one or more of the national objectives contained in section 302 or 303 of the CZMA; that the adverse effects of the project do not outweight its contribution to the national interest; that the project will not violate the Clean Air Act or the Federal Water Pollution Control Act; and that no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program.

Both Appellant and the State have raised the issue of the timeliness of the appeal in their preliminary filings. This issue will be briefed by Appellant and the State, and the Secretary will decide this issue when he makes his decision on the merits of the case.

Public comments are invited on the findings that the Secretary must make as set out in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice. Comments should be sent to Daniel W. McGovern, General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235. Copies of the comments also should be sent to Appellant's counsel, Peter H. Levy, Esquire, Law Office of Lawrence E. Elovich, 164 West Park Avenue, Long Beach, New York 11561, and George R. Stafford, Director, Division of Coastal Resources and Waterfront Revitalization, State of New York Department of State, Albany, New York 12231. All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the Law Office of Lawrence E. Elovich, the State of New York Department of State and the Office of General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Attorney/Adviser, Office of General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235 (202) 673-5200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Administration]

Dated: November 25, 1986.

Timothy R.E. Keeney,

Acting General Counsel.

[FR Doc. 86-26892 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Amended Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date and room number as published in the **Federal Register** on November 25, 1986 (51 FR 42610), for a special public meeting of Pacific Fishery Management Council advisors, have been changed.

The public meeting will convene on December 4, 1986, in Room 330 of the Council's office (address below), at 9 a.m., instead of on December 2 in Room 180. All other information remains unchanged. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 S.W. First Avenue, Suite 420, Portland OR 97201; telephone: (503) 221-6352.

Dated: November 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26899 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Turbulence Prediction Systems, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Turbulence Prediction Systems, Inc., having a place of business in Boulder, Colorado 80302, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,266,130, "Method and Apparatus for Detecting Clear Air Turbulences." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified 60-day period and should be addressed to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-26951 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Export Visa Requirement for Certain Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

November 25, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 2, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the bilateral agreement of November 18, 1982, as amended and extended, concerning certain cotton, wool and man-made fiber textile products from Taiwan, agreement has been reached to further amend the existing export visa requirement to provide for the use of visas for the merged Categories 447/448, instead of individual Categories 447 and 448. In the case of Category 659, 659-C and 659-H are being combined and shall be visaed as 659-H (T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 705.1650). Acccordingly, in the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry into the United States for consumption and withdrawal from warehouse for trousers visaed as Category 447/448 and man-made fiber headwear visaed as Category 659-H, effective on December 2, 1986 for goods exported on and after December 2, 1986. Wool trousers exported before December 2, 1986 may be visaed individually as Categories 447 and 448, and man-made fiber headwear in Category 659, exported before that date, may be visaed as Category 659-C, provided all other requirements established under this visa arrangement have been met.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

November 25, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Taiwan.

Effective on December 2, 1986 and until further notice, the existing export visa requirement established by the directive of September 27, 1972, as amended, is hereby further amended to permit entry for consumption, or withdrawal from warehouse for consumption, in the United States of wool textile products in Categories 447 and 448, visaed as merged Category 447/448, and man-made fiber textile products in Category 659, visaed as Category 659-H [1] and exported on and after November 1986. Merchandise visaed as Categories 447, 448 and 659-C [2] before December 2, 1986, shall not be denied entry provided all other requirements previously established under this visa arrangement have been met.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26926 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Cotton, Man-Made and Vegetable Fiber Textile Products Produced or Manufactured in Malaysia

November 25, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 18, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and July 11, 1985, the Governments of the United

[1] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 705.1650.

[2] In Category 659, only T.S.U.S.A. numbers 703.1610, 703.1620, 703.1630, 703.1640 and 705.1650.

States and Malaysia have agreed to amend their bilateral agreement to establish new specific limits for textile products in Categories 342/642/842 (skirts of cotton, man-made and vegetable fibers), 351/651 (cotton and man-made fiber pajamas and nightwear) and 605–T (man-made fiber sewing thread—only T.S.U.S.A. number 310.9500), produced or manufactured in Malaysia and exported during the period which, for Categories 342/642/842 and 351/651, began on October 1, 1986 and extends through December 31, 1986, and for Category 605–T, which began on September 1, 1986 and extends through December 31, 1986.

Accordingly, in the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, man-made and vegetable fiber products in the foregoing categories in excess of the designated restraint limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements.

November 25, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and July 11, 1985, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 28, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made and vegetable fiber textile products in Categories 342/642/842, 351/651 and 605–T [1], produced or manufactured in Malaysia and exported during the designated restraint periods, in excess of the following restraint limits:

Category	Restraint limit	Restraint period
342/642/842	52,500 doz.	Oct. 1–Dec. 31, 1986
351/651	40,000 doz.	Do.
605–T	115,000 pds.	Sep. 1–Dec. 31, 1986

Textile products in Categories 342/642/842, 351/651, 605–T which have been exported to the United States prior to September 1, 1986 for Category 605–T and October 1, 1986 for Categories 342/642/842 and 351/651, shall not be subject to this directive.

Textile products in Categories 342/642/842, 351/651 and 605–T which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement, as amended, between the Governments of the United States and Malaysia which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than 5 percent, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limits, except that there will be not carryover in the first agreement period (May 1, 1986 through December 31, 1986) and no carryforward in the final agreement period (calendar year 1989); and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] In Category 605, only TSUSA number 310.9500.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–26923 Filed 11–28–86; 8:45 am]

BILLING CODE 3510–DR–M

Adjusting Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 25, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 2, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call, (202) 377–3715.

Background

A CITA directive dated December 20, 1985 (50 FR 52830), as amended, established limits for certain cotton, wool and man-made fiber textile products, including Categories 335–T, 335–NT, 338/339, 341–T, 345, 348–T, 348–NT, 433, 631–W, (only TSUSA numbers 704.3215, 704.8525, and 704.9000) 634, 642–NT, 643, 651, 652–NT and 659–T, produced or manfactured in the Philippines and exported during the agreement year which began on January 1, 1986 and extended through December 31, 1986.

At the request of the Government of the Republic of the Philippines, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, swing and carryover are being applied to the restraint limits previously established for textile products in the foregoing categories.

As a result of these adjustments the limits for cotton and man-made fiber textile products in Categories 335–T, 634, 643 and 659–T are being reduced. The limits for all remaining categories affected by this action are being increased.

In the letter published below, the Chairman of the Committee for the

Implementation of Textile Agreements directs the Commissioner of Customs to adjust the limits accordingly.

A description of the textile categories in terms of T.S.U.S.A. numberss was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on December 2, 1986, the limits for the indicated categories are to be adjusted as follows under the terms of the bilateral agreement: [1]

Category	Adjusted limit [1]
335-T	42,765 doz.
335-NT	46,232 doz.
338/339	1,055,394 doz.
341-T	90,105 doz.
345	45,857 doz.
348-T	262,363 doz.
348-NT	266,760 doz.
433	3,051 doz.
631-W	449,822 doz. prs.
634	237,628 doz.
642-NT	76,614 doz.
643	49,120 doz.
651	122,509 doz.
652-NT	727,482 doz.
659-T	3,978,650 doz.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.
[2] In Category 631, only TSUSA numbers 704.3215, 704.8525 and 704.9000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26924 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

November 21, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 28, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On May 28, 1986, a notice was published in the **Federal Register** (51 FR 19249), which announced import restraint limits for cotton, wool and man-made fiber textile products in Categories 335, 340, 341, 348 and 640, among others, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1986 and extends through May 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement between the Governments of the United States and Sri Lanka, the limits for Categories 335, 340, 341, 348 and 640 are being reduced from 145,904 dozen to 137,645 dozen (Category 335), 524,984 dozen to 495,268 dozen (Category 340), 525,256 dozen to 475,524 dozen (Category 341), 291,810 dozen to 275,292 dozen (Category 348), 102,406 dozen to 96,609 dozen (Category 640), to account for carryforward used in the previous agreement year.

A description of the cotton, wool and man-made fiber textile catagories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

November 21, 1986.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on May 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1986 and extends through May 31, 1987.

Effective on November 28, 1986, the directive of May 22, 1986 is hereby further amended to adjust the previously established limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of May 10, 1983, as amended: [1]

Category	Adjusted 12-mo. limit [1]
335	137,645 doz.
340	495,268 doz.
341	475,524 doz.
348	275,292 doz.
640	96,609 doz.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26925 Filed 11-28-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The bilateral agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded by certain designated percentages of the square yard equivalent total, provided the amount of the increase is compensated for by a decrease in equivalent square yards in one of more other specific limits; (2) specific limits may be increased for carryover or carryforward; (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement.

Enforcement of Requirement to Provide Correct Date of Export

November 25, 1986.

The Committee for the Implementation of Textile Agreements (CITA) has learned that import declaration have been filed citing the incorrect date of export from the country of origin. Since bilateral textile agreements and unilateral restraint levels are implemented on the basis of the date of export and not the date of import of textile and apparel products, an incorrect date of export can affect the quote period to which goods are charged.

Accordingly, the public is reminedd that the correct date of export from the country of origin must be stated on the entry document with supporting evidence included in the entry package presented to Customs. Entry documents containing incorrect or unverifiable date of export informatin will not be accepted and Customs will deny such merchandise entry for consumption, or withdrawal from warehouse for consumption in the United States.

Background

The United States Customs Service, under §§12.130(f) and 132.11(b) of its regulations (19 CFR 12.130(f) and 132.11(b)), has the authority to deny entry to shipments lacking correct or verifiable date of export information. Specifically, §§ 12.130(f) which requires a manufacturer, producer, exporter or importer of a textile product to file a declaration of the country of origin, states that entry will be denied unless the merchandise is accompanied by a properly executed declaration. Among the information to be provided on that declaration is the correct date of export from the country of origin. Section 132.11(b) states that entry documents for quota merchandise must be presented in "proper form" and provides that when entry documents are not in proper form, the accompanying merchandise "shall not be regarded as entered for purposes of quota priority and shall not acquire quota status." Section 152.1(c) of the Customs regulations defines "date of exportation" as "the actual date the merchandise finally leaves the country of exportation for the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 26922 Filed 11-28-86; 45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on B-1B Defensive Avionics Review Subgroup

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on B-1B Defensive Avionics Review Subgroup will meet in closed session on December 15, 1986 at Eaton Corp., AIL Division, Deer Park, New York.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the status of the Air Force B-1B Defensive Avionics Program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 25, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-26879 Filed 11-28-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on B-1B Defensive Avionics Review Subgroup

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on B-B1 Defensive Avionics Review Subgroup will meet in closed session on December 17 and 29, 1986, and January 13, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate the status of the Air Force B-1B Defensive Avionics Program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: November 25, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-26880 Filed 11-28-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Computer Applications to Training and Wargaming

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Comupter Applications to Training and Wargaming scheduled for January 12-13, 1987 as published in the **Federal Register** (Vol. 51, No. 220, Page 41382, Friday, November 14, 1986, FR Doc 86-25693) will be held on November 24, 1986. In all other respects the original notice remains unchanged.

Dated: November 25, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-26881 Filed 11-28-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack (FOFA)

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Follow-on Forces Attack (FOFA) scheduled for December 1-2, 1986 as published in the **Federal Register** (Vol. 51, No. 216, Page 40477-40478, Friday, November 7, 1986, FR Doc. 86-25269) will be held on January 22-23, 1987. In all other respects the original notice remains unchanged.

Dated: November 25, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-26882 Filed 11-28-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

This request covers recordkeeping requirements and the collection of information regarding data about organization, products and services, security clearance, facilities, etc. which is used to establish files of firms to be solicited when the products or services they provide are needed by the Government. The Standard Form (SF) 1413, Statement and Acknowledgment, will be used by all Executive agencies to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form includes a signed subcontractor acknowledgment of the inclusion of those clauses in the subcontract.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *2,000;* responses, *3,000;* and reporting and recordkeeping hours, *$14,963.*

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. 9000–0014.

Dated: November 24, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–26855 File 11–28–86; 8:45 am]

BILLING CODE 6820–61–M

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, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–4820 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

The Government does not normally purchase used items. Therefore, when a contractor proposes the substitution of a use item for a new item, data must be furnished to the contracting officer so the proposal can be properly evaluated. A description of the item, quantity, data of acquisition, source and monetary advantages to the Government are the basic data necessary to evaluate the proposal. Upon completion of the contracting officer's evaluation and determination the data is placed in the contract file and becomes a matter of record.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *790;* responses per respondent, *4;* total annual responses *3,160;* hours per response, *.25;* and total burden hours, *790.*

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. 9000–0030, Sale of Used Items to Government.

Dated: November 24, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–26856 File 11–28–86; 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. Victoria Moss, Office of Federal Acquisition and Regulatory Policy (202) 523–4820 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

Entities doing business with the Government must identify those persons who have authority to bind the principal. This information is needed to ensure that Government contracts are legal and binding. The information is used by the contracting officedr to ensure that authorized persons sign contracts.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *12,000;* responses per respondent, *10;* total annual responses *120,000;* hours per response, *.017;* and total burden hours, *2,040.*

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. 9000–0033, Contractor's Signature Authority.

Dated: November 21, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–26857 Filed 11–28–86; 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. Victoria Moss, Office of Federal Acquisition and Regulatory Policy (202) 523–4820 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

b. Annual reporting burden

This is estimated as follows: Respondents, 61, 875; responses per respondent, 8; total annual responses, 495,000; hours per response, 0.17; total reporting hours, 8,415.

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. 9000–0048, Authorized Negotiators.

Dated: November 24, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–26858 Filed 11–28–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA87–1–20–002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 24, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on November 17, 1986, tendered for filing Second Substitute Seventh Revised Sheet No. 205 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Second Substitute Seventh Revised Sheet No. 205 is being filed pursuant to the provisions of section 7 of its Rate Schedule F–4 to reflect in its rates, effective November 1, 1986, an adjustment in the Contract Adjustment Demand Rate to be charged by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as set forth in Texas Eastern's November 7, 1986 filing.

Algonquin Gas requests that the Commission accept the above tariff sheet to be effective as proposed.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested State commission.

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 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 December 2, 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. 86–26917 Filed 11–28–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP87–1–000]

Arkla Energy Resources, et al.; Complaint

November 24, 1986.

In the matter of Arkla Energy Resources, a division of Arkla, Inc., Complainant, v. Alice-Sidney Oil Company and Anthony Oil & Gas Company, Respondents.

Take notice that on October 10, 1986, Arkla Energy Resources, a division of Arkla, Inc. (AER) filed a complaint pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure[1] against Alice-Sidney Oil Company and Anthony Oil & Gas Company (Respondents) in connection with the sale of natural gas by Respondents from the Ada Field in Webster and Bienville Parishes, Louisiana.

AER states that Respondents were sellers of natural gas to AER and its predecessor, Arkansas Louisiana Gas Company (ARKLA) pursuant to a November 14, 1951 gas purchase contract (the Contract) between ARKLA and Respondents' predecessors. The Contract was terminated effective March 1, 1985. AER states that between November 14, 1951, and December 31, 1984, it bought wet gas from Respondents at the wellhead first at the full just and reasonable rate under section 4 of the Natural Gas Act, (NGA)[2] and later at the maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA).[3] AER states that under the Contract, Respondents also were paid an additional sum for natural gas liquids that were extracted by AER from the wet gas at AER's Bistineau processing plant. AER did not receive any credit from the wellhead price for the loss of gas resulting from the extraction of the natural gas liquids.

AER alleges that the compensation received by Respondents for the gas plus the supplemental compensation received for the natural gas liquids exceeded the maximum lawful price under the NGPA and the just and reasonable rate under section 4 of the NGA. AER further alleges that Respondents have overcollected approximately $368,000 under the NGPA and at least $81,000 under the NGA. When interest through September 30, 1986, computed in accordance with the Commission's regulations,[4] is added to those figures, the total refund allegedly owed to AER exceeds $700,000. AER states that it has presented refund figures to Respondents and that Respondents have refused to make any refund. Instead, Respondents commenced a civil action against AER in the United States District Court,

[1] 18 CFR 385.206 (1986).

[2] 15 U.S.C. 717c (1982).

[3] 15 U.S.C. 3301–3432 (1982).

[4] 18 CFR 154.102(c) (1986).

Western District of Arkansas, El Dorado Division, seeking a determination whether AER overpaid for the gas sold to it by Respondents under the Contract for the period December 1, 1978, through Decemper 31, 1984. AER states that it will assert in the federal court action that the NGPA pricing claim falls within the primary jurisdiction of the Commission, that the issue should be referred to the Commission, and that the federal court action should be stayed pending the Commission's resolution of the federal regulatory issues.

AER requests that the Commission initiate a show cause proceeding pursuant to 18 CFR 385.209; find that Respondents have violated section 504 of the NGPA by collecting a price in excess of the maximum lawful price,[5] section 4 of the NGA, and the Commission's regulations issued under those statutes; and order Respondents to refund to AER all revenues collected in violation of the NGPA, the NGA, and the Commission's regulations, together with interest computed in accordance with 18 CFR 154.102(c).

Any person desiring to be heard or to protest AER's complaint 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 or 211 of the Commission's Rules of Practice and Procedure.[6] All motions to intervene or protests must be filed not later than 30 days following the issuance date of this Notice. Any person wishing to become a party to the proceeding must file a motion to intervene. AER has served a copy of the complaint on Respondents and the due date for answering the complaint is 30 days from the issuance date of this Notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26918 Filed 11-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL79-8-002]

Central Power and Light Co. et al.; Amendment to Environmental Report on Proposed Interconnection of Electric Utilities

November 24, 1986.

In the matter of Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company.

Take notice that on November 17, 1986, the applicants in the above-captioned proceeding substantially amended their environmental report concerning an application under sections 210, 211, and 212 of the Federal Power Act to construct transmission facilities for the purpose of interconnecting electric utilities in the states of Texas, Oklahoma, Louisiana and Arkansas. The report addresses the environmental factors specified in § 4.41 of the Commission's Rules of Practice and Procedure, 18 CFR 4.41. This report is available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, NE., Washington, DC. Members of the public are hereby invited to submit written comments on the environmental effects of the relief requested by the applicants. The Commission staff will analyze such comments in determining whether the proposed interconnection of electric utilities constitutes a major federal action significantly affecting the quality of the environment.

Any person wishing to comment should file a statement with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All comments should be filed by December 23, 1986 and should refer to the above docket number.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26916 Filed 11-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-53-000]

Cheney Energy Corp.; Application

November 24, 1986.

Take notice that on October 8, Cheney Energy Corp. (Cheney), 6600 Powers Ferry Road, Suite 225, Atlanta, Georgia 30339, filed in this proceeding an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting certificate authorization for (1) sales for resale of certain natural gas in interstate commerce, without market restriction, by Cheney; (2) sales of certain natural gas by others to Cheney for resale in interstate commerce, without market restriction; and (3) sales for resale of certain natural gas in interstate commerce, without market restriction, by producers through Cheney acting as their agent. Cheney also seeks pre-granted abandonment of all sales for resale for which sales certificate authority is sought herein.

Cheney states that the purpose of its application is to enable Cheney to make sales for resale of gas to all customers who have the ability to buy gas in the spot market. Such authority will also enable Cheney to act as agent for various producers who wish to sell gas subject to NGA jurisdiction on the spot market. As the duration of the sales transactions for which authority is sought will be coterminous with the abandonment authority granted to producers in separate proceedings, including expedited proceedings pursuant to the Commission's expedited abandonment procedures set forth in Order No. 436, Cheney is also requesting the Commission to authorize pre-granted abandonment of such sales. Finally, Cheney requests that the Commission declare in its order issuing the authorizations requested herein that the Commission's NGA jurisdiction over the activities and operations of Cheney is limited to the transactions for which authorization is sought in this Application.

Any person desiring to be heard or to make any protest with reference to said filing should on or before December 8, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordnace with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26919 Filed 11-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-59-000, 001]

Northern Natural Gas Co., Division of Enron Corp.; Purchased Gas Cost Adjustment Rate Change

November 24, 1986.

Take notice that on November 17, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

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[5] 15 U.S.C. 3414(a) (1982).

[6] 18 CFR 385.214 and 385.211 (1986).

Third Revised Volume No. 1

Forty-fourth Revised Sheet No. 4a
Thirty-eighth Revised Sheet No. 4b
Seventh Revised Sheet No. 4b.1
Seventh Revised Sheet No. 4c
First Revised Sheet No. 4g.2
Sixth Revised Sheet No. 65
Sixth Revised Sheet No. 67
Fifth Revised Sheet No. 68
Ninth Revised Sheet No. 69
Second Revised Sheet No. 69a
First Revised Sheet No. 69b
Eighth Revised Sheet No. 70
Sixth Revised Sheet No. 71
Third Revised Sheet No. 72
First Revised Sheet No. 73
Third Revised Sheet No. 74
First Revised Sheet No. 74c
Second Revised Sheet No. 74d
Second Revised Sheet No. 74e
Second Revised Sheet No. 74f

Original Volume No. 2

Forth-sixth Revised Sheet No. 1c.
Third Revised Sheet No. 1d
Third Revised Sheet No. 1e
Fourth Revised Sheet No. 1f
Sixth Revised Sheet No. 1g
First Revised Sheet No. 1j
First Revised Sheet No. 1k
Third Revised Sheet No. 1L
Third Revised Sheet No. 1o
Second Revised Sheet No. 1p
Second Revised Sheet No. 1q
Second Revised Sheet No. 1r

Such revised tariff sheets are required in order that Northern may place into effect the proposed rates on January 1, 1987 to reflect:

(1) Reflect Northern's cost of purchased gas to be experienced during the Calendar Year 1987, pursuant to Paragraph 18 of Northern's F.E.R.C. Gas Tariff Third Revised Volume No. 1 (Volume 1 Tariff), and Paragraph 1 of Northern's Original Volume No. 2 Tariff (Volume 2 Tariff).

(2) Reflect a negative surcharge to amortize the overrecovered commodity cost of purchased gas account for the twelve months ended September 30, 1986, and a positive surcharge to amortize the underrecovered demand cost of purchased gas account for the twelve months ended September 30, 1986, both pursuant to Paragraph 18 of Northern's Volume 1 Tariff and Paragraph 1 of Northern's Volume 2 Tariff and also to reflect certain revenue tracking adjustments.

(3) Track the change in the cost of transportation of gas through the Alaska Natural Gas Transportation System (ANGTS) pursuant to Paragraph 21 of Northern's Volume 1 Tariff and Paragraph 4 of Northern's Volume 2 Tariff. In addition, this filing reflects a negative surcharge to amortize the overrecovered cost of transportation of gas through ANGTS for the twelve months ended September 30, 1986.

(4) Reflect an increase in the Gas Research Institute (GRI) surcharge pursuant to Paragraph 19 of Northern's Volume 1 Tariff. Such increase in the GRI surcharge has been authorized by Commission Opinion No. 252, issued September 29, 1986 in Docket No. RP86–117.

In the filing, Northern has established a PGA ceiling rate of $2.1939 per MMBtu which reflects a decrease of $.2996 per MMBtus from the approved 1986 PGA ceiling rate of $2.4935 per MMBtu.

Northern states that since the projection of 1987 gas purchased costs does not reflect the level of gas purchased costs it actually will experience beginning on January 1, 1987 (due in part to the fact that the impact of Order No. 451 will not be felt immediately on that date), it does not intend to bill the commodity rates established in its filing on January 1, 1987. Instead, Northern states that it will utilize its flexible PGA tariff mechanism to reflect in the commodity rates on January 1, 1987, the estimated actual cost of purchased gas being experienced at that time.

Consistent with the provisions of northern's tariff, Northern states that it proposes to effectuate on January 1, 1987, the proposed demand rate adjustments, PGA surcharge adjustments, ANGTS rate adjustments, and GRI rate adjustments. Northern states that such components of Northern's rates will remain in effect throughout 1987 and will not be impacted by any subsequent rate adjustments pursuant to Northern's flexible PGA tariff.

Northern requests an effective date of January 1, 1987 for the proposed tariff sheets contained in its filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 1, 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. 86–26920 Filed 11–28–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84–429–024]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

November 24, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 17, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following sheets:

Revised Substitute Fourth Revised Sheet No. 16
Revised Substitute Eleventh Revised Sheet No. 97
Revised Substitute Seventh Revised Sheet No. 101B
Revised Substitute Fourth Revised Sheet No. 101E

Texas Eastern filed on November 7, 1986, tariff sheets in Docket No. CP84–429–023 which reinstated as of November 1, 1986 for the affected participants in such Docket, rates, respective billing determinants and sales entitlements at the 1985 Contract Adjustment levels which were in effect prior to the October 2, 1986 tariff filing in Docket No. CP84–429–022.

Pursuant to Article VII. *Facilities Construction* of the May 2, 1985 Joint Offer of Settlement (Settlement) in Docket No. CP84–429–001, Public Service Electric and Gas Company (Public Service) agreed to take 5,125 dth per day of Algonquin Gas Transmission Corporation's (Algonquin) nominated volume for the first year of service (1985 Program). In accordance with Algonquin's and Public Service's Precedent Agreements dated December 11, 1984 in the Settlement, the acceptance of such volumes by Public Service terminates October 31, 1986.

Texas Eastern in its November 7, 1986 filing, inadvertently failed to reflect the reversion of this volume in Algonquin's and Public Service's billing determinants and sales entitlements. These tariff sheets set forth the above mentioned revisions.

The proposed effective date of the above listed tariff sheets is November 1, 1986, the prescribed dated in the Settlement as approved by Commission order dated August 15, 1985 in Docket No. CP84–429–001.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 2, 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. 86-26921 Filed 11-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-000 et al.]

Electric Rate and Corporate Regulation Filings; Arkansas Power & Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Company

[Docket No. ER87-87-000]

November 25, 1986.

Take notice that November 7, 1986, Arkansas Power and Light Company (AP&L) tendered for filing a notice of cancellation of Rate Schedule FERC No. 106, effective December 31, 1986.

Notice of the proposed cancellation has been served upon the following:

Mr. Jack L. Gambrell, Vice-President—Operations, Cajun Electric Power Cooperative, Inc., P.O. Box 15540, Baton Rouge, Louisiana 70895

Arkansas Public Service Commission P.O. Box C-400, Little Rock, Arkansas 72203

Louisiana Public Service Commission, One American Place, Suite 1630, Baton Rouge, Louisiana 70825

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Electric Power Company

[Docket No. ER87-115-000]

November 25, 1986.

Take notice that on November 20, 1986, Southwestern Electric Power Company ("SWEPCO") tendered for filing a Letter Agreement between SWEPCO and TEX-LA Electric Cooperative of Texas, Inc. (TEX-LA"), dated July 31, 1986, which provides for SWEPCO to sell TEX-LA all the power and energy required by TEX-LA to meet the approximately 9 MW load served by Deep East Texas Electric Cooperative, Inc. ("Deep East"), a TEX-LA member, from Deep East's Center South substation located in Shelby County, Texas.

SWEPCO requests an effective date of July 31, 1986, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Public Utility Commission of Texas and TEX-LA.

Comment date: December 8, 1986, in acordance with Standard Paragraph E at the end of this notice.

3. Kansas Power and Light Company

[Docket No. ER87-108-000]

November 25, 1986.

Take notice that on November 17, 1986, Kansas Power and Light Company (KPL) tendered for filing an initial tariff designated Standby Transmission Service to Kansas Electric Power Cooperative, Inc. (KEPCo). This tariff would increase revenues from jurisdictional sales and service by $72,864 based upon the 12 month period ending October, 1987.

Standby Transmission Service to KEPCo, dated October 30, 1986, with KEPCo provides for Standby Transmission Service to KEPCo, provided KPL has transmission capability available. Copies of the filing have been mailed to KEPCo and the State Corporation Commission of Kansas.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this document.

4. Utah Power & Light Company

[Docket No. ER87-111-000]

November 25, 1986.

Take notice that on November 14, 1986, Utah Power & Light Company (UP&L) submitted for filing a Transmission Service Agreement and an Interconnected Operation Agreement for wheeling services to the city of Manti, Utah. The Transmission Service Agreement provides for the firm delivery of UMPA resource power from the Company's Mona Substation to Manti to the Company's Mona Substation. It additionally provides for the non-firm delivery of UMPA resource power from other available Company points of interconnection to Manti in the event Manti is unable to deliver at Mona its UMPA resoruce power which is located outside the Company's system.

The submission of these agreements is in compliance with the Commission's Order issued July 23, 1986 and is intended to resolve all matters at issue in this proceeding according to UP&L.

UP&L requests that the agreements be made effective on the date they are accepted for filing in accordance with the terms of the contracts.

Copies have been served upon Manti and the Utah Public Service Commission.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Cliffs Electric Service Company

[Docket No. ER87-96-000]

November 25, 1986.

Take notice that on November 10, 1986, Cliffs Electric Service Company (Service Co) tendered for filing an amendment to the Incidental Energy Service Schedule of the Interconnection and Energy agreement between the Service Co. and Wisconsin Electric Power Company (Wisconsin Electric).

The Service Co. states, while the amendment substitutes a new Service Schedule E for the existing Schedule, the only effect of the amendment is to add a paragraph to section 3.1 of the Schedule which clarifies the procedure pursuant to which Service Co.'s fuel costs are calculated for purposes of determining the rate for sales of Incidental Energy by Service Co. to Wisconsin Electric.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER87-103-000]

November 25, 1986.

Take notice that Carolina Power & Light Company on November 13, 1986, tendered for filing changes outlined below in its agreement with the French Broad EMC, Jones-Onslow EMC, and Lumbee River EMC.

1. *French Broad EMC—Peterburg 69 kv*—To reflect the installation of this new point of delivery with an in-service date of September 1, 1986. A load of 1,500 kw is being transferred from French Broad EMC's Marshall point of delivery to this new point of delivery.

2. *Jones-Onslow EMC—Southwest 115 kv*—To reflect the installation of special metering facilities required to provide metering pulse information to Jones-Onslow EMC's Southwest 115kv point of delivery. The metering pulse information will be provided under the Company's additional facilities plan.

3. *Lumbee River EMC—Rennert 115 kv*—To reflect the installation of this new point of delivery with an in-service date of September 1, 1986. A load of 2,000 kw is being transferred from Lumbee River ECM's Red Springs 23 kv point of delivery to this new point of delivery.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Clifs Electric Service Company

[Docket No. ER87-94-000]

November 25, 1986.

Take notice that on November 10, 1986, Cliffs Electric Service Company (Service Co) tendered for filing an

amendment to the Incidental Energy Service Schedule of the Interconnection and Energy agreement between the Service Co. and the Board of Light and Power of the City of Marquette, Michigan.

The Service Co. states, while the amendment substitutes a new Service Schedule D for the existing Schedule, the only effect of the amendment is to add a paragraph to section 3.1 of the Schedule which clarifies the procedure pursuant to which Service Co.'s fuel costs are calculated for purposes of determining the rate for sales of Incidental Energy by Service Co. to Marquette.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. ER87-112-000]

November 24, 1986.

Take notice that Delmarva Power & Light Company, on November 18, 1986, tendered for filing a Supplement to the Transmission Service Agreement between Conowingo Power Company and Delmarva. The Supplement makes the following revisions to the existing agreement:

(a) Changes the designation of the Conowingo Substation from "CAYOTS" to "TELEGRAPH."

(b) Increases the interconnection capability from 1690 kW up to 8000 kW in any hour.

(c) Allows Delmarva to render a billing for $21,500 to Conowingo to cover the construction costs associated with increasing the interconnection capability to 8000 kW.

Delmarva has requested an effective date of November 21, 1986.

The reason for the revised Agreement was to provide increased backup service for a new substation which Conowingo is constructing.

Copies of the filing were served on Conowingo Power Company and its parent, Philadelphia Electric Company, the Delaware Public Service Commission and the Maryland Public Service Commission.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER85-785-011]

November 24, 1986.

Take notice that on November 6, 1986, Wisconsin Electric Power Company (the Company) tendered for filing a compliance report whereby a refund was issued to Wisconsin Public Power, Inc. System, the only customer affected by the change in rates.

The company states that this change in rates was set forth in the Partial Settlement Agreement, dated August 12, 1986.

The company states that the Wisconsin Public Service Commission, the Michigan Public Service Commission and all other Parties in this proceeding will be notified of their compliance.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER87-107-000]

November 25, 1986.

Take notice that on November 14, 1986, Idaho Power Company (Idaho) tendered for filing an Agreement for Transmission Services between Idaho Power Company and Pacific Power & Light Company. Transmission services provided by Idaho Power Company to Pacific Power & Light Company for the transfer of up to 1,600 megawatts of Pacific Power & Light Company's share of the Jim Bridger Project as well as Pacific's other Wyoming generation in a westerly direction to Pacific Power & Light Company's western system for its use. Charges for the transmission services provided are fully set forth in the Agreement.

Idaho requests that the requirements of prior notice be waived for an effective date as of September 10, 1980. Because the only purchasing party under the Agreement is Pacific Power & Light Company, there would be no effect upon purchasers under other rate schedules.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp, doing business as Pacific Power & Light Company

[Docket No. ES87-13-000]

November 25, 1986.

Take notice that on November 18, 1986, PacifiCorp, doing business as Pacific Power & Light Company, (Pacific) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking authorization to negotiate privately the terms for the offering and sale in one or more public offerings, $125,000,000 of variable rate preferred stock pursuant to 18 CFR 34.2(b)(2).

Comment date: December 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER87-114-000]

November 25, 1986.

Take notice that no November 20, 1986, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Seven to Revised Agreement to Provide Specified transmission Service Between Florida Power & Light Company and City of Gainesville (Rate Schedule FERC No. 62) and a document entitled Schedule TX Operating Agreement Between Florida Power & Light Company and City of Gainesville, which document supplements Amendment Number Seven.

FPL states that under Amendment Number Seven, FPL will transmit power and energy for City of Gainesville as is required in the implementation of its interchange agreements with The Florida Municipal Power Agency, Orlando Utilities Commission, Tampa Electric Company Fort Pierce Utilities Commission, City of New Smyrna Beach, City of Starke and City of Vero Beach.

FPL further states that the Schedule TX Operating Agreement defines the methodology used to determine the additional incremental cost under section I.4 of Amendment Number seven.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment and the proposed Operating Agreement be made effective immediately. FPL states that copies of the filing were served on City of Gainesville.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER87-113-000]

November 25, 1986.

Take notice that on November 19, 1986, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Eleventh Revised Sheet No. 5C, superseding Tenth Revised Sheet No. 5C (Index of Purchasers) of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff), and a Service Agreement between Pacific and Sacramento Municipal Utility District dated February 6, 1986.

Pacific states that the Service Agreement provides for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL-3 under Pacific's Tariff.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER87-43-000]

November 25, 1986.

Take notice that on October 23, 1986, Public Service Company of New Mexico (PNM) tendered for filing an Economy Energy Agreement with Los Angeles Department of Water and Power. The Agreement permits the seller to offer economy energy rates which permit the price to reflect the current market price of such energy or the seller's actual cost to generate such energy.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this document.

15. Southwestern Electric Power Company

[Docket No. ER87-40-000]

November 25, 1986.

Take notice that on November 17, 1986, Southwestern Electric Power Company ("SWEPCO") tendered for filing an amendment to its October 22, 1986 filing of a Letter Agreement providing for the sale of replacement energy from SWEPCO to the Oklahoma Municipal Power Authority ("OMPA") and a Rate Schedule for Third-Party Purchase and Resale Transactions (Pursuant to FERC Order No. 84). The Order No. 84 Rate Schedule tendered for filing incorporates SWEPCO's established Order No. 84 rate in a tariff format intended for general applicability where SWEPCO purchases and resells energy from another utility. SWEPCO now asks that such Order No. 84 Rate Schedule be deemed a supplement to the OMPA Letter Agreement and to the following SWEPCO rate schedules:

SWEPCO Rate Schedule No.	Description
93	Interchange Agreement with Associated Electric Cooperative, Inc., Empire District Electric Company, Grand River Dam Authority and the Board of Public Utilities of Springfield, Missouri
96	Interchange Agreement with the City of Lafayette, Louisiana

SWEPCO requests an effective date of August 4, 1986 for the OMPA Letter Agreement and the Order 84 Rate Schedule supplement thereto and accordingly seeks waiver of the notice requirements of the Federal Power Act. SWEPCO requests that the Order No. 84 Rate Schedule supplement to the two other agreements be permitted to become effective as of the date that the Order No. 84 rate (unchanged by this filing) originally became effective with respect to the underlying agreements.

Copies of the filing have been sent to OMPA, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and all parties to the above listed agreements.

Comment date: December 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26915 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1630]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 21, 1986.

Petitions for reconsideration 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 Transportation 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: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Sedona, Arizona). Number of petitions received: 1.

Subject: Amendment of the Commission's Rules for Rural Cellular Service. (CC Docket No. 85-388, RM-5167). Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Trinity and Rogersville, Alabama) (MM Docket No. 86-35, RM's 5134 & 5377). Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Aurora, Republic and Pleasant Hope, Missouri) (MM Docket No. 86-303, RM-5236). Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26914 Filed 11-28-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 86-30]

Investigation of Unfiled Agreements; Yangming Marine Transport, Evergreen Marine Corp., and Orient Overseas Container Line, Inc.; Order of Investigation

This proceeding is instituted pursuant to sections 15 and 22 of the Shipping Act, 1916 (1916 Act), 46 U.S.C. 814 and 821 [1] and sections 10 and 11 of the Shipping Act of 1984 (1984 Act, 46 U.S.C. app. 1709 and 1710.

By Order served December 24, 1985, the Commission directed three ocean common carriers, engaged in the United States to Taiwan trade, Yangming Marine Transport (Yangming), Evergreen Marine Corporation (Evergreen), and Orient Overseas Container Line, Inc. (OOCL), to submit information and documents concerning their tariff filing, rate negotiation, and rate setting practices as well as information about memberrship in two Taiwan trade organizations—Association of Shipping Services (AOSS) and its predecessor, Overseas Joint Shipping Office (OJSO).

OJSO was an organization in Taiwan whose membership included Yangming, Evergreen and OOCL (through OOCL's

[1] Prior to June 18, 1984, the effective date of the Shipping Act of 1984, sections 15 and 22 of the 1916 Act were codified at 46 U.S.C. 814 and 821 and applied to both foreign and interstate commerce. When the Shipping Act of 1984 became effective, those sections were amended and later codified at 46 U.S.C. app. 814 and 821. As amended, they apply to interstate commerce, only.

General Agent in Taiwan, Chinese Maritime Transport, Ltd. (CMT)). Yangming, Evergreen and OOCL (again, through CMT) have been members of AOSS since it was established on September 21, 1984.

Responses to the Order of December 24, 1985, indicate that during the period January 1, 1983 to November 30, 1985, Yangming, Evergreen, and OOCL, under the aegis of the OJSO and AOSS, held discussions and attempted to set rates in the United States to Taiwan Trade without an effective agreement on file at the Commission, in apparent violation of section 15 of the 1916 Act, during the period January 1, 1983 through June 17, 1984, and sections 10(a)(2) and 10(a)(3) of the 1984 Act, 46 U.S.C. app. 1709(a) (2) and 1709(a) (3), during the period June 18, 1984 through November 30, 1985.

Now therefore it is ordered, that pursuant to sections 15 and 22 of the 1916 Act, and sections 10(a)(2), 10(a)(3), and 11 of the 1984 Act, an investigation is instituted to determine the following:

1. Whether Yangming, Evergreen and OOCL violated section 15 of the 1916 Act by discussing rates and attempting to set rates without an effective agreement on file at the Commission.

2. Whether Yangming, Evergreen and OOCL violated sections 10(a) (2), and 10(a) (3) of the 1984 Act, by discussing rates and attempting to set rates without an effective agreement on file at the Commission.

3. In the event Yangming, Evergreen or OOCL is found to have violated any of the above-cited provisions of the 1916 Act of the 1984 Act, whether civil penalties should be assessed, and, if so, the amount of such penalties;

4. Whether Yangming, Evergreen and OOCL are continuing to violate any of the above-cited provisions of the 1984 Act;

It is further ordered, that in the event Yangming, Evergreen or OOCL is found to be continuing to violate any of the above-cited provisions of the 1984 Act, an appropriate order shall be entered;

It is further ordered, that a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge, of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge, in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61;

It is further ordered, that Yangming, Evergreen, and OOCL, jointly and severally, are designated Respondents in this proceeding;

It is further ordered, that the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, that notice of this Order be published in the **Federal Register**, and a copy be served on parties designated herein;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, that all future notices, orders, and/or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, that in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the presiding officer in this proceeding shall be issued by November 25, 1987, and the decision of the Commision shall be issued by March 25, 1988.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-26907 Filed 11-28-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisition of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1818(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 16, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jules B. Schwing,* New Iberia, Louisiana; to acquire 7.03 percent of the voting shares of New Iberia National Bancorp, Inc., New Iberia, Louisiana, and thereby indirectly acquire New Iberia National Bank, New Iberia, Louisiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis Minnesota 55480:

1. *T. Denny Sanford,* Plam Harbor, Florida; to acquire 100 percent of the voting shares of United National Corporation, Sioux Falls, South Dakota, and thereby indirectly acquire United National Bank, Sioux Falls, South Dakota.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Phyllis L. McKinney,* Long Beach, California, Herbert B. Leo, Anaheim California, Duane D. Logsdon, Stanton, California; to acquire an additional 38.79 percent of the voting shares of New City Bancorp, Orange, California, and thereby indirectly acquire New City Bank, Orange, California.

Board of Governors of the Federal Reserve System, November 24, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26886 Filed 11-28-86; 8:45 am]

BILLING CODE 6210-01-M

Chemical New York Corp.; Application To Engage de Novo in Nonbanking Activities

Chemical New York Corporation, New York, New York, has filed an application under § 225.23(a)(3) of the Board's Regulation Y, 12 CFR 225.23(a)(3), for the Board's approval under section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8), and § 225.21(a) of Regulation Y, 12 CFR 225.21(a), to engage through a national bank subsidiary in making loans to individuals for personal, family, household, or charitable purposes, and other noncommercial loans, and in taking deposits, including savings, time, and demand deposits. The national bank subsidiary will not make commercial loans or engage in any transactions defined by applicable law or regulation to be commercial loans for purposes of the definition of "Bank" in the Bank Holding Company Act. The activities will be engaged in by Chemical Trust

Company of Florida, N.A., Palm Beach, Florida, and will be conducted throughout the state of Florida. The Board has previously determined by order that such activities are closely related to banking. U.S. Trust Company, 70 Federal Reserve Bulletin 371 (1984).

The application is available for immediate inspection at the Federal Reserve Bank of New York. 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 "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank of New York or the offices of the Board of Governors not later than December 19, 1986.

Board of Governors of the Federal Reserve System, November 24, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26881 Filed 11-28-86; 8:45 am]

BILLING CODE 6210-01-M

Leroy C. Darby, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 18, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *LeRoy C. Darby, Inc.*, Monona, Iowa; to retain 3.11 percent of the voting shares of Keystone Bancshares, Inc., Monona, Iowa, and 3.10 percent of Peoples State Bank, Elkader, Iowa, and thereby indirectly acquire 5.87 percent of Peoples State Bank, Elkader, Iowa. Comments on this application must be received by December 16, 1986.

2. *WFC, Inc.*, Waukon, Iowa; to become a bank holding company by acquiring 98.71 percent of the voting shares of Waukon State Bank, Waukon, Iowa.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Community Bankers, Inc.*, Granbury, Texas; to acquire 80 percent of the voting shares of Farmers & Merchants State Bank, Burleson, Texas. Comments on this application must be received by December 19, 1986.

Board of Governors of the Federal Reserve System, November 24, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26888 Filed 11-28-86; 8:45 am]

BILLING CODE 6210-01-M

Michigan National Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) 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. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are 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 December 12, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Michigan National Corporation*, Bloomfield Hills, Michigan; to acquire Morison International, Inc., Minneapolis, Minnesota, and therby engage in the activity of investment advisor pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 24, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26889 Filed 11-28-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegation of Authority

Part A (Office of the Secretary), Chapter AE (Office of the Assistant Secretary for Planning and Evaluation) of the Statement of Organization, Functions and Delegation of Authority for the Department of Health and

Human Services (last amended at 48 FR 4915 on February 3, 1983) is amended. The following organizational change are made in part as a result of the streamlining of the Office of the Secretary, principally to consolidate the support functions within the Office of the Assistant Secretary for Planning and Evaluation. The changes will reduce organizational overlap and duplication, and provide a more efficient organization.

The changes are as follows:

1. Amend Chapter AE by deleting the current sections AE.10 in its entirety and replacing it with the following:

AE.00 Mission
AE.10 Organization
AE.20 Functions

Section AE.00 Mission

The Assistant Secretary for Planning and Evaluation serves as the principal advisor to the Secretary on policy development, program analysis, and economic policy. He/She is responsible for the major decisions and support activities which encompass legislative development, planning, policy analysis and research and evaluation oversight. This mission is accomplished through an organization consisting of functional and programmatic units. This dual approach provides both an operational framework to direct, coordinate and evaluate departmental activities in a research and analytic capability to perform policy analyses.

Section AE.10 Organization

The Office of the Assistant Secretary for Planning and Evaluation (OASPE) consists of the following components:

A. Immediate Office (IO).

B. Office of Program Systems (OPS).

(1) Division of Policy and Regulatory Analyses.

(2) Division of Planning and Policy Coordination.

(3) Division of Research, Evaluation and Special Analyses.

(4) Division of Technical and Computer Support.

C. Office of Health Policy (OHP).

(1) Division of Health Financing Policy.

(2) Division of Public Health Policy.

(3) Division of Health Economic Analysis and Research.

D. Office of Income Security Policy (OISP).

(1) Division of Income Assistance Policy.

(2) Division of Policy Research and Analysis.

E. Office of Social Services Policy (OSSP).

(1) Division of Children, Youth and Family Policy.

(2) Division of Disability, Aging and Long-Term Care Policy.

Section AE.20 Functions

A. The *Immediate Office of the Assistant Secretary for Planning and Evaluation* provides executive direction, leadership and guidance to OASPE components. The Assistant Secretary acts as a principal advisor to the Secretary on policy development issues, and is responsible for major decisions and support activities in the areas of legislative development, policy planning, policy analysis and research and evaluation oversight.

B. The *Office of Program Systems*—in conjunction with the offices of Health, Income Security, and Social Services Policy—is responsible for (1) the general development, coordination, and operation of the Department's policy planning, development, and policy support activities, including formulation of legislation; and (2) for developing the Department's evaluation, research and statistical policies, including revision of poverty income guidelines required by Pub. L. 97-35; and oversight of regulatory analysis conducted throughout the Department. It is also responsible for policy analysis, research, and evaluation of crosscutting issues which involve more than one HHS agency or which involve HHS interaction with other Federal departments or agencies or other levels of government; and for providing a full range of technical support services to the OASPE, and selected policy support services for the Department.

1. The Division of Policy and Regulatory Analysis is responsible for the conduct of policy analysis in subjects and areas, such as civil rights, not covered by, or cutting across, the programmatic offices of OASPE; for providing the Department's analysis of issues for the Domestic Policy Council; for the analysis of economic issues and their implications for the Department's programs; for the oversight of regulatory analysis and related analytic and planning activities concerning regulations; and for developing approaches to conduct effective policy analysis of social programs; and for providing support to other Departmental offices on techniques of policy, systems, and cost-benefit analyses.

2. The Division of Planning and Policy Coordination is responsible for the coordination and oversight of policy planning and formulation of legislation by the Department, including the establishment of schedules and procedures to ensure the availability of supporting information. This Division is further responsible for reviewing legislative proposals affecting HHS prepared by other Departments; for performing analyses to identify opportunities to improve program efficiency and the effectiveness of program management across HHS agencies; and for analyzing data and developing guidelines and options concerning income eligibility, State allotments, and other aspects of program design.

3. The Division of Research, Evaluation, and Special Analysis is responsible for developing policies and procedures to ensure the quality, relevance, and utility of the Department's evaluation and policy research activities; for the conduct of policy analysis in subjects and areas affecting other units of government; for representing the Department on intergovernmental policy task forces; and for identifying and assessing alternative Federal financial assistance policies, including block grants. It is also responsible for coordinating the development of evaluation and policy research plans for the OASPE.

4. The Division of Technical and Computer Support is responsible for providing analytic, statistical, scientific programming and computer systems support, and for other technical staff services in support of policy analyses, research and evaluation activities of the OASPE. It is responsible for development, coordination, and oversight of Departmental policy for social and demographic statistics, including the revision and publication of the Poverty Income Guidelines. Finally, it is responsible for providing technical assistance and advice to other policy offices within the Department on statistical and specialized scientific policy analyses, and computer support systems design; and for operation of a policy information center for identifying and retrieving evaluative and policy research studies.

C. The *Office of Health Policy* is responsible for policy development—including policy planning, policy and budget analysis, review of regulations and formulation of legislation—and for the conduct and coordination of research and evaluation on issues relating to health policy. In these matters, the office works closely with the Public Health Service and the Health Care Financing Administration.

1. The Division of Health Financing Policy is responsible for policy coordination, long-range planning, formulating budget and legislation, economic analysis, program analysis, review of regulations, evaluation, and information dissemination related to the

Department's health financing programs, primarily Medicare and Medicaid and policies affecting health care financing and health care costs. Functions include: formulating and analyzing alternative legislative and regulatory proposals; preparing short-term policy analyses and evaluations on the efficacy of existing and potential policies and programs in terms of cost, effectiveness and other variables; and synthesizing technical analyses performed outside of the Government in a manner that is relevant to policy formulation.

2. The Division of Public Health Policy is responsible for policy coordination, long-range planning, formulating budget and legislation, economic analysis, program analysis, review of regulations, evaluation, and information dissemination related to public health programs and policies, including biomedical research; food and drug safety; disease control; health care resources development; health care and services delivery; alcohol, drug abuse and mental health services; and health promotion and disease prevention. Specific responsibilities include: preparation of studies on the distribution, adequacy, and organization of health resources and services; on the effects of these resources and services on costs and health status; and on the appropriateness of services utilization. It also is responsible for the conduct of policy research and evaluation studies on public health issues, synthesizing these analyses into special initiatives and new policies, and for the formulation of alternative legislative and regulatory proposals.

3. The Division of Economic Analysis is responsible for the performance of economic and statistical analyses of the Department's existing and proposed health care financing and reimbursement programs, policies and proposed legislation; performance of economic research and statistical analysis, as well as development, coordination and monitoring of health research and evaluation contracts in the areas of financing and reimbursement; and the estimation and analysis of the costs of existing and proposed Departmental health programs for use in the development of health policy.

D. The Office of Social Services Policy is responsible for policy development—including policy planning, policy and budget analysis, review of regulations and formulation of legislation—and for the conduct and coordination of research and evaluation on issues relating to social services, child welfare, aging, Native American and human development programs; deinstitutionalization and long-term care policy; and volunteerism and private sector social services initiatives. In these matters, the office works closely with the Office of Human Development Services.

1. The Division of Children, Youth and Family Policy is responsible for policy coordination, long-range planning, formulating budget and legislation, economic analysis, program analysis, review of regulations, research, evaluation and information dissemination related to service programs and human development policies affecting children, youth, and families. The Division oversees and assists the development of legislative, budgetary, regulatory, and research/evaluation proposals for programs typically administered by the Office of Human Development Services and other human services agencies. The Division performs independent policy research and evaluation of these programs and policies affecting them.

2. The Division of Disability, Aging and Long Term Care Policy is responsible for policy coordination, long-range planning, formulating budget and legislation, economic analysis, program analysis, review of regulations, research, evaluation and information dissemination related to service programs and human development policies concerning the disabled, retarded, and aging populations, including deinstitutionalization, rehabilitation, long-term, and non-institutional community-assisted care. The Division is the focal point for the coordination of disability and long-term care policy, including home and community care and institutional care, with related policies which affect the aged and disabled. Specific functions include design and execution of research, and review and coordination of departmental research and demonstration activities concerning disability, aging and long-term care policies.

E. The *Office of Income Security Policy* is responsible for policy development—including policy planning, policy and budget analysis, review of regulations and formulation of legislation—and for the conduct and coordination of research and evaluation on issues relating to income assistance, income security, and employment programs and policies. In these matters, the office works closely with the Social Security Administration and Family Support Administration.

1. The Division of Income Assistance Policy is responsible for policy coordination, long-range planning, budget and economic analysis, program analysis, review of regulations and reports on legislation, and information dissemination related to the Department's programs that provide cash assistance and social insurance benefits. In the cash assistance area, the principal programs examined are Aid to Families With Dependent Children, Supplemental Security Income, Child Support Enforcement, Low-Income Home Energy Assistance, Work Incentive program and refugee assistance. The Division performs the same functions in regard to programs outside the Department that affect the employment and income support, such as the Earned Income Tax Credit, Food Stamps, housing assistance programs, and employment and training programs. In the social insurance area, the Old Age, Survivors and Disability Insurance programs are the principal social insurance programs examined. As with cash assistance, other programs of this and other Departments concerning income provision, old-age and disability (e.g., the tax treatment of deferred compensation) are similarly monitored. Responsibilities include advising the Secretary about his or her decisions as a trustee of the several Social Security funds. In addition, the Division assists the Division of Policy Research and Analysis in the review and conduct of research in the areas of welfare, employment, social security and retirement policy.

2. The Division of Policy Research and Analysis is responsible, in conjunction with the Division of Income Assistance Policy, for reviewing the Department's research and evaluation activities in the areas of income assistance, employment and retirement income provision and for conducting an intramural and extramural policy research program in these areas on issues of priority to the Secretary, and those that cut across and complement research conducted by HHS agencies.

Dated: November 17, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-26873 Filed 11-28-86; 8:45 am]

BILLING CODE 4110-60-M

Office of Human Development Services

[Program Announcement No. HDS-87-1]

FY 1987 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Office of Human Development Services, HHS.

ACTION: Correction to the FY 1987 Coordinated Discretionary Funds Program; availability of funds and request for applications; notice.

SUMMARY: This document corrects Volume 51, No. 189, page 34744, of program announcement HDS-87-1 published September 30, 1986, in regard to eligibility for applicants for priority area, 5.3.D (Special Indian Grants), and extends the due date for applications under this priority area.

FOR FURTHER INFORMATION CONTACT: Duane Ragan, Room 2044, Donohoe Building, P.O. Box 1182, Washington, DC 20013, (202-755-7730).

SUPPLEMENTARY INFORMATION: On September 30, 1986, the Office of Human Development Services published in the Federal Register its FY 1987 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; Notice (Volume 51, No. 189, pages 34712-34762). On page 34744 of this announcement a change in eligibility requirements for funding under priority area 5.3.D, Special Indian Grants, is needed.

The current requirement for all four child welfare training priority areas (5.3 A, B, C, and D) states that all applicants must train bachelors or master level students in social work. This requirement was added this year, and should have applied to 5.3 A-C only, as most Indian Colleges and other interested educational institutions do not train BSWs and MSWs. It was not our intention to make these colleges ineligible for child welfare training grants which focus on the education and training of Indians.

Accordingly, the Office of Human Development Services is correcting page 34744, Column 1, "Introduction", paragraph four to add: "except for applicants for area 5.3.D (Special Indian Grants). For this priority area only, applicants will be considered from institutions of higher education which are accredited by the appropriate accrediting authority, with no requirement that they train bachelors or masters level students in social work."

Applications under this priority area (5.3.D) will now be due January 15, 1987.

Approved: November 24, 1986.

Jean K. Elder,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 86-26883 Filed 11-28-86; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-86-1656; FR-2295]

Scott Housing Systems, Inc.; Presentation of Views

AGENCY: Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of presentation of views in the matter of Scott Housing Systems, Inc.

SUMMARY: A Presentation of Views pursuant to 24 CFR 3282.152(f) will commence at 9:30 a.m. on December 15, 1986, in Room 9280, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 on the Department of Housing and Urban Development's preliminary determination that certain homes manufactured by Scott Housing Systems, Inc. (HUDALJ 1-86-MH) fail to comply with the Federal manufactured home construction and safety standards.

FOR FURTHER INFORMATION CONTACT: William C. Sorrentino, Director, Manufactured Housing and Construction Standards Division, U.S. Department of Housing and Urban Development, Room 9158, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-5210.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development (Secretary) administers the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (the Act) and its regulations. Based on information available through the Office of Manufactured Housing and Regulatory Functions, HUD has made a preliminary determination that noncompliance with the Federal manufactured home construction and safety standards exist in certain manufactured homes produced by Scott Housing Systems, Inc. (Scott). The noncompliances arise from Scott's failure to comply with various sections of 24 CFR Part 3280.

The Department has preliminarily determined that between June 1, 1984 and July 31, 1984, Scott manufactured 100 manufactured homes to be used by the Federal Emergency Management Agency pursuant to a contract with the General Services Administration and that the chassis used in these homes, in conjunction with the manufactured home structure, were unable to effectively sustain transportation loads as required by the Federal manufactured home construction and safety standards (Standards). As a result, overstreees exist in various components.

The Department has further preliminarily determined that Scott used an insufficient number of fasteners to fasten the outer metal siding to the sidewall belt rail of some of the FEMA homes. As a result, the exterior siding on the sidewalls separated from the wall studs and belt rails.

HUD also has preliminarily determined that Scott failed to properly seal areas around the passage doors and living room windows in some of the FEMA homes. As a result, panels and floors were damaged.

The Department has preliminarily determined that Scott failed to glue wall paneling properly at the butt joints in some of the FEMA homes. As a result, wall panels separated.

AHUD has preliminarily determined that Scott failed to affix the data place permanently in some of the FEMA homes. As a result, the data plates were misplaced or missing.

Further, the Department has preliminarily determined that Scott used exposed combustible material below the cabinets over the kitchen stove without adequate flame spread protection in some of the homes. As a result, the homes had inadequate fire protection in this area.

The Department has also preliminarily determined that Scott's set-up instructions for the home, if followed, would result in overstressed I-beams.

Finally, HUD has preliminarily determined that Scott wired the FEMA homes to accommodate a clothes dryer but failed to properly install the necessary receptacles in some of the FEMA homes.

Based on these preliminary determinations, the Department has preliminarily determined that Scott has constructed homes which fail to comply with the Standards at 24 CFR 3280.5, 3280.204, 3280.303, 3280.305, 3280.306, 3280.307, 3280.801 and 3280.903 and that by manufacturing and selling such homes Scott has violated 42 U.S.C. 5409(a)(1).

As a result of these preliminary determinations, a Presentation of Views will be held under the authority of the Act and 24 CFR Part 3282 Subpart D. The parties to this proceeding are the Secretary and Scott. The purpose of this proceeding are to enable Scott to

present information that would demonstrate that the homes manufactured by Scott do not fall to comply with the indicated standards and were not produced and sold in violation of the Act.

This presentation of views will be held in accordance with the provisions of 24 CFR 3282.152(f). William C. Sorrento, Director, Manufactured Housing and Construction Standards Division is hereby designated as the presiding officer for the proceedings. All inquiries concerning these proceedings should be directed to Mr. Sorrentino. The presentation of views will commence at 9:30 a.m. on December 15, 1986 in room 9280, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Interested persons may participate in writing in the oral portion of the presentation of views pursuant to 24 CFR 3282.153. The presiding officer may determine that such participation should be limited or barred so as not to unduly prejudice the rights of the parties involved or unnecessarily delay the proceedings.

Dated: November 20, 1986.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 86-27001 Filed 11-28-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-943-07-4212-13; N-39040]

Nevada; Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and order providing for opening of public lands.

SUMMARY: On August 22, 1986, the United States issued an exchange conveyance document to Ninety-Six Ranch for the following described Federal lands pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 43 N., R. 41 E.,
Sec. 3, lots 3, 4, S½NW¼, SW¼;
Sec. 4, lot 1, S½NE¼, E½SW¼, SE¼;
Sec. 9, NE¼, E½SE¼;
Sec. 10, W½;
Sec. 15, N½NW¼;
Sec. 16 NE¼NE¼;
T. 44 N., R. 41 E.,
Sec. 33, S½SW¼, NW¼SE¼;
Sec. 34, S½SW¼.

Comprising 1,561.74 acres in Humboldt County, Nevada

In exchange for these lands, the United States acquired the following non-Federal lands having high public values for wildlife habitat, recreation and livestock grazing:

Mount Diablo Meridian, Nevada

T. 40 N., R. 40 E.,
Sec. 4, NE¼SW¼.
T. 42 N., R. 40 E.,
Sec. 14, SE¼NE¼;
Sec. 35, E½SW¼.
T. 42 N., R. 41 E.,
Sec. 1, SW¼NE¼, SE¼NW¼;
Sec. 5, lot 2, SE¼NW¼, NW¼SW¼.
T. 43 N., R. 41 E.,
Sec. 28, W½NE¼, NW¼SE¼, SE¼SW¼;
Sec. 32, E½SE¼, SW¼SE¼, SE¼NE¼;
Sec. 33, N½NW¼, SW¼NW¼.
T. 44 N., R. 41 E.,
Sec. 26, N½SW¼, SE¼SW¼;
Sec. 34, NW¼SE¼, NE¼NE¼, S½NE¼;
Sec. 35, N½NW¼.
T. 43 N., R. 42 E.,
Sec. 19, S½NE¼, N½SE¼.
T. 44 N., R. 42 E.,
Sec. 31, NE¼NE¼;
Sec. 32, NW¼NW.

Comprising 1,400.41 acres in Humboldt County, Nevada.

The land is located approximately 14 miles northeast of Paradise Valley, Nevada. Title was accepted on July 28, 1986.

DATES: On the 30th day, commencing with the date of this publication, the land described above will be open to the operation of the public land laws, subject to valid existing rights, existing classifications, and requirements of applicable laws. All valid applications received from the date of this publication and until the opening of business on the 30th day, will be considered as simultaneously filed. Those received thereafter shall be considered in the order of filing.

All mineral in the following described lands were reconveyed to the United States:

Mount Diablo Meridian, Nevada

T. 40 N., R. 40 E.,
Sec. 4, NE¼SW¼.
T. 42 N., R. 40 E.,
Sec. 14, SE¼NE¼;
Sec. 35, E½SW¼.
T. 42 N., R. 41 E.,
Sec. 1, SW¼NE¼, SE¼NW¼.
T. 44 N., R. 41 E.,
Sec. 26, N½SW¼, SE¼SW¼;
Sec. 34, NW¼SE¼, NE¼NE¼, S½NE¼;
Sec. 35, N½NW¼.
T. 43 N., R. 42 E.,
Sec. 19, S½NE¼, N½SE¼.
T. 44 N., R. 42 E.,
Sec. 31 NE¼NE¼;
Sec. 32, NW¼NW¼.

On the 30th day, commencing with the date of this publication, the land described above will be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The purpose of this notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance documents.

FOR FURTHER INFORMATION CONTACT: Frank Shields, District Manager, Bureau of Land Management, Winnemucca District Office, Winnemucca, NV 89445.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-26863 Filed 11-28-86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf; Availability and Proposed Notice of Sale; Central Gulf of Mexico Oil and Gas Lease Sale 110

Gulf of Mexico Outer Continental Shelf; Notice of Availability of Proposed Notice of Sale, Central Gulf of Mexico, Oil and Gas Lease Sale 110.

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended (43 U.S.C. 1345), has provided the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 110, Central Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Wholesalers Parkway, New Orleans, Louisiana 70123-2394, or by telephone (504) 736-2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for April 1987.

The proposed Notice includes a request for comments regarding possible incentives for leasing and for diligent

exploration being considered by the Department for the final Notice of Sale for Sale 110. Proposed incentives include such items as lower minimum bids and variable rental options. The comments requested on these items are due no later than January 26, 1987.

This Notice of Availability is hereby published pursuant to 30 CFR 256.29 as amended (51 FR 37177 on October 20, 1986) as a matter of information to the public.

Dated: November 25, 1986.

Wm. D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-26898 Filed 11-28-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19; Sub-125X]

Baltimore & Ohio Railroad Co.; Exemption; Abandonment in Harrison, Doddridge, Ritchie and Wood Counties, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by The Baltimore and Ohio Railroad Company of 60.57 miles of rail line in Harrison, Doddridge, Ritchie and Wood Counties, WV, subject to standard labor protective conditions.

DATES: This exemption will be effective on December 31, 1986. Petitions for stay must be filed by December 11, 1986, and petitions for reconsideration must be filed by December 22, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-19 (Sub-No. 125X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Peter J. Shudtz, Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201
(3) Patricia Vail, Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 17, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26903 Filed 11-28-86; 8:45 am]

BILLING CODE 7035-02-M

[Finance Docket No. 30944]

Chicago & North Western Transportation Co.; Trackage Rights Exemption; Soo Line Railroad Co.; Exemption

On November 11, 1986, Chicago and North Western Transportation Company (C&NW) filed a notice of exemption for trackage rights over a line of track of the Soo Line Railroad Company (Soo) (1) between milepost 34.60 near Beloit, WI, and milepost 30.85 near South Beloit, IL, and (2) between milepost 32.37 and milepost 33.47 near Beloit, WI, including a spur line which extends .53 miles. C&NW also desires that certain connector tracks be constructed or rearranged. C&NW must separately obtain authority under or an exemption from U.S.C. 10901 before commencing construction of any track.

C&NW is an independent railroad and is not part of any railroad system. It has entered into a written agreement with Soo, whereby C&NW will acquire trackage rights over the Soo line to transport its overhead traffic between Harvard, IL, and Beloit, WI. The trackage rights will also facilitate continued rail service to Colt Industries at Beloit, WI. As a result of the proposed transaction, it is anticipated that operations will be more efficient and economical. The trackage rights were effective on November 18, 1986.

The transaction is based on written agreements and is not filed or sought in responsive applications in rail consolidation proceedings. Thus, this trackage rights agreement falls within the class of transactions identified at 49 CFR 1180.2(d)(7) that the Commission has found to be exempt under 49 U.S.C. 10505. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights agreement shall be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 654 (1980).

Decided: November 21, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26904 Filed 11-28-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-177)B]

Seaboard System Railroad, Inc.; Abandonment; Between Ewing and Hagans, VA; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc. (CSX Transportation, Inc.) to abandon its 8.0-mile rail line between Milepost CV-234 near Ewing and Milepost CV-242 near Hagans in Lee County, VA.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: November 21, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented with a separate expression. Chairman Gradison did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26905 Filed 11-28-86; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Tuesday, January 20, 1987. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, Virginia. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m.

The agenda is as follows:

a. Opening remarks.

b. Administrative remarks.

c. Briefings on industry and government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Charles F. Noll,

Captain, U.S. Navy, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 86-26902 Filed 11-28-86; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by December 18, 1986.

ADDRESSES: Send comments to Mrs. Judy Egan, Office of Management and 8Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Service Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of two previously approved collections for which approval has expired. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504 (h).

Title: Advancement Program Application Guidelines FY 1988.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from nonprofit organizations that apply for funding under the Advancement Program. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 250.

Estimated Hours for Respondents to Provide Information: 8,000.

Title: Dance/Inter-Arts/State Programs Presenting/Touring Initiative Guidelines FY 1988.

Frequency of Collection: One-time.

Respondents: State or local governments and non-profit institutions.

Use: Guideline institutions and applications elicit relevant information from nonprofit organizations and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 20.

Estimated Hours for Respondents to Provide Information: 700.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 86-26953 Filed 11-28-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Survey Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9421.

OMB Desk Officer: Carlos Tellez, (202) 395-7340.

Title: Survey of Academic Research Facilities Needs.

Affected Public: Non-Profit Institutions.

Number of Respondents: 250 respondents: total of 10,000 burden hours.

Abstract: Congress directed NSF to maintain data collection capability to assess academic science/engineering (S/E) research facilities needs. Data are collected on current and planned construction, repairs, and renovations by major S/E field. Users include Federal and State policy makers and planners, academic officials, etc. Affected public: universities and colleges.

Dated: November 24, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86-26847 Filed 11-28-86; 8:45 am]

BILLING CODE 7555-01-M

Directorate for Engineering; Division of Mechanics, Structures and Materials Engineering Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Committee for the Division of Mechanics, Structures and Materials Engineering.

Date & Time: December 15, 1986, 8:30 a.m. to 5:00 p.m.; December 16, 1986, 8:30 a.m. to 3:00 p.m.

Place: Room 540, NSF.

Type of Meeting: Open.

Contact Person: Ms. Hope Duckett, National Science Foundation Room 1110, Washington, DC 20550; Telephone (202) 357-9542.

Summary Minutes: May be obtained from the Contact Person.

Agenda:

Monday, December 15, 1986

8:30-8:45 a.m.: Introductions and Welcoming Remarks

8:45-9:45 a.m.: Reports of Activities by Advisory Committee Members

9:45–10:30 a.m.: Reports and Discussion of Actions Items from the February 6–7, 1986 Meeting by NSF Staff and Advisory Committee Members
10:30–Noon: Activities of the Engineering Directorate and the Division
Noon–1:30 p.m.: Lunch
1:30–5:00 p.m.: Discussion of Division Plans and Programs

Tuesday, December 16, 1986

8:30–10:30: Objectives of the Division and the Advisory Committee for FY 1987
10:30–Noon: Development of Tasks and Assignments for FY 1987
Noon–1:30 p.m.: Lunch
1:30–3:00 p.m.: Preparation of Summaries of Action Items and Recommendations to the Assistant Director
3:00: Adjourn

Dated: November 24, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–26845 Filed 11–28–86; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Renewal

The Advisory Committee for Biological, Behavioral, and Social Sciences is being renewed for an additional two years.

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the renewal of this Committee is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Dated: November 24, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–26846 Filed 11–28–86; 8:45 am]

BILLING CODE 7555-01-M

Forms Submitted For OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9421
OMB Desk Officer: Carlos Tellez, (202) 395–7340

I. *Title:* Survey of Scientific and Engineering Expenditures at Universities and Colleges, FY 87–88–89.
Affected Public: Non-profit Institutions
Number of Respondents: 422 respondents; total of 8,153 burden hours

Abstract: This survey provides academic R&D expenditures data by source and discipline, including research equipment and facilities. Data are used for planning and policy formulation related to academic science and engineering infrastructure. Users include Congress, Federal agencies, States, industry, universities, etc. Affected public—Higher education and associated federally funded R&D centers.

II. *Title:* Survey of Scientific and Engineering Personnel Employed at Universities, January 87–88–89
Affected Public: Non-profit Institutions
Number of Respondents: 300 Respondents; total of 4,800 burden hours

Abstract: Data are provided on employment status and gender of scientific and engineering personnel employed in universities in 25 disciplines, along with their full-time-equivalents. Users include Federal, State, industrial, and academic officials in analyses of the academic infrastructure and research capacity. Affected public: Doctorate-granting institutions and their affiliate federally funded R&D centers.

Dated: November 21, 1986.

Herman G. Fleming,

NSF Reports Officer.

[FR Doc. 86–26938 Filed 11–28–86; 8:45 am]

BILLING CODE 7555-01-M

National Science Board; Nominations for Membership, December 1, 1986

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director ex officio, as follows:

Terms Expire May 10, 1988

Dr. Warren J. Baker, President, California Polytechnic State University, San Luis Obispo, California
Mr. Robert F. Gilkeson, Chairman of the Executive Committee, Philadelphia Electric Company, 2301 Market Street, P.O. Box 8699, Philadelphia, Pennsylvania
Dr. Charles E. Hess, Vice Chairman, Dean, College of Agricultural and Environmental Sciences, 228 Mrak Hall, University of California at Davis, Davis, California
Dr. Charles L. Hosler, Vice President for Research and Dean of Graduate School, 114 Kern Building, The Pennsylvania State University, University Park, Pennsylvania
Dr. William F. Miller, President and Chief Executive Officer, SRI International, 333 Ravenswood Avenue, Menlo Park, California
Prof. William A. Nierenberg, Director Emeritus, Scripps Institution of Oceanography, A–021, University of California at San Diego, La Jolla, California
Dr. Norman C. Rasmussen, McAfee Professor of Engineering, Massachusetts Institute of Technology, 77 Massachusetts Avenue, Room 24–205, Cambridge, Massachusetts
Dr. Roland W. Schmitt, Chairman, Senior Vice President and Chief Scientist, General Electric Company, P.O. Box 8, Schenectady, New York

Terms Expire May 10, 1990

Dr. Perry L. Adkisson, Chancellor, The Texas A&M University System, System Administration Building, Executive Offices, Room 219, College Station, Texas
Dr. Annelise G. Anderson, Senior Research Fellow, The Hoover Institution, Room 301–M, Stanford University, Stanford, California
Dr. Craig C. Black, Director, Los Angeles County Museum of Natural History, 900 Exposition Boulevard, Los Angeles, California
Dr. Rita R. Colwell, Vice President for Academic Affairs, University of Maryland, Central Administration, Adelphi, Maryland
Dr. Thomas B. Day, President, San Diego State University, 5300 Campanile Drive, San Diego, California
Dr. James J. Duderstadt, Vice President for Academic Affairs and Provost, The University of Michigan, 3068 Fleming Building, Ann Arbor, Michigan
Dr. K. June Lindstedt-Siva, Manager, Environmental Sciences, Atlantic Richfield Company, 515 South Flower Street, Los Angeles, California
(One Vacancy)

Terms Expire May 10, 1992

Dr. F. Albert Cotton, W.T. Doherty-Welch Foundation, Distinguished Professor of Chemistry, Texas A&M University, 113 Chemistry Building, College Station, Texas
Dr. Mary L. Good, President—Engineered Materials Research, Allied-Signal Corporation, 50 East Algonquin Road, Box 5016, Des Plaines, Illinois
Dr. John C. Hancock, Executive Vice President and Chief Technical Officer, United Telecommunications, Inc., 2330

Shawnee Mission Parkway, Westwood, Kansas
Dr. James B. Holderman, President, University of South Carolina, Columbia, South Carolina
Dr. James L. Powell, President, Franklin and Marshall College, Lancaster, Pennsylvania
*Dr. Howard A. Schneiderman, Senior Vice President for Research and Development and Chief Scientist, Monsanto Company, 800 North Lindbergh Boulevard, St. Louis, Missouri
(Two Vacancies)
*NSB Nominee

Member Ex Officio

Mr. Enrich Bloch (Chairman, NSB Executive Committee), Director, National Science Foundation

Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

All members whose terms expire in May of 1988 are eligible for reappointment.

The Board and the Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, Washington, DC 20550, no later than February 1, 1987.

Any questions should be directed to Mrs. Lois Hamaty, Staff Assistant, National Science Board (202/357-7512).

November 25, 1986.

Roland W. Schmitt,

Chairman, National Science Board.

[FR Doc. 86-26937 Filed 11-28-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee Waste Management; Revised

The notice that the ACRS Subcommittee on Waste Management will hold a meeting on December 4 and 5, 1986, Room 1046, 1717 H Street, NW., Washington, DC was published in the **Federal Register** on November 17, 1986 (51 FR 41551).

This revision replaces the statement made in the original notice that the entire meeting will be open to public attendance as follows:

The portion of the meeting during which the Subcommittee will review item 2 of the previous announcement will be closed for the discussion of information which is protected under Exemption 5 of the Freedom of Information Act. Otherwise, all information contained in the original notice remains unchanged.

Further infromation regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 25, 1986.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 86-26944 Filed 11-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424A]

Georgia Power Company et al.; Notice of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of Plant Vogtle by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the 'significant change' determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Vogtle construction permits to Georgia Power Company (Georgia Power), the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as 'staff' have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a second antitrust review at the operating license (OL) stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in Georgia, the events relevant to the Plant Vogtle and Plant Hatch construction permit reviews, the events relevant to the Plant Hatch, Unit 2 operating license review and the events that have occurred subsequent to these antitrust reviews.

The conclusion of the staff's analysis is as follows:

The generation and transmission of bulk power and energy in the State of Georgia has for many years been dominated by the Georgia Power Company. During the construction permit review of Plant Hatch and Plant Vogtle, the staffs of the Department of Justice and the Atomic Energy Commission identified several instances where Georgia Power Company abused its market position and its market power at the expense of smaller competing power systems in Georgia. Georgia Power's activities had a stifling effect upon the competitive process in bulk power supply in Georgia and severely hampered the ability of competing municipal and cooperative electric systems to supply their customers with the most cost effective sources of power and energy available. After extensive negotiations involving Georgia Power, intervening power systems and the staffs of the Department of Justice and the Atomic Energy Commission, Georgia Power agreed to a settlement agreement which included in the Hatch and Vogtle licenses a set of conditions designed to stimulate the competitive process in the Georgia bulk power services market.

The license conditions provided municipal and cooperative electric power systems, individually and through their broker representatives, ownership participation in Plant Vogtle and Unit 2 of Plant Hatch as well as ownership in the integrated transmission grid running throughout most of Georgia—heretofore controlled solely by Georgia Power Co. Moreover, the license conditions provided these competing power systems the means to effectively implement their newly acquired power and energy options by requiring Georgia Power to: (1) File partial requirements rates with the Federal Power Commission; (2) coordinate and share energy reserves; (3) interconnect with qualifying Georgia power entities; (4) transmit bulk power over its transmission system, and generally treat all power systems in the State more equally.

The operating license antitrust review is concerned with *changes* in the licensee's activities since the construction permit review that may create or maintain a situation inconsistent with the antitrust laws.

Staff has identified several groups of changes that have occurred since the construction permit review which are attributable to the licensees; however, these changes have largely been procompetitive and do not warrant remedial action by the Commission. The vast majority of these changes have materialized through the implementation of the antitrust license conditions attached to the Plant Vogtle and Plant Hatch Unit 2 construction permits. Through their purchases in portions of Plant Hatch and Plant Vogtle (and portions of Unit 1 of Plant Hatch and various Georgia Power Co. fossil fueled plants which were not subject to the licensing commitments), as well as participation in the Georgia transmission grid, the municipal and cooperative power systems in Georgia are now active players in the Georgia bulk power market. Georgia Power has provided these systems with ownership in existing and planned future transmission facilities based upon each system's expected use of the transmission grid. Georgia Power has also provided interconnections and filed partial requirements power rates allowing newly emerging power systems to shop for power supply alternatives within and outside of the Georgia Power territorial service area. An example of this new found independence is Oglethorpe Power Corporation's (Oglethorpe) energy exchange agreements with the Alabama Electric Cooperative and the South Mississippi Electric Power Association. Oglethorpe has also entered into negotiations to sell a portion of its Plant Scherer capacity to the Seminole Electric Cooperative of Florida. Both Oglethorpe and the Municipal electric Authority of Georgia (MEAG) have set goals of generating self-sufficiency and are capable of achieving these goals in the near future given the marketing tools provided by the settlement agreement and the emergence of competitive alternatives in the state of Georgia since the completion of the Vogtle construction permit review.

The formation of Oglethorpe and MEAG in 1974 and 1975 coupled with the successful implementation of the antitrust license conditions has resulted in a vastly different Georgia bulk power market than was apparent during the construction permit review in Plant Hatch and Plant Vogtle. The changes which have taken place in this market have largely been procompetitive, allowing smaller competitors to mature and contribute to the competitive process ongoing in the Georgia bulk power services market. Based upon the successful implementation of the antitrust license conditions to date and the lack of any significant negative competitive activities by the licensees since the antitrust review at the construction permit stage, staff recommends that no affirmative signficant change determination be made pursuant to the application for an operating license for Unit 1 of Plant Vogtle.

Based upon the staff's analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review in connection with the construction permit.

Signed on November 21, 1986, by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the **Federal Register**. Requests for reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated in Bethesda, Maryland, this 24th day of November 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26959 Filed 11-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR Part 50 to the Vermont Yankee Nuclear Power Corporation VYNPC/the licensee) for the Vermont Yankee Nuclear Power Station located in Windham County, Vermont.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of sections III.G.1 and III.G.2 of Appendix R to 10 CFR Part 50 that require that automatic fire suppression be installed in four locations, that separation be provided in three locations, and that in two instances equipment necessary to achieve and maintain safe hot shutdown be free of fire damage without taking credit for repairs. Specifically, the repairs would involve connecting a backup battery charger and replacing fuses.

The Need for the Proposed Action

Because of low combustible loading in the locations being exempted from separation or automatic fire suppression, a fire in one of these areas would be of low intensity and short duration. Furthermore, safe shutdown could be effected if a fire occurred in one of these areas because of the passive protection afforded by such separation and barriers as exist, and because of the provision of detection systems to alert the fire brigade. The fire brigade could then take action to extinguish the fire. Therefore, automatic fire suppression and additional separation in these locations would not enhance the level of fire protection and are unnecessary.

With regard to the repairs needed in order to achieve and maintain safe hot shutdown, the times in which the repairs are required are well in excess of the times required to perform the repairs considering the proximity of work locations, the provision of necessary tools and equipment, and the simplicity of the actions required.

Environmental Impacts of the Proposed Action

The proposed action would not impact the ability to effect safe shutdown of the plant in the event of a fire in the above mentioned areas and would provide an acceptable level of safety, equivalent to that attained by compliance with section III.G of Appendix R to 10 CFR Part 50. On this basis, the Commission concludes there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Vermont Yankee Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff based their review in part on an evaluation by the NRC contractor, Franklin Research Center (FRC). Except for FRC assistance the NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for exemption dated April 24, 1985, August 2, 1985, August 16, 1985, October 31, 1985, August 15, 1986, and June 10, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont.

Dated at Bethesda, Maryland, this 24th day of November, 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-26957 Filed 11-28-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, CE 403-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 3.44 and is entitled "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Water-Basin Type)." The guide is being revised to conform with changes in the proposed revision to Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste" (51 FR 19106). This guide provides guidance on the type of information needed by the NRC staff for its evaluation of a Safety Analysis Report for an independent spent fuel storage installation. The guide also provides a format for submitting this information.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW, Washington, DC 20555. Comments will be most helpful if received by February 20, 1987.

Although a time is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 24th day of November 1986.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 86-26958 Filed 11-28-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Instrumentation and Control Systems; Meeting

The ACRS Subcommittee on Instrumentation and Control Systems will hold a meeting on December 18, 1986, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 18, 1986—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the effects of adverse conditions such as high temperature on solid-state components in nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 25, 1986.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 86-26941 Filed 11-28-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 11-13, 1986, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on November 20, 1986.

Thursday, December 11, 1986

8:30 a.m.-8:40 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:40 a.m.-9:00 a.m.: Election of ACRS Officers (Closed)—The members will discuss the qualifications and availability of candidates and will select Committee officers for Calendar Year 1987.

This portion of the meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

9:00 a.m.-9:50 a.m.: Preparation for Meeting with NRC Commissioners

(Open)—The members will discuss the status of ACRS activities and observations regarding the effectiveness of NRC Staff programs which address generic and unresolved safety issues, and NUREG-1225, Implementation of NRC Policy on Standardization of Nuclear Power Plants.

10:00 a.m.-11:30 a.m.: Meeting with NRC Commissioners (Open)—The members will address and discuss the topics noted above with the NRC Commissioners.

11:45 a.m.-1:00 p.m.: Reactivation of Nuclear Power Plants (Open)—The members will hear reports and discuss proposed NRC requirements regarding the reactivation of deferred or terminated nuclear power plants.

2:00 p.m.-4:00 p.m.: Reactor Operations (Open/Closed)—The members will hear reports of and discuss recent transients and incidents which have occurred at nuclear facilities. Representatives of the NRC Staff will participate in this session to the degree considered appropriate.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the project being discussed.

4:15 p.m.-6:15 p.m: Improved Light Water Reactors (Open)—The members will discuss proposed ACRS comments and recommendations regarding the characteristics of improved light water reactors.

Friday, December 12, 1986

8:30 a.m.-9:30 a.m.: Nuclear Plant Security (Open/Closed)—The members will hear a report from the Director, NRC Division of Security, NMSS, and discuss provisions for security of nuclear power plants.

Portions of this session will be closed as required to discuss information regarding detailed security arrangements at nuclear facilities.

9:30 a.m.-10:30 a.m.: Pressurized Thermal Shock (Open)—The members will discuss a proposed NRC Regulatory Guide on Pressurized Thermal Shock of Reactor Pressure Vessels. Representatives of the NRC Staff will take part in this discussion.

10:30 a.m.-12:30 p.m.: Implications of the Chernobyl Accident (Open)—The members will hear and discuss reports about the implications of the Chernobyl nuclear plant accident regarding the safety and regulation of nuclear power plants in the United States.

1:30 p.m.-3:00 p.m.: Containment Performance (Open)—The members will hear reports and discuss a proposed NRC generic letter regarding the performance of dynamic reactor containment types to contain severe nuclear power plant accidents.

3:15 p.m.-5:15 p.m.: Improved Light Water Reactors (Open)—The members will continue discussion of proposed ACRS comments and recommendations regarding the characteristics of improved light water reactors.

5:15 p.m.-6:00 p.m.: Radioactive Waste Management and Disposal (Open)—The members will hear and discuss the report of its subcommittee regarding items related to the management and disposal of radioactive wastes including the NRC Staff review of the environmental assessment of waste disposal sites nominated by the DOE, rulemaking to conform 10 CFR Part 60 to the EPA Standard for high-level waste repositories, implementation of the Low Level Radioactive Waste Policy Amendments Act of 1985, and alternatives to shallow land burial of radioactive wastes. Representatives of the NRC Staff will participate as appropriate.

6:00 p.m.-6:30 p.m.: ACRS Subcommittee Activities (Open)—Discuss plans for ACRS 1987 Report to the U.S. Congress regarding the NRC Safety Research Program.

Saturday, December 13, 1986

8:30 a.m.-8:45 a.m.: Future Activities (Open)—The members will discuss anticipated ACRS subcommittee activities as appropriate and items proposed for consideration by the full Committee.

8:45 a.m.-1:00 p.m.: Preparation of ACRS Reports to NRC (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding matters considered during this meeting.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the matter being discussed.

2:00 p.m.-3:30 p.m.: Subcommittee Activities (Open)—The members will hear and discuss reports of ACRS subcommittees and subcommittee chairman regarding the status of specific safety-related issues including resolution of ACRS recommendations regarding proposed operation of the Shearon Harris Nuclear Plant, proposed revision of NRC Regulatory Guide 1.63, Electrical Containment Penetrations in Nuclear Power Plants, and storage of nuclear power plant spent fuel.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)], information that involves detailed security provisions for nuclear power plants [5 U.S.C. 552b(c)(1)], and information that involves Proprietary Information [5 U.S.C. 552(c)(4)] applicable to the facility being discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Dated: November 25, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–26942 Filed 11–28–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on December 19, 1986, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, December 19, 1986—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the NRR Implementation Plan for Severe Accident Policy Statement regarding Individual Plant Examinations (IPE) for Existing Plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representations of the NRC Staff, its consultants, IDCOR representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 25, 1986.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 86–26943 Filed 11–28–86; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

November 24, 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:

Coca-Cola Enterprises, Inc.
Common Stock, $1.00 Par Value (File No. 7–9412)

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 December 16, 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26945 Filed 11–28–86; 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.

November 24, 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:

Coca-Cola Enterprises, Inc.
Common Stock, $1.00 Par Value (File No. 7–9411)

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 December 16, 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26946 Filed 11–28–86; 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.

November 24, 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:

Coca-Cola Enterprises, Inc.
Common Sotck, $1.00 Par Value (File No. 7-9410)

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 December 16, 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26947 Filed 11-28-86; 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.

November 24, 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 securities:

General Re Corporation
Capital Stock, $0.50 Par Value (File No. 7-9406)

Newmont Gold Company
Common Stock, $.01 Par Value (File No. 7-9407)

Stop & Shop Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7-9408)

Comdata Network, Inc.
Common Stock, $.02 Par Value (File No. 7-9409)

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 December 16, 1986, written data, views and arguments concerning the above-referenced application. 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 application 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26948 Filed 11-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15425; (812-6498)]

Application for Exemption; Mellon Bank, N.A.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Imvestment Company Act of 1940 ("1940 Act"). *Applicant:* Mellon Bank, N.A. ("Mellon").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from section 17(f).

Summary of Application: Applicant seeks an order to permit certain securities or other assets of registered investment companies ("Securities") for which Mellon acts as custodian or subcustodian (other than investment companies registered pursuant to section 7(d) of the 1940 Act, "Companies"), to be deposited with Pictet & Cie, Geneva, S.A. ("Pictet"), a private bank in Switzerland.

Filing Dates: The application was filed on October 14, 1986, and amended on October 27 and November 13, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on December 16, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Mellon Bank, N.A., One Mellon Bank Center, Pittsburgh, PA 15258-0001.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-7324 or Brion F. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Mellon is a U.S. bank which satisfies the requirements of section 17(f) of the 1940 Act for custodians of assets of registered investment companies. Mellon acts as primary custodian for Securities of certain investment company clients and anticipates performing custodial services for other investment company clients in the future. If the requested relief is granted, Mellon intends to recommend to current and future investment company clients that each Company with investment policies permitting investment in securities of foreign issuers approve subcustodian arrangements providing that the Securities of such Companies be maintained with Pictet in Switzerland, and with other foreign banking institutions and securities depositories selected by Mellon and/or Pictet meeting the requirements for the exemption afforded by Rule 17f-5 under the 1940 Act.

2. Pictet is a private Swiss bank organized as a partnership. It is one of three Swiss banks that acts as custodian for the Euroclear Transnational Clearing System established and operated by Morgan Guaranty Trust. Pictet has authority to offer all banking services, but has chosen to concentrate on

services related to portfolio management. These services include investment advisory services, investment research, securities brokerage, global custody, underwriting, foreign exchange and money market dealing, and personal financial planning. Pictet's reputation extends beyond Switzerland; it is well-known in Latin America, Europe, the United States, and the Far East, particularly in Tokyo and Hong Kong. Presently, Mellon cannot deposit Securities with Pictet because Pictet, as a partnership, has no shareholders and, thus, cannot meet the shareholders' equity requirement of Rule 17F–5.

3. Pictet has provided custody services for over a century, and currently is custodian of assets including securities, currency and precious metals. In Mellon's opinion, the benefits derived from use of Pictet far outweigh any potential risks that might be suggested as a result of Pictet's inability, as a partnership, to satisfy the shareholders' equity requirement of Rule 17f–5.

4. Pictet currently participates with Mellon (through subsidiaries of each) in a joint venture called Mellon-Pictet International Management Limited, which is registered as an investment adviser under the Investments Advisers Act of 1940 and provides investment advisory services for foreign investments by U.S. pension funds and other institutional clients. Moreover, in connection with its administration of assets for employee pension benefit plan accounts ("Plans") subject to stringent fiduciary standards imposed by the Employee Retirement Income Security Act of 1974, Mellon for some time has used Pictet as a foreign custodian and agent with respect to foreign assets purchased on behalf of such Plans.

Applicant's Conditions

If the requested order is granted, Applicant expressly consents to the following conditions:

1. Securities will be deposited in Switzerland with Pictet only in accordance with an agreement among (a) the Company or a custodian of the Securities of the Company for which Mellon acts as subcustodian, (b) Mellon and (c) Pictet, pursuant to the terms of which Mellon would act as the custodian or subcustodian, as the case may be, of the Securities of the Company and Pictet would be delegated such duties and obligations of Mellon thereunder as would be necessary to permit Pictet to hold in custody the Securities of the Company in Switzerland, provided that such delegation would not relieve Mellon of any responsibility to the Company for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of Pictet) for which neither Mellon nor Pictet would be liable (*e.g.*, despite the exercise of reasonable care, loss due to acts of God, nuclear incident and the like).

21. All provisions of Rule 17f–5 other than the shareholders' equity requirement will be complied with in connection with the deposit of Securities in Switzerland with Pictet.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: November 21, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26949 Filed 11–28–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15427; File No. 812–6532]

Application for Exemption; Salomon Brothers Mortgage Securities III, Inc.

November 21, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Salomon Brothers Mortgage Securities III, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order exempting it and certain trusts to be created by it from all provisions of the 1940 Act in connection with the issuance and sale of collateralized mortgage obligations and ownership interests in the trusts.

Filing Date: November 12, 1986. An amendment was filed on November 20, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 P.M. on December 17, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o David G. Sabel, Esq., Cleary, Gottlieb, Steen & Hamilton, One State Street Plaza, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Philip J. Niehoff, Esq., (202) 272–2048, or H.R. Hallock, Jr., Esq., (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Applicant is a Delaware corporation and an indirect, wholly-owned, limited purpose finance subsidiary of Salomon Inc 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. Except as incidental to the activities described below and more fully set forth in the application, the Applicant will not trade or deal in securities or engage in any other activity.

2. Applicant contemplates creating one or more separate trusts (each, a "Trust"). Each Trust will be a common law business trust created under an agreement ("Trust Agreement") between Applicant, acting as a depositor, and a bank, trust company or other fiduciary acting as owner trustee ("Owner Trustee"). The Trust Agreements contemplate that the Owner Trustee will enter into a Management Agreement with respect to each Trust with Salomon Brothers Inc., an affiliate of the Applicant, or another financial institution, for the provision of certain management services in connection with the issuance of the bonds.

3. Each Trust will issue one or more series of collateralized mortgage obligations ("Bonds") rated in at least the second highest rating category by an independent nationally recognized statistical rating agency ("Rating Agency"). The Bonds will be issued under an Indenture ("Indenture") between the Trust and an independent trustee for the Bondholders ("Bond Trustee"). Each series of 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 Mortgage Certificates. In addition to the Mortgage Certificates directly securing the Bonds, a series will have additional collateral, which will include certain collection accounts and may include other reserve funds as specified in the related Indenture.

4. For each series of Bonds, (i) 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 the Bonds; (ii) the Mortgage Certificates securing each series of Bonds will be pledged to the related Bond Trustee under the applicable Indenture and will be held by the Bond Trustee or an independent nominee; (iii) the Bond Trustee will have a first lien perfected security interest in all such Mortgage Certificates; (iv) the principal amount and the collateral value of the Mortgage Certificates securing each series of Bonds will at all times be at least equal to the principal amount of outstanding Bonds; and (v) the cash flow on the Mortgage Certificates, together with reinvestment income at the assumed reinvestment rate specified in the Indenture, will be sufficient to pay principal and interest on the Bonds when due to Bondholders.

5. The Bonds will not be redeemable at the option of the Bondholders. A series of Bonds may be subject to special redemption if, as a result of substantial prepayments on the underlying mortgages and/or the low yields available on reinvestment of the distributions on Mortgage Certificates, the amount of cash anticipated to be available on the next Bond payment date would not be sufficient to make required interest and principal payments on the Bonds.

6. Applicant also contemplates selling certificates ("Equity Certificates") representing some or all of the ownership interest in a Trust to one or more banks, savings and loan associates, pension funds, insurance companies or other institutions that customarily engage in the purchase of mortgages and mortgage-backed assets ("Eligible Institutions"). Each sale will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933 ("1933 Act").

7. Initially, the applicant intends to sell the Equity Certificates of each Trust to no more than twenty-five Eligible Institutions. The Trust Agreement will require that each purchaser of an Equity Certificate represent that it is purchasing the Equity Certificate for investment purposes only and that it will hold the Equity Certificate in its own name and not as nominee for undisclosed investors. Each Trust Agreement will prohibit the transfer of any Equity Certificate of a Trust if there would be more than one hundred beneficial owners of the Equity Certificates of such Trust at any time. Each owner of Equity Certificates ("Owner") will agree to be bound by the terms of the applicable Trust Agreement.

8. The Trust Agreements will provide that, (i) no Owner of an Equity Certificate may be affiliated with the Bond Trustee; (ii) no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in the Trust will be affiliated with either any custodian which may hold the Bond collateral on behalf of the Bond Trustee or the Rating Agency rating the related series of Bonds; and (iii) the Owner Trustee will not purchase any Equity Certificates but will function as a legal stakeholder for the assets of the Trust.

9. Neither the Owners nor the Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Board because, without the consent of each affected Bondholder, neither the holders of the Equity Certificates of any of the Trusts nor the Bond Trustee will be able to (i) change the stated maturity on any Bonds; (ii) reduce the principal amount of, or the rate of interest on, any Bond; (iii) change the provisions in the Indenture relating to the application of collateral collections to principal payments on the Bonds; (iv) impair or adversely affect the Mortgage Certificates securing a series of Bonds; (v) permit the creation of any lien ranking to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates; (vi) terminate the lien of the Indenture on any collateral at any time subject thereto (except in certain limited circumstances expressly permitted in the Indenture);[1] or (vii) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture. In addition, the sale of Equity Certificates of any Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account securing the Bonds or any reserve fund created under the Indenture to support payments of principal and interest on the Bonds.

10. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust and there will not be a conflict of interest between the Bondholders and the Owners for several reasons: (i) The collateral that will initially be deposited into each Trust will not be speculative in nature because it will consist solely of GNMA Certificates, FNMA Certificates, or FHLMC Certificates, which are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (ii) the Bonds will only be issued provided a Rating Agency has rated the 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; (iii) the Indenture under which the Bonds have been issued will subject the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders; and (iv) the Owners will be entitled to receive current distributions representing the residual payments on the collateral from each Trust in accordance with the terms of the applicable Trust Agreement, which distributions are analogous to dividens payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, unless the Trust elects to be treated as a "real estate mortgage investment conduit"under the Internal Revenue

[1] The Indenture for each Trust will provide that amounts may be released from the lien of the Indenture after each Bond payment date and remitted to the Trust only if (i) the Bond Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Bond 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) if and to the extent required, deposits have been made to certain reserve funds securing the Bonds. Under the Trust Agreement, the Owner Trustee is obligated to collect all amounts released from the lien of the Indenture by the Bond Trustee, to pay all other current expenses of the trust, including its own fees, and to remit the balance to the Owners on a pro rata basis. Each Trust Agreement provides that, once amounts have been released from the lien of the Indenture, the Owner Trustee has a lien superior to that of the Owners to the remaining cash flow.

Code of 1986, the Owners will be liable for the expenses, taxes and other liabilities of the 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 Bonds and the identity of the Owners of the equity interests in such issuer will not alter in any respect the payments made to the holders of the Bonds or the amount available to make such payments.

11. The excess cash flow, if any, from the Bond collateral that is available to Owners will always be far less than the cash flow from the Bond collateral that is used to make principal and interest payments to Bondholders. As a result, the purchase price of the entire beneficial interest of the Owners in each Trust will be significantly less than the purchase price of the Bonds. Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 120% of the aggregate principal amount of the related Bonds.

12. Except for the limited right to substitute Bond collateral described in the application, it will not be possible for the Owners to alter the collateral initially deposited into a Trust, and, in no event will the right to substitute collateral result in a diminution in the value or quality of such collateral.

13. While certain purchasers of the Bonds and certain purchasers of the Equity Certificates may desire to purchase securities backed by Mortgage Certificates having specific characteristics that, for example, would generally result in faster or slower prepayment rates on the Mortgage Certificates, the Applicant's discretion in directing the purchase of the Mortgage Certificates by each Trust will not adversely affect either the Bondholders or the purchasers of the related Equity Certificates. The offering documents prepared in connection with the respective offers of the Bonds and Equity Certificates will provide investors with all material information concerning the characteristics of the related Mortgage Certificates, including the expected pass-through rates and maturities of such Mortgage Certificates, and will set forth information as to the anticipated return on investment that would be realized by a Bondholder or an Owner based on varying assumptions as to the prepayment rates on the Mortgage Certificates and as to other relevant factors specified in such offering documents. Each class of prospective investor will therefore be able to make an informed investment decision as to whether the Bonds or Equity Certificates represent an attractive investment opportunity based upon their payment terms and the investors' own determination as to the anticipated rate of prepayments on the underlying Mortgage Certificates. The actual prepayment experience of the Mortgage Certificates will, in any event, be determined by market conditions that are beyond the control of the Applicant or the Owners and are likely to affect in a similar fashion all Mortgage Certificates having similar payment terms and maturities.

14. The requested order is appropriate in the public interest because (1) the acquisition of Mortgage Certificates, the issuance of Bonds by the Trusts and the sale of the Equity Certificates by the Applicant in the manner described herein are not the types of activities intended to be regulated by the Act, (2) the safeguards afforded to purchasers of the Bonds fully protect investors in a manner comparable to those protections provided to purchasers of the collateralized mortgage obligations previously issued in reliance upon no-action letters under section 3(c)(5)(C) of the 1940 Act or exemptive orders granted under section 6(c) of the 1940 Act and (3) its activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation.

Applicant's Conditions

The Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

1. Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration under 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. The mortgage collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates or FHLMC Certificates.

3. If a new Mortgage Certificate 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 Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as security for a series of Bonds. 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, directly or indirectly, will be held by the Bond Trustee or on behalf of the Bond 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) of the Applicant. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all such Bond collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized 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 1940 Act.

6. No less often than annually, an independent accountant will audit the books and records of each Trust and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Certificates will 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 Bond Trustee.

7. All of the representations and undertakings relating to the Equity Certificates mentioned above and discussed more fully in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26950 Filed 11-28-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.853-1, Flammability Requirements for Aircraft Seat Cushions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.853-1, Flammability Requirements for Aircraft Seat Cushions. The AC provides guidance for demonstrating

compliance with the Federal Aviation Regulations (FAR) pertaining to flammability of aircraft seat cushions. The AC also defines certain terms used in the FAR, in the context of these requirements.

DATE: Advisory Circular 25.853–1 was issued by the Transport Airplane Certification Directorate in Seattle, Washington, on September 17, 1986.

HOW TO OBTAIN COPIES: A copy of AC 25.853–1 may be obtained by writing to the U.S. Department of Transportation, M–494.3, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on November 14, 1986.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 86–26848 Filed 11–28–86; 8:45 am]

BILLING CODE 4910–13–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Written Comments on the Harmonized Commodity Description and Coding System

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) has published for public comment a third edition of the proposed conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System). Comments must be filed with the TPSC not later than January 15, 1987.

SUPPLEMENTARY INFORMATION:

1. Background

The Harmonized System is a new international product nomenclature which has been developed under the auspices of the Customs Cooperation Council and is being proposed for world-wide use in the classification description, and coding of goods for customs purposes, the collection of statistical data on imports and exports, and the documentation of transactions in international trade. The Harmonized System will be implemented by an international convention that obligates contracting parties to use the six-digit Harmonized System nomenclature as the basis for their national customs tariff and statistical nomenclatures for imports and exports.

The United States participated in the development of the Harmonized System in accordance with section 608(c) of the Trade Act of 1974. As requested by the President on August 24, 1981, the U.S. International Trade Commission prepared a draft conversion of the TSUS into the nomenclature structure of the Harmonized System and submitted its draft to the President on June 30, 1983 (USITC Publication 1400). After giving public notice in the **Federal Register** (Vol. 48, No. 148, August 1, 1983, pages 34822 and 34823), the Trade Policy Staff Committee held public hearings on the draft conversion in November 1983. After considering the information presented in connection with the public hearings, the TPSC issued a second edition of the draft conversion in September 1984. Public comments on this revised draft were requested in a notice published in the **Federal Register** (Vol. 49, No. 174, September 6, 1984, pages 35273 and 35274).

2. Publication of Third Draft Conversion

Since the issuance of the second edition, refinement of the draft conversion has continued, taking into consideration comments by numerous interested parties in the United States, as well as by U.S. trading partners in informal discussions preparatory to the initiation of negotiations under Article XXVIII of the General Agreement on Tariffs and Trade (GATT) for the conversion of existing U.S. tariff concessions under that agreement into the Harmonized System nomenclature. A third edition of the draft conversion has now been issued by the TPSC to provide interested parties an updated version of the proposed conversion, and to provide a final opportunity for public comment on the conversion before the introduction of implementing legislation in early 1987.

In addition to the revisions made in response to comments received on the second edition, most of which were to avoid changes in existing tariff treatment, the present edition reflects:

(1) Legislation and Presidential proclamations modifying the existing TSUS which had been enacted or issued as of September 1, 1986.

(2) Preliminary designation of Canadian automotive products to receive duty-free treatment under the bilaterial U.S.-Canadian Agreement on Automotive Products and the Automotive Products Trade Act of 1965, implementing that Agreement.

(3) Preliminary designation of products to receive duty-free treatment under the Agreement on Trade in Civil Aircraft.

(4) Preliminary designation of products to receive duty-free treatment under the Generalized System of Preferences. Country specific product exclusions from GSP eligibility, based on the application of statutory competitive need limits and the President's policy of discretionary authority, are not indicated in this publication. A separate **Federal Register** notice is being published soliciting public comment on the proposed conversion of GPS eligible items to the Harmonized System tariff nomenclature. Guidance is provided in that notice concerning the submission of comments on the proposed conversion of GSP eligible articles to the Harmonized System and the use of the President's discretionary authority to exclude countries on certain products as well as the application of competitive need limits.

(5) Preliminary designation of products to receive duty-free treatment under the Caribbean Basin Economic Recovery Act.

(6) Correction of typographical errors and more accurate alignment of the text with the official text of the Harmonized System.

(7) Some changes in rates of duty based upon the recalculation of trade weighted average rates using more recent trade data.

(8) Numerous revisions in the statistical annotations, according to which statistics on imports will be reported, in order to achieve a high level of comparability between U.S. import and export statistics.

The Committee for the Implementation of Textile Agreements (CITA) expects to complete a correlation between the proposed conversion and the quota categories used in administration of the textile program the end of 1986. When completed, the relevant chapters of the converted schedules annotated with the quota category numbers will be available to interested parties.

The exact duty status of products of Israel under the U.S.-Israel Free Trade Agreement is still under review and therefore is not reflected in this edition.

Along with its major trading partners, the United States has set January 1, 1988 as the target date for implementation of the Harmonized System tariff schedule, subject to Congressional approval. The Administration plans to submit to the Congress in early 1987 the legislation required for implementation of the United States Harmonized System tariff schedule, at which time a final edition of the proposed conversion will be available to the public.

3. Copies of the Revised Conversion

Copies of the revised draft of the proposed new U.S. Tariff Schedule will be mailed automatically to all persons who received copies of the ITC's original draft conversion (ITC Publication 1400, June 1983), or the revised version issued by the TPSC in September 1984. Others may obtain copies from the Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, (701 E Street, NW., Washington, DC 20436, telephone (202) 523–5764).

4. Submission of Written Comments

Interested persons are invited to submit written comments on the new revised text of the draft conversion. Such comments must be submitted in twenty copies by January 15, 1987, to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 521, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Christopher Marcich, Director, Tariff Affairs, Office of the U.S. Trade Representative, Room 507, 600 17th Street, NW., Washington, DC 20506; telephone: (202) 395–5097.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86–26876 Filed 11–28–86; 8:45 am]

BILLING CODE 3190–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 24, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Certification of Lessons Completed
3. VA Form 22–6553b
4. Quarterly
5. Individuals or households; Businesses or other for-profit; Small businesses or organizations
6. 9,825 responses
7. 1,638 hours
8. Not applicable.

[FR Doc. 86–26890 Filed 11–28–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 230
Monday, December 1, 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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Volume 51, No. 226, Dated November 24, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, December 1, 1986.

CHANGE IN THE MEETING: The item below on the closed portion of the meeting has been postponed and rescheduled for the December 9, 1986 Commission Meeting.

3. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated and issued: November 26, 1986.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 86-27074 Filed 11-26-86; 3:49 pm]

BILLING CODE 6750-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, December 9, 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: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual, Volume I, Section VII, Withdrawals

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals

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: November 26, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86-27075 Filed 11-26-86; 3:49 pm]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, December 2, 1986, to consider the following matters:

Summary Aganda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities:

Southwest National Bank of Pennsylvania, Greensburg, Pennsylvania, for consent to purchase certain assets of and assume the liability to pay deposits made in the New Stanton, Pennsylvania, branch of Great American Federal Savings and Loan Association, Pittsburgh, Pennsylvania, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,757-L
Farmers State Bank in Afton, Oklahoma, Afton, Oklahoma
Case No. 46,758-L
Bank of Canton, Canton, Oklahoma
Case No. 46,759-L
First State Bank, Jet, Oklahoma
Case No. 46,760-SR
Farmers State Bank of Dexter, Kansas, Dexter, Kansas
Case No. 46,761-SR
The Sedan State Bank, Sedan, Kansas, Sedan, Kanas
Case No. 46,767-SR
West Coast Bank, Los Angeles (Encino), California
Case No. 46,768-L
Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: The First National Bank and Trust Company of Enid, Enid, Oklahoma—NR-765

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
Atlanta Regional Office Cost Center—100 (Memo dated October 28, 1986)
Summary Audit Report re:
Dallas Regional Office Cost Center—400 (Memo dated November 6, 1986)
Summary Audit Report re:
Wichita Consolidated Office Cost Center—304 (Memo dated October 21, 1986)
Summary Audit Report re:
The Peoples National Bank and Trust Company, Albia, Iowa (5655)(Memo dated November 6, 1986)
Summary Audit Report re:
Johnson County Bank, Tecumseh, Nebraska (2534)(Memo dated November 5, 1986)
Summary Audit Report re:
Utah Firstbank, Salt Lake City, Utah (2531)(Memo dated October 24, 1986)
Summary Audit Report re:
Pioneer State Bank, Salt Lake City, Utah (2532)(Memo dated October 24, 1986)
Summary Audit Report re:
Analysis of Liquidation, Site Audits by Region (Memo dated November 4, 1986)

Discussion Aganda:

Memorandum and resolution re: Statement of Policy and Criteria on Assistance to Operating Insured Banks, which policy statement (1) revises the present criteria used to evaluate requests for financial assistance to operating FDIC-insured banks which are in danger of failing; and (2) replaces the current Statement of Policy and Criteria on Assistance to Operating Insured Banks Which Are in Danger of Failing and FDIC's Voluntary Merger Plan.

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 898–3813.

Dated: November 25, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–27006 Filed 11–26–86; 11:25 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, December 2, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct thereof:

Names of persons and names of locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion agenda:

Request to consider a core deposit intangible as part of primary capital:

Union Bank and Trust, Bartlesville, Oklahoma.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report, September 30, 1986

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: November 25, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–27007 Filed 11–26–86; 11:25 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, December 3, 1986; meeting will continue at 2:30 p.m. if necessary.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed modifications to the uniform Cash Service Standards.

Discussion Agenda

2. Proposed 1987 Federal Reserve Board budget.

3. Proposals to reduce risks on large-dollar transfer systems. (Proposed earlier for public comment; Docket No. R–0515–A, B, and C)

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 25, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–2690 Filed 11–26–86; 9:28 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 3:30 p.m., Wednesday, December 3, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 25, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–26961 Filed 11–26–86; 9:29 am]

BILLING CODE 6210–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:00 p.m., Thursday, November 13, 1986.

PLACE: Board Conference Room, Sixth Floor 1717 Pennsylvania Avenue, NW.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Regional Office Boundaries.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone (202) 254–9430.

Dated, Washington, DC, November 26, 1986.

By direction of the Board.

John C. Truesdale

Executive Secretary, National Labor Relations Board.

[FR Doc. 86–27051 Filed 11–26–86; 3:14 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 1, 8, 15, and 22, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 1

Wednesday, December 3

10:00 a.m.
Briefing by Steering Group on Strategic Planning (Public Meeting)

Thursday, December 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Request for Hearing on Shearon Harris Exemption Request (Tentative)

Week of December 8—Tentative

Wednesday, December 10

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, December 11

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 15—Tentative

Tuesday, December 16

9:30 a.m.
Briefing on Status of TVA (Open/Portion Closed—Ex. 5 & 7)
2:00 p.m.
Briefing on Chernobyl (Public Meeting)

Wednesday, December 17

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing on Source Term and Severe Accident Matters (Public Meeting)

Thursday, December 18

10:00 a.m.
Discussion/Possible Vote on Full Power License for Shearon Harris (Public Meeting)
2:00 p.m.
Briefing on Status of Palisades (Public Meeting)
3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 22—Tentative

No Commission Meetings

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,
Office of the Secretary.
November 26, 1986.

[FR Doc. 86–27052 Filed 11–26–86; 3:21 pm]
BILLING CODE 7545–01–M

Corrections

Federal Register
Vol. 51, No. 230
Monday, December 1, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 86-29]

Maritime Carriers and Related Activities in Foreign Commerce; Filing of Service Contracts and Availability of Essential Terms

Correction

In proposed rule document 86-25612 beginning on page 41132 in the issue of Thursday, November 13, 1986, make the following corrections:

1. On page 41132, in the third column, in the first paragraph, in the fifth line from the bottom, "not" should read "now".

2. On the same page, in the same column, in the second paragraph, in the twelfth line, "designed" should read "designated".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6625

[AA-320-07-4220-10; C-39308]

Colorado; Withdrawal of National Forest System Land for Protection of Recreational Values

Correction

In rule document 86-23350 beginning on page 36808 in the issue of Thursday, October 16, 1986, make the following corrections:

1. On page 36808, in the third column, in the 15th line, "Channel" should read "Ch.".

2. On page 36809, in the second column, in the fifth line, "of" should read "or".

BILLING CODE 1505-01-D

federal register

Monday
December 1, 1986

Part II

Department of Housing and Urban Development

24 CFR Parts 243, 511, 842, and 942

Pet Ownership in Assisted Housing for the Elderly or Handicapped; Final Rule and Notice of Pet Deposit Limitation

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 243, 511, 842, and 942

[Docket No. R-86-1152; FR-1936]

Pet Ownership in Assisted Housing for the Elderly or Handicapped

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n-1) provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may prohibit or prevent a tenant from owning or having common household pets living in the tenant's dwelling unit, or restrict or discriminate against any person regarding admission to or continued occupancy of such housing because of the person's ownership of pets or the presence of pets in the person's dwelling unit. This final rule implements the statute, and establishes guidelines under which owners or managers of covered housing: (1) May prescribe reasonable rules governing the keeping of common household pets and (2) must consult with tenants when prescribing the rules.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Edward C. Whipple, Office of Public Housing, telephone (202) 426-0744, or James J. Tahash, Office of Multifamily Housing, telephone (202) 426-3970, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing or speech impaired individuals may call HUD's TDD number (202) 426-0015. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 227 of the Housing and Urban-Rural Recovery Act of 1983 provides for the ownership and keeping of common household pets in federally assisted housing for the elderly or handicapped. Section 227(a) provides that no owner or manager of covered housing may: (1) Prohibit or prevent any tenant from owning or having common household pets living in the dwelling accommodations or (2) restrict or discriminate against any person in connection with admission to, or continued occupancy of, covered housing because of the ownership of such pets or their presence in the dwelling accommodations. Section 227(b) directs the Department to issue regulations that may be necessary to ensure compliance with the provisions of section 227(a) and to ensure attaining of the goal of providing decent, safe, and sanitary housing for the elderly or handicapped. Section 227(b) also requires that these regulations include guidelines under which owners or managers of covered housing: (1) May prescribe reasonable rules for the keeping of pets and (2) must consult with tenants in prescribing the rules.

On February 28, 1984, HUD issued Notice H-84-10 to Public Housing agencies (PHAs), Indian Housing Authorities (IHAs),[1] project owners, and HUD Field Staff. This Notice discussed the effectiveness of section 227 pending the issuance of HUD regulations, and invited public comments on the issues that HUD should address in its regulations. HUD received approximately 2,800 comments on the Notice. On December 28, 1984, the Department published a proposed rule implementing the statute and establishing guidelines for house pet rules (49 FR 50562 (1984)). HUD received approximately 1,500 comments by the comment deadline (February 28, 1985). An additional 500 comments were received after the comment deadline. HUD has taken into account in the final rules all 4,800 comments received in response to the interim notice and the proposed rule. Throughout the preamble, the Department has referred to the number of commenters addressing certain points. These figures reflect the 1,500 comments timely received in response to the proposed rule.

Interim Effect of Section 227

Commenters reported that there is widespread confusion among project owners and PHAs whether, in the absence of HUD final regulations, applicants with pets may be refused an apartment or existing tenants may be told to remove pets. Four commenters urged HUD to publish an interim notice: (1) Informing project owners and PHAs that the law is in effect, (2) forbidding discrimination against pet owners and the imposition of discriminatory house rules, and (3) requiring project owners and PHAs to issue a notice to tenants and applicants declaring that pets are allowed.

On August 22, 1986, HUD issued Notice H-86-22. This Notice reiterated the policies contained in the February 28, 1984 Notice, stated that the prohibitions of section 227 were effective, and stated that PHAs and project owners were required to comply with the prohibitions of the statute even in the absence of a final HUD regulation. The Notice also urged PHAs and project managers to adopt reasonable interim house pet rules to govern the keeping of pets.

The two Notices and the proposed rule did not require PHAs or project managers to notify tenants or applicants for tenancy that pets are permitted pending the effective date of the final rule. Sections 243.15 and 942.15 of the final rule require this notification to all affected tenants and applicants shortly after the rule's effective date. Given the notice requirement in the final rule, HUD has concluded that an additional tenant notification in the time period preceding the effective date of the rule would be duplicative and costly, and may cause undue tenant confusion.

Commenters noted that it is possible that PHAs and project owners may have admitted pets during the interim period that ultimately could be excluded under the final house pet rules. For example, a project owner may have permitted a tenant to keep two dogs in a dwelling unit, pending the final HUD pet regulations. Under the final rule, the project owner may issue house pet rules limiting the number of four-legged, warm-blooded pets to one. *See* § 243.20(c)(1). Commenters urged that HUD amend various provisions of the final regulations to "grandfather" in these animals.

It would be extremely cruel and create unnecessary hardship to deprive tenants of the companionship of pets that have been accepted into projects pending the promulgation of HUD's final rules or a project's final house pet rules. However, the Department does not believe it is necessary to promulgate a rule addressing this limited class of pets. These situations will be addressed in administrative instructions governing the rules' implementation.

As noted above, HUD has encouraged PHAs and project owners to adopt reasonable interim rules governing the keeping of pets pending the issuance of final rules in this proceeding. One commenter stated that it developed its

[1] As used in this preamble, "PHAs" will include "IHAs."

rules on October 1, 1984, and asked if it would be required to start over to fulfill the procedural and content requirements of this final rule.

It is the responsibility of the PHA or project owner to comply with the final regulations. If the interim house rules promulgated by the project owner or PHA comply with the final rules' procedures for development of house rules (§§ 243.22 and 942.25) and the content requirements for house rules (§§ 243.20 and 942.20), the project owner or PHA will not be required to take further actions. If these requirements were not fulfilled, reissuance will be required.

Final Rules

The comments to the proposed rules addressed several matters of general importance (*i.e.*, the "two-rule" approach for Housing and Public Housing, the level of specificity in the rules, the effect of State and local laws, and the effect on existing contractual relationships), as well as issues that affect specific sections of the proposed rules. These are addressed below.

General Matters

A. "Two-Rule" Approach

The Department proposed to implement section 227 by promulgating two rules. 24 CFR Part 243 would govern the housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, except programs under sections 10(c) and 23 of the United States Housing Act of 1937 (as in effect before amendment by the Housing and Community Development Act of 1974). 24 CFR Part 942 would govern the public housing programs administered by the Assistant Secretary for Public and Indian Housing, including the sections 10(c) and 23 programs.[2] While the two rules are similar in content, Part 942 would generally permit PHAs to have more autonomy in the administration of their programs.

Two commenters supported the "two-rule" approach. Nineteen urged the Department to implement one rule to apply to all programs. Commenters also urged HUD to provide more uniformity in the two rules.

While the Federal policy is to simplify and streamline regulations whenever practicable, HUD continues to believe that the two-rule approach is justified in this instance. PHAs have traditionally been given a great deal of discretion in the management of their local public housing programs. Indeed, one of the major policies of the United States Housing Act of 1937 (1937 Act) is ". . . to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs. . .". (Section 2 of the 1937 Act, 42 U.S.C. 1437). Moreover, PHAs are public bodies created by State, local, and tribal governments, and traditionally have jurisdiction over a broad area. Giving these entities greater responsibility for the management of projects serves the goal of minimizing Federal control over matters of local concern that are within the competency of local governments.

Commenters argued that the bifurcated approach is based on the false assumption that PHAs have greater administrative expertise than similarly situated project owners. HUD recognizes that PHAs and project owners possess a wide range of abilities and that in some instances, project owners' expertise will equal or surpass that of their PHA counterparts. We also note, however, that project owners, unlike PHAs, are unlikely to receive guidance in the management of their projects from nonmortgagee agencies of State or local government. The Department's decision to give PHAs greater discretion is not based on a lack of project owner administrative ability, but rather on the broad discretion contemplated for PHAs under the 1937 Act; the policy toward minimization of Federal control of local government; and the fact that absent Federal guidance, project owners are unlikely to receive any governmental guidance in the implementation of section 227.

Other commenters argued that two rules are inappropriate because they will permit similarly situated tenants to be treated differently. The goal of the final regulations is to ensure that all PHAs and projects owners comply with the purposes of section 227. The fact that similarly situated tenants may be subject to different house rules or procedures is acceptable under both rules, and even expected. (*See* § 243.20(a), which permits project owners to vary the content of house rules between projects owned by the project owner and § 942.20(b), which permits similar actions by PHAs.)

Contrary to the allegations of some commenters, HUD does not believe that the promulgation of two parts will hinder the smooth implementation of section 227. While the two parts may require PHAs that operate public housing projects subject to Part 942 and Section 8 projects subject to Part 243 to meet different regulatory requirements, this concern does not warrant the abandonment of the "two-rule" approach or the transfer of Section 8–PHA-owned projects to Part 942. PHAs traditionally have been viewed as private owners for purposes of the Section 8 programs. They are commonly required to fulfill different regulatory requirements for the two different types of programs. For example, Section 8 projects are not subject to a cooperation agreement requirement under section 5(e)(2) of the 1937 Act, are not exempt from State and local real and personal taxes under section 6(d) of the Act, are not eligible for operating subsidies under section 9 or comprehensive improvement assistance under section 14 of the Act, and are not subject to requirements governing the demolition and disposition of housing under section 18 of the Act. Additionally, PHA lease and grievance procedures under Part 966 differ from the termination of tenancy provisions governing Section 8 projects. In the absence of any compelling reason to change this approach for purposes of this rulemaking proceeding, Parts 243 and 942 are left unchanged.

As noted above, Part 243 is intended to apply to the housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner. This includes projects assisted under programs described in Chapter VIII of Title 24. For clarity and for ease of reference, the final rule adds a new Part 842. This part reiterates the purpose of section 227 and states that the provisions of Part 243 apply to projects assisted under programs contained in Chapter VIII that meet the definition of project for the elderly or handicap contained in § 243.3(c).

B. Specificity of Rules

Several commenters argued that the proposed rules represented an attempt by the Federal government to write local policy. Others asserted that the proposed rules would give PHAs and project owners too much discretion, may permit PHAs and project owners to discriminate against pet owners, and may invite lawsuits. On the basis of ongoing review of the proposed rules and the public comments, the Department has reduced the level of specificity of the rules in some instances (e.g., the final Part 243 removes the detailed tenant-move provisions under proposed § 243.26) and increased the level of regulation in others (*see* financial responsibility under final §§ 243.20(c)(3) and 942.20(b)(4)). These

[2] On May 21, 1985, the Secretary transferred the delegated authority to administer programs under sections 10(c) and 23 of the United States Housing Act of 1937 from the Assistant Secretary for Housing-Federal Housing Commissioner to the Assistant Secretary for Public and Indian Housing (50 FR 20943 (1985)). Parts 243 and 942 have been revised to reflect this delegation.

and the other changes are discussed below.

C. Preemption of State and Local Laws

The preamble to the proposed rule identified a few areas where the proposed rule would conflict with State and local laws (49 FR 50566). It also stated:

> It is possible that these regulations and the pet rules prescribed pursuant to them will conflict with State and local laws in other areas as well. During the course of the development of final rules in this proceeding, we intend to identify potentially conflicting State and local law, determine if Federal preemption is available and, if available, the extent to which it should be exercised. Accordingly, we invite commenters to identify conflicting statutes and ordinances that HUD ought to take into account in developing a final rule. (49 FR 50566)

In response to this invitation, commenters identified: (1) Statutes in Arizona and California permitting animal ownership by the elderly; (2) "leash" laws; (3) inoculation and licensing provisions; (4) laws banning certain species (e.g., skunks) or certain breeds within a species (e.g., pit bull terriers); (5) local laws limiting the number of animals residing in a unit or project; (6) vicious animal statutes; (7) "pooper scooper" laws; (8) pet procreation ordinances; (9) animal cruelty provisions; (10) laws granting animal control officers citation powers; and (11) statutory provisions governing pet deposits.

The purpose of section 227 is to prevent project owners and PHAs from imposing arbitrary rules precluding or restricting pet ownership or presence in federally assisted projects for the elderly or handicapped. The Department does not believe, nor can we find any legislative history to support the notion, that the statute contemplated, or was intended to permit, Federal interference with the legitimate exercise of the power of States and localities to safeguard the health and well-being of their citizens. The statutes and ordinances cited by the commenters represent State and local attempts to protect the public health and safety by establishing reasonable limitations on pet ownership within their jurisdictions. Given the limited purposes of section 227, and absent a compelling reason for HUD to interfere with the police and health and safety powers traditionally reserved to States and localities, the final regulations preserve these State and local laws. If, therefore, there is an applicable State or local law or regulation governing the owning or keeping of pets, the final rules provide that the pet rules prescribed by PHAs and project owners may not conflict (on their face or as applied) with the State or local authority. If a conflict may exist, the final rules make it clear that the State or local law or regulation is to apply. The following sections of the final rule contain provisions preserving State and local law: Exclusion for animals that assist the handicapped (§§ 243.2 and 942.2); definition of common household pet (§§ 243.3(a) and 942.20(b)(1)); pet rule general content requirements (§§ 243.20(a) and 942.20(b)); inoculations and licensing (§§ 243.20(b)(1), 243.20(c)(5), and 942.20(b)(6)(i)); sanitary standards (§§ 243.20(b)(2) and 942.20(b)(5)(i)); pet restraint (§§ 243.20(b)(3) and 942.20(b)(5)(ii)); registration and screening of pets (§ 243.20(b)(4)); pet and tenant density provisions (§§ 243.20(c)(1) and 942.20(b)(2)); pet size and pet type (§§ 243.20(c)(2)and 942.20(b)(3)); financial obligations of pet ownership (§§ 243.20(c)(3) and 942.20(b)(4)); standards of pet care (§§ 243.20(c)(4) and 942.20(b)(5)(ii)); provisions governing pets temporarily on premises (§§ 243.20(c)(6) and 942.20(b)(7)); lease provisions (§§ 243.30 and 942.27); and nuisance and threat to health or safety (§§ 243.40 and 942.30).

Because of the virtually infinite number of possible State or local laws and ordinances dealing with the owning and keeping of pets, there may be other areas in which State or local law or regulation conflicts with the house pet rules adopted by project owners and PHAs. Since these laws or regulations constitute legitimate attempts to protect the public health and safety, the Department will defer to the State and local jurisdictions.

Many sections of the final rules do not contain specific references to the preservation of State and local law and regulation. These sections are generally those necessary:

(1) To provide a regulatory framework for the implementation of section 227 (e.g., the purpose sections (§§ 243.1 and 942.1); the definitions of project for the elderly or handicapped, project owner, PHA, IHA, and elderly or handicapped family (§§ 243.3 and 942.3); effective date provisions (§§ 243.4 and 942.4); and prohibitions against discrimination (§§ 243.10 and 942.10)); or

(2) To provide guidance to project owners and PHAs concerning the procedures to be used to implement the substance of section 227 (e.g., notice to tenants of their rights under section 227 (§§ 243.15 and 942.15); procedures for development of house pet rules (§§ 243.22 and 942.25); pet rule violation procedures (§ 243.24); provisions for rejection of units by applicants for tenancy (§ 243.26); implementation of lease provisions (§§ 243.30, 243.35, and 942.27)).

These matters primarily pertain to HUD's management and procedural responsibilities under section 227, and do not infringe on areas of health and safety that are of peculiar concern to State and local jurisdictions. Thus, the above-cited sections prescribe the requirements that PHAs and project owners are to follow, irrespective of the provisions of State or local law or regulation.

D. Contractual Rights

One hundred thirty commenters questioned HUD's promulgation of rules that, in their view, ignore and alter tenant understandings, and contractual rights and obligations under present leases.

The relevant inquiry as to whether the statute and these regulations impermissibly impair obligations and rights under existing contracts is two-fold: *i.e.*, is the impairment "substantial" and if so, are the statute and regulations rationally related to, and justified by, a legitimate exercise of constitutional power?

There is no substantial impairment of the existing contractual rights of PHAs and project owners. While the right of project owners or PHAs to exclude pets from the project under existing leases has been eliminated, the Department does not consider this to be a substantial change, particularly in light of provisions in the final regulations permitting project owners and PHAs to impose reasonable rules governing the keeping of pets, the provisions for the recovery of damages through pet deposits, the right to enforce the pet rules through eviction, the preservation of State and local pet removal remedies, and the limited administrative requirements imposed by the regulation. Moreover, projects covered by §§ 243.3(c) and 942.3(c) are regulated by HUD. The involved project owners and PHAs are on notice (often under express language in the agreements with HUD) that they will be bound by later changes in governing law and HUD regulations.

Similarly, there is no impairment of tenants' contractual rights. The rights of individual tenants who were previously denied pet ownership are being expanded to permit them to keep pets. Since current lease provisions generally prohibit a tenant from keeping pets only in his or her dwelling unit, tenants were, at best, incidental beneficiaries of the policy of excluding pets from other tenants' units, and have no cognizable contract claim on that basis.

Even if the statute and implementing regulations could be construed to constitute an impairment, they do not violate the due process rights of PHAs, project owners, or tenants because there is a rational basis for the statute and the regulations implementing the statute. In enacting section 227, Congress clearly stated its rationale for prohibiting discrimination against pets in elderly or handicapped housing: Numerous studies and reports that show that pets provide substantial physical and mental benefits to elderly and handicapped persons, particularly those individuals living independently; and the necessity for congressional action based on the finding that project owners and PHAs, absent guidance, have acted to foreclose these benefits by imposing absolute "no pets" policies. (S. Rep. No. 98–142, 98th Cong., 1st Sess. 41 (1983); 129 Cong. Rec. H5020 (Daily ed. July 12, 1983) (statement of Rep. Biaggi); and 129 Cong. Rec. H10526 (Daily ed. November 18, 1983) (statement of Rep. Biaggi)). The Department believes that this legislative history clearly indicates that Congress acted rationally in enacting section 227 and that no due process rights were violated. Since the final rules merely implement section 227, the same conclusion is compelled with respect to them.

Section-by-Section Discussion

A. Exclusion for Animals that Assist the Handicapped

Neither proposed Part 243 nor 942 would apply to animals that assist the handicapped (§§ 243.2 and 942.2). Three commenters opposed this provision, and argued that PHAs and project owners should be permitted to apply selected provisions to these animals. Four other commenters supported the provision, but feared that housing managers may ignore the exclusion and attempt to regulate the keeping of such animals under house pet rules. These commenters suggested that the definition of common household pet specifically exclude animals that assist the handicapped, that provisions governing the content of the house pet rules state that the house rules do not apply to these animals, and that all leases provide that pet provisions do not apply to animals that assist the handicapped.

The application of the house pet rules to animals that assist the handicapped potentially could result in serious harm to the handicapped individual's ability to function independently and effectively. For example, the exclusion of handicap assistance animals from specified common areas (§§ 243.20(c)(4) and 942.20(b)(5)(ii)) could effectively exclude the handicapped individual from the area, and the imposition of pet owner financial requirements (§§ 243.20(c)(3) and 942.20(b)(4)) and other limitations that the final rules allow could be contrary to Federal, State, and local laws that forbid discrimination against the handicapped. Accordingly, the Department has concluded that application of any part of the pet regulations to these animals is wholly inappropriate.

To reduce the possibility that PHAs and project owners will intentionally or mistakenly attempt to apply the pet regulations to such animals: (1) The definition of common household pet in § 243.3(a) and the provision giving PHAs the ability to define common household pets (§ 942.20(b)(1)) are revised specifically to exclude animals that are used to assist the handicapped; and (2) §§ 243.2 and 942.2 are revised to state that (A) PHAs and project owners may not apply or enforce the house pet rules developed under Part 243 or 942 against individuals with such animals and (B) PHAs and project owners are prohibited from limiting or impairing the right of handicapped individuals under Federal, State, or local law to own or keep such animals. HUD will inform PHAs and project owners of the exclusion through the issuance of administrative instructions, and will monitor compliance with this exclusion during the course of management reviews. The Department believes that these measures, including the requirements contained in both the proposed and final §§ 243.15 and 942.15 that tenants and prospective tenants be notified of the exclusion of handicap assistance animals from the rules' coverage, are adequate to protect the rights of individuals with these animals.

These provisions, however, are not meant to imply that PHAs and project owners have no authority outside of Parts 243 and 942 to regulate the keeping of animals that assist the handicapped. It is possible that under Federal, State, or local law, and agreements made in accordance with these laws, PHAs and project owners may retain some authority to regulate the keeping of such animals. The final rules have been amended to ensure that Parts 243 and 942 have no affect on whatever independent authority PHAs and project owners may have.

B. Definitions

1. Common Household Pet

The proposed rules included a definition of common household pet under Part 243 (§ 243.3(a)), but permitted PHAs to include a reasonable definition of common household pet (§ 942.20(b)(1)).

Commenters suggested that HUD issue one definition for common household pet for both parts. They argued: (1) This phrase is a term of art that should be defined by the rule making agency and (2) PHA discretion to define the term could create administrative problems and legal difficulties in the enforcement of the rule. Given the opposition of a number of the commenters to dogs and cats, some commenters suggested that the definition for purposes of Part 942 should specifically include these animals. Others urged the Department to leave the definition of common household pet entirely to the project owner.

Based on the autonomy and discretion placed in PHAs, HUD has decided to retain the definitional approach taken in the proposed rule. It should be noted that PHAs are not without guidance concerning an acceptable definition of common household pet. Section 942.20(b)(1) requires the definition to be "reasonable" and, as noted below, the definition is subject to the reasonableness standards contained in § 942.20(b) for developing house rules. Under this standard, the PHA must weigh competing factors, such as the PHA's legitimate interest and the burdens to pet owners. Such provisions would prohibit the arbitrary exclusion of dogs and cats.

Proposed § 243.3(a) defined "common household pet" as follows:

> A smaller domesticated animal, such as a dog, cat, bird, rodent, fish or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Reptiles (except turtles) are excluded from the definition.

Some commenters noted that "smaller" is a comparative term and that the proposed definition provided no standard for comparison. This term has been eliminated from the final rule. It should be noted, however, that under § 243.20(c)(2), the project owner will retain the ability to place reasonable restrictions on the size and weight of project pets.

Some commenters suggested that "rodents" should be excluded from the illustrative list of common household pets. Others requested clarification of this term since many rodents are potentially destructive. While the term "rodent" includes feral animals such as squirrels, chipmunks, beavers, gophers, and prairie dogs, our definition does not permit the keeping of all rodents. Rather, HUD's definition requires that all

animals be "domesticated" and "traditionally kept in the home." In the case of rodents, this may include gerbils, hamsters, guinea pigs, etc. Since the Department believes that these additional requirements will exclude potentially destructive rodents, the definition of common household pet remains unchanged.

One commenter requested that the illustrative list provided in the common household pet definition be expanded to include "rabbits." Although rabbits are rodents and therefore within the definition in the proposed rule, the illustrative list has been amended to list "rodent (including a rabbit)", lest there be any doubt on this point.

As noted above, the definition of common household pet under Part 243 and the provisions giving PHAs the ability to issue a definition of common household pets under Part 942 have been amended specifically to exclude animals that assist the handicapped and to recognize that where a State law or local ordinance conflicts with HUD's definition or the definition contained in the house pet rules, the State law or local ordinance will control.

2. Projects for the Elderly or Handicapped

Proposed §§ 243.3(c), 511.11(h) (Rental Rehabilitation Grant program), and 942.3(c) addressed the coverage of section 227 by defining projects for the elderly or handicapped. A number of comments expressed general concern about the proposed rules' coverage. One hundred eighty five comments requested that the pet rule apply to *all* elderly or handicapped residents of *all* federally assisted rental housing projects. They argued that this construction conforms to the intent of the legislation. An additional 25 commenters would extend the pet rule to all tenants of HUD-assisted housing.

Seven commenters objected because the definitions would apply to all residents of covered housing for the elderly or handicapped, even if the individual resident is not elderly or handicapped or is not a member of an elderly or handicapped family. They argued that the proposed rules' interpretation (1) is contrary to the clear language of section 227; (2) is contrary to the legislative history of section 227, that indicates that only elderly or handicapped tenants would be permitted to keep pets; (3) would create significant management problems in the projects; and (4) could give rise to discrimination complaints filed by nonelderly and nonhandicapped residents of projects not covered by the proposed rule.

Section 227(a) applies to any "federally assisted rental housing for the elderly or handicapped." Section 227(d) defines this term to mean any "housing *project*" (emphasis added) that (1) is assisted under the section 202 program of Housing for the Elderly or Handicapped or (2) is assisted under specified authorities and "designated for occupancy by elderly or handicapped families." Section 227(a)'s nondiscrimination provisions apply to "any tenant" and "any person" of covered housing. The statute is clear: section 227's provisions apply to any *tenant* (not just elderly or handicapped tenants) of specified *elderly or handicapped* projects (not all projects, or all projects with elderly or handicapped tenants). The proposed rules reflected this interpretation, and remain unchanged in the final rule. It is true that some of the remarks of Rep. Biaggi (section 227's sponsor in the House of Representatives) support the notion that section 227 was intended to cover only elderly or handicapped tenants *of* covered projects. (*See* 129 Cong. Rec. H5020–21 (Daily ed. July 12, 1983). This expression of intent, however, cannot override the clear language in the statute, applying the nondiscrimination provisions to "any tenant" or "any person" in covered housing, without regard to age or handicap status.

a. *Application to insured, but unsubsidized, projects.* Section 227 covers "any federally assisted rental housing for the elderly or handicapped," and defines this term to include any rental housing (1) that is "assisted" under section 202 of the Housing Act of 1959, or (2) that is "assisted" under the United States Housing Act of 1937, the National Housing Act, or Title V of the Housing Act of 1949, "and is designated for occupancy by elderly or handicapped families." In Notice H–84–10, the Department adopted the position that "assistance" under the National Housing Act, within the meaning of section 227, encompassed mortgage insurance without subsidy. (See also, Notice H–86–22). Consistent with this determination, HUD proposed to include, in the coverage of Part 243, elderly or handicapped projects that have HUD-insured mortgages under sections 221(d)(3) (Market-Rate), 221(d)(4), and 231 of the National Housing Act, without regard to whether rent subsidies also are provided, as well as projects for the elderly or handicapped owned by HUD following foreclosure. The preamble to the proposed rule stated:

> The statute refers to projects "assisted" under the National Housing Act. In HUD program usage, the term "assisted" normally refers to subsidy and does not encompass mortgage insurance without subsidy. However, the Department believes that Congress intended a broader coverage in the case of this particular enactment. Congress' focus appears to have been on the character of the tenants as elderly or handicapped—without regard to whether their rent is subsidized. Given this apparent focus, no rational basis appears for excluding projects that have a HUD association but are not subsidized. Such a basis might exist if Congress contemplated that compliance with its requirements would entail additional cost burdens on owners and managers which would be fairly imposed only if absorbed by additional subsidy, but no such contemplation is disclosed in the legislative history. Accordingly, consistent with the determination previously announced in Notice–84–10, Part 243 would include elderly or handicapped projects that have HUD-insured mortgages under sections 221(d)(3) (Market Rate), 221(d)(4), and 231 of the National Housing Act, even though these projects may be unsubsidized. Part 243 also would apply to any projects for the elderly or handicapped that HUD owns. (49 FR 50562, 50563.)

Several commenters commended this coverage provision, while others protested it. The protesting comments, who generally expressed basic opposition to section 227 in total, argued that HUD's interpretation conflicted with HUD's own "normal" interpretation of "assisted" housing, had no explicit foundation in the legislative history, and is unwarranted because compliance would entail cost burdens to owners and managers that could be fairly imposed only if absorbed by additional subsidy.

Insofar as the commenters directly addressed the statutory language of section 227, they merely repeated the Department's own admission, stated in the preamble to the proposed rule, that "in HUD program usage, the term 'assisted' normally refers to subsidy and does not encompass mortgage insurance without subsidy" (49 FR 50563). However, even this "normal" HUD usage is not so universal that a clear understanding of it can easily be attributed to Congress.

The principal source of the "normal" usage is the exclusion of the unsubsidized mortgage insurance programs of "Federal financial assistance" under Title VI of the Civil Rights Act of 1964 and other antidiscrimination statutes modeled on it. That exclusion, however, resulted not from any "normal" understanding that "financial assistance" did not include insurance, but from a specific statutory exclusion. Indeed, the language of the exclusion confirms that the term

"assistance" normally *does* include insurance. Section 605 of the Civil Rights Act 1964 provides:

> Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty. (42 U.S.C. 2000d–4.)

The effect of this exclusion insofar as Federal mortgage insurance was concerned, was to exclude the mortgage insurance programs from Title VI coverage, but to preserve their coverage by Executive Order 11063, *Equal Opportunity in Housing*. This executive order refers to laws which authorize "Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities," and expressly includes within its coverage facilities "provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government."

The Department believes that these precedents are enough to establish that in Congressional usage, the term "assistance" normally encompasses insurance, unless otherwise specifically provided.

Examining congressional intent within the context of the specific enactment, the Department finds no evidence whatever that would suggest an intent to exclude insured but unsubsidized projects. The statutory provision on pet ownership was sponsored in the Senate by Senator Proxmire, and in the House by Congressman Biaggi. The justification for the provision was stated exclusively in terms of the benefits of pet ownership for elderly and handicapped persons, without regard to their income status. See S. Rep. No. 142, 98th Cong., 1st Sess. 40 (1983); 129 Cong. Rec. H 5021 (daily ed. July 12, 1983). (The provision was added as a floor amendment in the House.) As indicated in the proposed rule preamble cited above, there was no suggestion in the legislative discussion of additional costs that might be incurred by project owners and therefore require subsidy, leaving no discernible rationale for distinguishing between subsidized and unsubsidized projects provided for the same target population.

Finally, there is the post-enactment expression of intent by the legislation's principal sponsors, Senator Proxmire and Congressman Biaggi, contained in their letter to Secretary Pierce dated November 18, 1985, clearly indicating their expectation that "assisted" includes unsubsidized, insured elderly or handicapped projects.[3] The Department recognizes that post-enactment expressions by individual legislators, even sponsors, are entitled to relatively little weight, and this letter is not cited as a basis for our conclusion, as much as a later confirmation of it. Further, while this expression may not itself have much weight, the Department has found no weight at all on the other side to counterbalance it.

On the basis of the foregoing, therefore, the Department believes that, as used in section 227, the term "federally assisted rental housing for the elderly or handicapped" includes projects for the elderly or handicapped (as otherwise defined) with mortgage insurance under the National Housing Act, without regard to whether an additional form of subsidy is provided.

Some commenters argued that HUD's position is contrary to its other efforts to deregulate certain aspects of the housing industry, and asserted that inclusion of unsubsidized projects is improper because it imposes administrative burdens on project owners that are unaccustomed to meeting HUD directives. The Department believes that regulation and the imposition of limited compliance burdens in this area are permissible in order to effect the goals of Congress in enacting section 227. While some commenters fear that the extension to insured projects for the elderly and handicapped will pave the way for the extension of pet provisions to family projects, such an extension is clearly not contemplated by section 227, and is not included under this regulation.

As in the proposed rule, the final rule will exclude health and care facilities that have mortgages insured under the National Housing Act. The proposed rule excluded nursing homes and intermediate care facilities under section 232 of the Act, and hospitals under section 242 of the Act. The final rule adds board and care homes under section 232 of the Act to the list of excluded health and care facilities. Omission of such homes from the proposed rule was an oversight. Like other section 232 facilities, board and care homes are not "rental housing" and, thus, fall outside section 227's coverage.

b. *Designation.* Section 227 applies to projects that are (1) assisted under the United States Housing Act of 1937 or the National Housing Act and (2) "designated for occupancy by elderly or handicapped families." Under the proposed rule, a National Housing Act project would meet the "designation" requirement if it is designated for occupancy by the elderly or handicapped in the regulatory agreement covering the project. A public housing project subject to Part 942 would fulfill this requirement if it is designated for occupancy by the elderly or handicapped at the project's inception or, if not so designated, if the PHA currently gives preference in tenant selection (with HUD approval) for all units in the project to elderly or handicapped tenants. A Section 8 project, would be "designated" if preference in tenant selection is given (with HUD or PHA approval) for all units in the project to elderly or handicapped families. A project assisted under the Rental Rehabilitation or Housing Development Grant program would be covered if it gives such a preference, but without reference to HUD approval, since these programs do not contemplate this type of HUD involvement. HUD-owned projects would be covered where HUD gives tenant selection preference for elderly or handicapped families and the preference is applicable to all units in the project.

All of the proposed designation requirements varied from the approach contained in HUD's February 28, 1984 Notice. The Notice provided that section 227 would apply to projects "built exclusively for occupancy by the elderly and handicapped." A number of commenters urged HUD to adopt such an approach in the final rule.

The preamble to the proposed rule indicated that this approach was too limited, since not all projects that serve the elderly or handicapped were built exclusively for that purpose. The Department recognized that some family projects evolve into elderly or handicapped projects. This coverage was also reflected in HUD Notice H–86–22, issued August 22, 1986. The Department continues to believe that determining section 227's coverage on the present use of projects is far more responsive to congressional intent in enacting the provision. Thus, the final rules remain unchanged in this respect.

The proposed rule stated that a project assisted or insured under the National Housing Act would meet the "designated" requirement if the project is designated for occupancy by the elderly or handicapped in the regulatory agreement covering the project. While HUD does not wish to alter the scope of

[3] Senator Proxmire and Representative Biaggi stated to the Department with reference to the scope of the term "assisted": "We understand this language—and intended it—to cover both insured and directly-subsidized rental properties designed for elderly or handicapped persons. Mortgage insurance in our minds is a form of assistance, not unlike interest payments and rent supplements."

the definition, the language of the proposed rule presents some practical problems.

An analysis of various National Housing Act regulatory agreements reveals that agreements covering some family projects that were never intended for occupancy by elderly or handicapped families, through administrative error, contain language that inadvertently designate the projects for such occupancy. Similarly, the regulatory agreements for some elderly or handicapped projects include no specific designation. Instead, designation may appear in the loan commitment papers, financial documents, the notice of fund availability, the bid invitation, or the owner's management plan or funding application.

To ensure that HUD's regulation includes all projects that currently serve the elderly or handicapped, final §§ 243.3(c)(2) and (3) have been revised. In the final rule, a project assisted or insured under the National Housing Act will be included under Part 243 if the project was designated for occupancy by the elderly or handicapped when the commitment to insure the mortgage on the project was issued (or when funds for the project were reserved, in the case of subsidized projects) or if not then so designated, if the project is designated for such occupancy in an effective amendment to the project's regulatory agreement requested by the project owner.

Under the proposed rule, Public Housing, Section 8, Housing Development Grant, Rental Rehabiliation Grant, and HUD-owned projects would be "designated" for occupancy by the elderly or handicapped, if in tenant selection, preference is given for all units in the project to elderly or handicapped families. (*See* §§ 243.3(c) (4), (5), and (6), 511.11(h) and 942.3(c)). Some commenters argued that this requirement is too restrictive, and suggested that the requirement be reduced to require a preference for "a majority of units" or "substantially all units." One commenter reported that some projects have interpreted the provisions to require 100 percent occupancy by elderly or handicapped families.

HUD does not believe that this requirement is overly restrictive. Rather, the Department believes that it is the most appropriate way of giving meaning to the statutory mandate that projects be "designated for occupancy by the elderly or handicapped." This approach is supported by the legislative history. Section 316 of S. 1338, 98th Cong., 1st Sess. (1983), as passed by the Senate, contained the "designated" language that was later included in section 227. The Senate Committee report refers to covered projects as "elderly projects" and "elderly or handicapped projects." (S. Rep. No. 98–142, 98th Cong., 1st Sess. 41 (1983).) More importantly, section 232 of H.R. 1, 98th Cong., 1st Sess. (1983), as passed by the House, defined the pet provision's coverage in terms of a project that has "as a majority of its tenants elderly or handicapped families." The House approach—advocated by some commenters in this proceeding—was dropped in favor of the Senate's "designated" approach in the final version of section 227—a clear signal that the approach proposed by commenters is not consistent with congressional intent.

Contrary to the interpretation given by some commenters to the preference requirement, this provision does not require 100 percent *occupancy* by elderly or handicapped families. A preference is "given" for a unit if an elderly or handicapped family would be offered the unit over an equally qualified nonelderly and nonhandicapped family. The fact that a unit is actually rented to a nonelderly and nonhandicapped family, because there is no qualified elderly or handicapped family that is able to take advantage of the preference, is irrelevant.

Two PHAs objected to the use of the preference requirement entirely. They argued that because they give preference to elderly families regarding admission to *all* units in *all* of their projects, the regulation was overly broad. Part 942 requires HUD to approve extension of the preference for the elderly or handicapped. These PHAs should consult their responsible Field Offices to determine whether HUD has, in fact, approved such a preference. If so, that PHA may wish to seek HUD approval to give a less sweeping preference for these tenants.

The proposed definition of project for the elderly or handicapped under § 943.3(c) applied to projects that were designated for occupancy by the elderly or handicapped at their inception. Because this definition could technically apply to projects that have evolved to other uses and that currently grant no preference for the elderly or handicapped, commenters objected to it, arguing that it could invite additional administrative burdens and could expose the PHA to litigation by other residents of family housing on the basis of discrimination.

In the preamble to the proposed rule (49 FR 50563–50564), HUD specifically invited comments on the factual issue of whether there were projects that were designated for occupancy by the elderly or handicapped at inception, but that had evolved to other uses and no longer serve elderly or handicapped families. No comments were provided. In light of this lack of evidence of the existence of such projects, the proposed definition in § 943.3(c) is left unchanged.

c. *Mixed-use projects.* Under proposed § 942.3(c), project for the elderly or handicapped was defined to include a building within a "mixed-use" project, if the building independently meets the designation requirements. One commenter suggested that this provision should be deleted from the final rule in order to make the two parts consistent. This commenter also suggested that this provision could cause management difficulties within a project. A second commenter supported HUD's coverage of buildings within a mixed-use project, "since such a construction is entirely consonant with the statute and, as is the case with antidiscrimination legislation in general, the statute should be construed liberally."

The definitions of projects for the elderly or handicapped have not been revised in the final rule in response to commenters' arguments. Projects for the elderly or handicapped under §§ 243.3(c) and 942.3(c) are treated differently based on variations in the program structure. Because PHAs under Part 942 establish preferences for their entire inventory of dwelling units based on building structure and unit size, it is possible to have a building within a project that has a designated use separate and distinct from the uses of other project buildings.

There may be buildings that are occupied primarily [or even exclusively by the elderly and handicapped that are located within projects that do not meet the designation requirements of § 243.3(c). Unlike buildings within public housing projects, however, it is impossible for these buildings to be independently designated for the elderly or handicapped. For projects that are assisted under the National Housing Act, specific buildings within projects are never separately designated for occupancy by the elderly or handicapped. Buildings in other projects described under § 243.3(c) cannot be independently designated because preferences for the elderly or handicapped are never required to be extended with regard to a specific building within the project.

Contrary to commenter's arguments, the presence of pets in buildings within PHA projects should not raise any

significant management problems that cannot be mitigated by the judicious application of house pet rules.

One commenter noted that the phrase "mixed-use project" was not defined in the regulation. It is not necessary to define this term in the regulation, since it is clear that the term includes a project with more than one building, where the buildings are designated for different uses.

d. *Exemptions.* Commenters urged that certain types of projects be exempted from the definition of project for the elderly or handicapped. Others urged the Department to provide a waiver of the regulations for certain projects. Exemption or waiver was requested for: (1) Group homes for the chronically mentally ill, developmentally disabled, or physically handicapped; (2) projects for the mobility-impaired; and (3) projects where the owner or manager can demonstrate good cause for exception (e.g., diminishing capacity of the residents, health needs of a significant proportion of the residents, and inadequacy of the project facilities).

The statute is mandatory, and permits no exemption from, or waiver of, its requirements. It should be noted, however, that the final rules give project owners and PHAs wide latitude in prescribing rules for the keeping of pets. Within statutory limits and the bounds of reasonableness, these rules can be specifically tailored to the needs of individual projects. For example, under § 243.20(b)(4) project owners are permitted to screen pet owners based on whether they will be able to fulfill their obligations as tenants by adhering to the lease, the house pet rules, and other house rule requirements. Because of the special nature of group homes, the final rule permits these homes specifically to impose reasonable limitations on the number of pets in each home under §§ 243.20(c)(1) and 942.20(b)(2). (Project quotas in other types of projects, however, are expressly prohibited.)

e. *Miscellaneous.* Section 243.3(c)(1) of the proposed rule would have covered projects under Part 885 (Loans for the Elderly or Handicapped). Because this section would not include all projects currently assisted under section 202 of the Housing Act of 1959, the final rule has been amended.

One commenter suggested that HUD issue a list of projects covered by the pet regulation. A listing of covered projects is not available within the Department. It is the duty of project owners and PHAs to determine whether their projects are covered under §§ 243.3(c), 942.3(c) and 511.11(h).

C. Effective Date

Several commenters urged revision of §§ 243.4 and 942.4 to reduce confusion concerning the effective date of section 227 and the effective date of the final rules.

The text of proposed §§ 243.4 and 942.4 clearly stated the effective dates that are applicable to the provisions of Parts 243 and 942 and provided extended periods from this date to permit project owners and PHAs to implement the rules' provisions. In light of the clear language of these sections and the Department's pronouncements in the interim Notices and the proposed rule preamble discussing the fact that the provisions of section 227 were effective on November 30, 1983, the 1983 Act's effective date, the Department does not believe that further clarification is necessary.

Proposed §§ 243.4 and 942.4 stated that project owners and PHAs would have 120 days from the effective date of the rules to implement the regulations. Some commenters urged HUD to allow PHAs and project owners 180 days to implement the rule, and to allow extensions of the implementation period.

Section 7(o)(3) of the Department of Housing and Urban Development Act provides, in part, "No rule or regulation may become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the day on which such rule or regulation is published as final." Based on the 1986 legislative calendar and the anticipated 1987 legislative calendar, this rule will not become effective until March 1987. A 120-day implementation period would thus delay compliance with this rule until July 1987. Due to the lengthy delay of the effective date of this rule caused by the application of section 7(o), the Department does not believe it is necessary to provide such an extended implementation period.

The 120-day period was originally proposed to ensure that project owners and PHAs would have a sufficient period to prepare for and perform various obligations imposed in the final rule. Because of the delayed effective date of the rule, many of the preparatory steps may now be commenced pending the effective date of the rule. (These steps might include the preparation of such documents as the notice to tenants required under §§ 243.15 and 942.15, the notice of proposed house rules under § 243.22(b) or revised lease provisions under §§ 243.35 and 942.27(a)). Accordingly, the final rules at §§ 243.4 and 942.4 provide that project owners and PHAs will have 60 days from the effective date of the final rules to implement the regulation. It should be noted that if the 60-day period is added to the period of delayed effectiveness because of section 7(o), PHAs and project owners will have approximately 180 days—the period that some commenters suggested—to prepare for the rules' implementation.

These time periods should be adequate in all cases, if project owners and PHAs pursue their responsibilities in a reasonably expeditious manner. Accordingly, the Department has determined that extension requests will not be entertained.

Section 243.4 of the proposed rule permitted HUD to extend the implementation date if needed to accomplish tenant moves under proposed § 243.20(b)(5). Since, as discussed later, the tenant move provisions have been eliminated, this extension provision has also been deleted.

D. Prohibition Against Discrimination

Proposed §§ 243.10 and 942.10 would forbid project owners and PHAs from: (1) Prohibiting or preventing any tenant from owning or keeping common household pets in the dwelling unit and (2) restricting or discriminating against any person based on pet ownership or presence in the dwelling unit. The proposed rule also provided that these prohibitions would be applicable, except as otherwise specifically authorized under the parts.

Some commenters argued that the nondiscrimination language used in these provisions and reflected throughout the regulations improperly protects pet ownership to the detriment of the interests of project management and other tenants. Notwithstanding commenters' misgivings concerning the wisdom of the language used in these provisions, this language mirrors the provisions of section 227(a). This statutory provision makes pet ownership a protected aspect of all federally assisted projects for the elderly or handicapped. Based on this statutory language, no revision in the final regulation is believed to be warranted.

Other commenters argued that the wording of proposed §§ 243.10 and 942.10 is improper, because it implies that exceptions to the rights granted in section 227(a) are permissible. Despite the absolute language contained in section 227(a), subsections (b) and (c) of the statute place conditions, or permit project owners and PHAs to place conditions, on tenants' rights to keep pets. For example, subsection (b)

permits the owners to prescribe reasonable house rules to govern the keeping of pets. Similarly, section 227(c) preserves the right of the owner to require the removal of any pet whose conduct or condition is duly determined to constitute a nuisance or a threat to health or safety. In recognition of these permissible conditions, the provisions of the final rule are adopted as proposed.

E. Notice to Tenants

Under proposed §§ 243.15 and 942.15, project owners and PHAs would be required: (1) To serve a notice on tenants stating, among other things, that tenants are permitted to keep pets; and (2) to provide this notice to applicants for tenancy.

Commenters opposed to these provisions argued that this notice is burdensome and redundant. As an example, commenters cited the fact that §§ 243.35 and 942.27(b) require that leases for existing tenants be revised to incorporate material with respect to owning and keeping pets. Since §§ 247.4(d) and 966.3 already provide for tenant notice for lease changes, commenters viewed the notice requirements of §§ 243.15 and 942.15 as duplicative.

Despite the fact that the pet legislation has been effective since November 30, 1983, the commenters indicated that there may be a substantial number of tenants who are unaware of their right to keep pets. This lack of knowledge may have been fostered by the continued existence of "no pet" provisions in existing leases, the fact that an absolute "no pets" policy was practiced for many years, and confusion concerning the effect of section 227 pending the issuance of HUD final regulations. To ensure that tenants and applicants are positively notified of their rights, the notice provisions are retained in the final rule.

The Department does not believe that this notice requirement is overly burdensome, since its content has been limited to that strictly necessary to inform tenants of their rights. Moreover in some cases, the notice can be served or provided in connection with other notices or documents (*See* § 243.22). In addition, the final rule relaxes the procedures for service of notice under Part 243. This revision is discussed below in connection with the house rule development procedure.

Proposed §§ 243.15 and 942.15 have been revised for clarity in the final rule. Both proposed §§ 243.15(a) and 942.15(a) stated that the project owner or PHA shall serve the written notice on tenants "in occupancy at the time of implementation of this part." Since both provisions contemplated service of the notice during the tenant consultation period, service on those in occupancy at implementation—a later date—made little sense. Section 243.15 has been amended to clarify that the notice must be served with the notice of proposed pet rule under §§ 243.22(a) and must be served upon all tenants in occupancy at the time of service. Similarly, § 942.15(a) now states that the PHA must serve the notice during the tenant consultation period (or within 60 days of the effective date of the Part, if the PHA chooses not to promulgate pet rules) upon all tenants who are in occupancy at the time of service.

Section 243.15(b) has been revised to make clear that applicants for tenancy will receive a current copy of final pet rules developed under §§ 243.22, as well as any current proposed rule or proposed amendment to an existing rule.

The final § 942.15 also makes additional substantive changes. Under § 942.15(a) the notice to tenants will state that PHAs will be required to provide tenants copies of any current pet rule developed under § 942.25 (as well as any current proposed rule or proposed amendment to any existing rule), only upon tenants' request. Under § 942.15(b) each prospective tenant will also be advised of this right to request rule copies. This change reflects the greater discretion to be accorded PHAs in implementing section 227, and is designed to enable PHAs to reduce the administrative burdens of complying with the provision.

F. Reasonable Rules Governing the Keeping of Pets

Section 227(b)(2) requires HUD to promulgate regulations that establish guidelines under which owners of federally assisted rental housing projects for the elderly or handicapped may prescribe reasonable rules for the keeping of pets. To ensure that the final guidelines would permit the establishment of adequate house pet rules, the preamble to the proposed rule invited project owners and PHAs that have permitted pets in the past to comment on the proposed guidelines by estimating the incidence of pet ownership and the costs associated with pet presence, and by indicating how the proposed rule could be improved. HUD's final guidelines are found in §§ 243.20 and 942.20.

Proposed §§ 243.20(a) and 942.20(b) provided project owners and PHAs with general guidance concerning the reasonableness of house pet rules. Both sections stated that the house pet rules must be reasonably related to furthering a legitimate interest of the project owner or PHA, such as its interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and in protecting and preserving the physical condition of the project and the owner's financial interest in it.

In addition, proposed § 243.20(a) provided that the house pet rules should be drawn narrowly to achieve the owner's legitimate interests, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners. This provision was not included in proposed § 943.20(b). Upon reconsideration, the Department has concluded that the final rule should require PHAs to consider the burdens of house pet rules on pet owners, as well as their own legitimate interests. This modification will help ensure that PHAs will take tenants' interests into account along with their own and that PHA rules will not impose unreasonable burdens and restrictions on those who own or wish to own pets.

Some commenters suggested that §§ 243.20(a) and 942.20(b) be modified to include definitions for "reasonable rules", "reasonably related to the owner's legitimate interest", "narrowly drawn", and "unnecessary burdens". The terms used in these sections are an attempt to prescribe general limitations on project owner and PHA discretion in prescribing house rules. These limitations anticipate that the reasonableness of any rule will vary with the factual situation in each case and that a rigid definition would unnecessarily restrict a project owner's or PHA's ability to issue rules specifically crafted to the needs of their tenants and their projects.[4] Accordingly, the final rules contain no definitions of these terms.

Commenters suggested that §§ 243.20(a) and 942.20(b) be modified so that the reasonableness of a house pet rule will also be judged by whether it complies with the statutory prohibitions against discrimination. Consideration of section 227's nondiscrimination provisions is

[4] Section 243.20 specifically states, "Since the reasonableness of a rule will frequently depend on the facts and circumstances *in each case*, this part will not define with specificity the limits of the owner's discretion" (emphasis added). Part 942 does not contain this provision, and one commenter urged its deletion from § 243.20. This commenter alleges that the language places undue restrictions on project owners' ability to regulate the keeping of pets by requiring that the rules be reasonable as applied to each individual pet in the project. This language incorporates HUD's determination that the reasonableness of house rules can only be determined by their application to individual cases. The provision will be left unchanged.

necessarily included in any determination of a pet rule's reasonableness. It is unnecessary to include a duplicative provision in §§ 243.20 and 942.20.

The content of the pet rule guidelines are similar under both parts. There are, however, major differences. For example, the Department requires project owners to prescribe certain mandatory rules under Part 243. PHAs under Part 942 are not required to prescribe any specific rules, and are permitted to elect not to promulgate *any* rules. (Under the latter circumstances, the keeping of pets would be subject to the general obligations under the lease and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.)

Commenters suggested that the mandatory rules in Part 243 be made applicable to all projects; that PHAs be required to refer to § 243.20 for guidance for reasonable rules; or that project owners under Part 243 be accorded the same discretion given PHAs under Part 942. These suggestions are not incorporated in the final rules. The rationale for promulgating two rules and for according greater deference to PHAs was discussed earlier in the General Matters Section under item A.

Other commenters urged that the term "mandatory" rules under Part 243 be clarified to ensure that they are interpreted to be "minimum" rules: *i.e.*, the project owner has discretion to impose more rigorous requirements. The proposed rule sufficiently stated HUD's position that project owners may impose more rigorous requirements on pet owners, provided they are reasonable and not specifically prohibited in the regulation.

Many commenters urged that specific rules be made mandatory or discretionary. Based on the broader discretion accorded PHAs, no rules have been made mandatory under Part 942. Some mandatory and discretionary rules under Part 243 have been changed, as discussed below.

1. Inoculation and Licensing

Under proposed Part 243, project owners must require pets to be inoculated in accordance with State and local laws (§ 243.20(b)(1)), and may require pets to be licensed under State and local laws (§ 243.20(c)(5)). Under proposed Part 942, PHAs may require licensing and inoculation (§ 942.20(b)(6)). To the extent licensing and inoculation are discretionary, the proposed rules provided that failure of the house pet rules to contain these requirements does not relieve the pet owner of responsibility for complying with applicable State and local law (§§ 243.20(c)(5) and 942.20(b)(6)).

The proposed rule noted that most State and local laws only address rabies inoculations and invited the public to address whether HUD's guidelines should address other transmittable animal diseases. Additionally, the public was invited to identify jurisdictions without any inoculation requirements and comment concerning the guidance that should be given project owners and PHAs in these areas (49 FR 50565).

Fifty five commenters addressed the inoculation requirement. All favored the inoculation of animals. Some commenters believed that State and local laws will adequately address the health and safety needs of local areas, and saw no need for more stringent inoculation and health care standards. However, most commenters urged HUD to require or allow the project owners and PHAs to impose additional inoculation and health care requirements, applicable either in the absence of, or in addition to, existing State or local law. One commenter would forbid the PHA or project owner from imposing inoculation requirements that violate State law.

The final regulations have been left unchanged. The Department presumes that State and local laws generally address the health and safety needs of a community. There is no compelling rationale for prescribing, on a national level, more stringent inoculation or health care requirements for pets that live in housing for the elderly or handicapped than for other pets found elsewhere in a locality or State. HUD's rules, of course, do not preclude PHAs and project owners from requiring other types of inoculations or other pet health care requirements, provided that such requirements are reasonable under all the circumstances. Based on HUD's conclusion that Parts 243 and 942 do not preempt State and local laws, project owners and PHAs may not impose additional inoculation or health care requirements that violate State or local law.

As noted above, proposed §§ 243.20(c)(5) and 942.20(b)(6) stated that pet owners may be required to license their pets. Commenters suggested that the rules should require the licensing and tagging of animals. While these requirements are helpful for verification of compliance with State and local inoculation laws and identification of animals, the Department does not believe that licensing and tagging should be required as a national standard. The imposition of these requirements, however, remains within the discretion of the project owner or PHA and, in any event, failure of the house pet rules to address these matters does not relieve the pet owner from complying with applicable State and local requirements.

Section 243.20(b)(4) requires pet owners to include in the pet registration and annual update, a certificate stating that the pet has been inoculated as required by State and local law. Several commenters proposed the expansion of this requirement to include a pet health certification. As noted above, HUD is not disposed to regulate these types of health care requirements on a national level. Owners are free, however, to impose additional, reasonable pet health care requirements. Where they do so, § 243.20(b)(4) permits the owner to require the pet owner to submit additional information necessary to verify compliance. Although Part 942 is silent on this issue, nothing would preclude PHAs from using a reasonable pet registration system and requiring tenants to submit similar data under that part.

2. Sanitary Standards

Both proposed rules contained provisions governing the establishment of house pet rules addressing sanitary standards for the disposal of pet wastes. Proposed § 243.20(b)(2) would require project owners to prescribe such rules. Proposed § 942.20(b)(5)(i) would permit PHAs to impose such standards. Both proposed regulations also provided examples of permissible sanitation rules. For example, both rules would permit project owners to designate portions of project premises for exercising pets and the disposal of wastes, and standards for the changing and disposal of litter.

Some commenters would amend the proposed rules to require project owners and PHAs to designate exercise and waste disposal areas, unless special circumstances make this impossible. Others sought guidance concerning how pet areas would be defined. The final rule retains the provisions of the proposed rule. The decision to establish a pet area and the type of facilities to be provided ultimately will depend on such factors as the number and type of pets living in a project and the size and location of possible exercise and waste disposal areas, both on and off the project premises. Since these factors will vary with the project, the Department believes that the final decision to establish the area and the type of facilities to be provided must remain with the project owner or PHA, based on consultation with the tenants.

As noted above, proposed §§ 243.20(b)(2) and 942.20(b)(5)(i) contained specific guidance permitting the prescription of standards for changing and disposing of litter. Proposed Part 243 stated that the pet rules may require the pet owner to change the litter not more than twice a week and to separate waste from litter no more than once a day. Several commenters suggested that this guidance was too explicit, inadequate, or inappropriate for certain types of litter. One commenter requested clarification whether the guidance is a requirement or a recommendation.

The specific guidance for the disposal of litter under § 243.20 was imposed to protect tenants from overly prescriptive house pet rules. While there are different types of litter with varying absorbency or odor control capacities, HUD cannot foresee a situation where it would be reasonable for project owners to impose a stricter standard. This provision has been retained in § 243.20. The proposed rule did not give specific guidance concerning the changing and disposal of litter in § 942.20. That section did, however, contain provisions stating that PHAs may prescribe litter changing and disposal standards. In light of the broader discretion given PHAs and the fact that § 942.20 already contains provisions permitting PHAs to issue rules governing pet waste disposal, this provision is deleted as unnecessary in the final rule.

3. Leashing.

Under proposed § 243.20(b)(3), the house pet rules must require that "all cats and dogs be leashed and under the control of a responsible individual while on the common areas of the project." Proposed § 942.20(b)(5)(ii) would permit the establishment of these rules. Commenters suggested that the regulation require that dogs and cats be leashed or restrained in an appropriate container; that dogs be muzzled; that pets be carried when transported to and from apartments; and that this provision apply whenever the animal is out of the owner's apartment.

Both final regulations have been modified. Section 243.20(b)(3) of this final rule requires the project owner to establish house rules that require that all cats and dogs be appropriately and effectively restrained and under the control of a responsible individual. Section 942.20(b)(5)(ii) permits PHAs to establish such rules. The Department believes that this general language provides projects owners and PHAs adequate discretion with respect to issuing reasonable rules governing pet restraint.

Since restraint provisions apply to dogs and cats "while on the common areas," including shared hallways, elevators, stairwells, parking lots, lawn areas, etc., it is not necessary to revise the regulation (as commenters suggested) to apply "whenever the animal is out of the owner's apartment."

Several commenters suggested that the Department should issue regulations governing the handling and treatment of pets during emergency building evacuations. The treatment of animals during emergencies involves matters of local discretion, and have not been addressed in the final regulation.

4. Registration

Under proposed § 243.20(b)(4), pet owners would be required to register pets with the project owner before the pet is brought onto the project premises. Additionally, the pet owner would be required to update the registration annually. As noted earlier, Part 942 is silent on this issue, thus leaving the imposition of registration requirements to PHA discretion.

Under the proposed § 243.20(b)(4), the project owner would be permitted to refuse to register a pet if the pet is not a common household pet, if the keeping of the pet would violate any applicable house pet rule (e.g., restrictions on number of pets per unit), if the presence of the pet will constitute a serious threat to the health of another resident of the project (as provided in § 243.26(c)), or if the pet owner fails to provide complete pet registration information or fails to update the pet registration annually.

Commenters suggested that the project owner also be permitted to consider: (1) The pet owner's financial, mental, or physical ability to care for the pet; (2) the pet's temperament; and (3) the appropriateness of the pet based upon its therapeutic value and the best interest of the property and existing tenants.

HUD has revised § 243.20(b)(4) to permit project owners to refuse to register pets if the project owner reasonably determines, based upon the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with the house rules and other lease obligations. Project owners should be able to screen prospective tenants with pets (and existing tenants attempting to register new pets) in the same manner that they screen any other prospective (or current) tenant family. This does not permit project owners to conduct intrusive investigations of pet owners' habits and practices. Rather, the emphasis in this screening must be on whether the tenant is able to fulfill his or her obligations as a tenant by adhering to the lease, the house pet rules, and other house rule requirements. In making this determination, the project owner should be primarily interested in the individual's past history as a tenant. That is, if a tenant has fulfilled his or her past obligations as a tenant, the project owner should generally assume that the tenant will continue to be responsible as a pet owner. If a tenant has been unable to fulfill his or her obligations under the tenancy, the project owner has an obligation to question whether the tenant could meet his or her obligations with regard to a pet. The pet's temperament may be considered as a factor when considering the tenant's ability to fulfill its obligation under the lease.

The final rule does not permit screening based on the financial status of the tenant. The Department believes that such a test is wholly inappropriate under the nondiscrimination provisions, and interferes with the tenant's right to set his or her own financial priorities. Moreover, HUD doubts whether it is possible to construct a reasonable financial means test, since people at all income levels set different priorities and make individual choices or sacrifices based on their needs and priorities.

The statute permits pet ownership without regard to the therapeutic value of the pet to the particular tenant. Screening on this basis, therefore, is not permitted under § 243.20(b)(4). Similarly, screening based on the "best interest of the property and existing tenants" is not permitted in the final rule. As long as the pet owner is able to fulfill his or her obligations as a tenant under the lease and the house rules, the consideration of these factors is wholly inappropriate, since it could lead to the arbitrary exclusion of pets from the project.

Consistent with the final rule's deletion of provisions dealing with pets that may cause serious health threats (discussed later), the final rule deletes provisions permitting the project owner to refuse to register pets on these grounds.

As noted above, registration must be completed before the pet is brought onto the project premises. Commenters suggested: (1) That HUD devise a system whereby an existing tenant could be permitted to register his or her intent to secure a pet and, after the pet arrives, complete the registration process; and (2) that the regulations require the project owner to complete the registration process before "move in" of new tenants.

The Department believes that it is appropriate to require pet owners to

register their pets before they are brought onto the project premises. This will eliminate the obvious hardship of having a pet that does not qualify for registration removed from the pet owner's unit. Thus, the final rule is unchanged in this regard.

The Department sees no reason to *require* project owners to complete the registration process before the prospective tenant actually moves in. A project owner must have a reasonable opportunity to determine if he or she will refuse to register a pet under § 243.20(b)(4). Because the registration process begins with the submission of the registration material—an act wholly within the tenant's control—it may not always be possible for the project owner to complete the registration process before move-in.

Three additional minor modifications have been made to § 243.20(b)(4). First, the section has been amended to permit the project owner to require the pet owner to supply the names of one *or more* responsible parties to care for the pet in emergencies. To reduce the administrative burden to the projects, the final rule also permits the project owner to coordinate the annual update of registration with the annual reexamination of tenant income, if applicable. Finally, in response to public comments on the administrative burden of service of notice requirements, the notice of the project owner's refusal to register a pet may be delivered by first class mail *or* by personal service.

5. Pet and Tenant Density Considerations

Both proposed § 243.20(c)(1) and § 942.20(b)(2) allow the project owner or PHA to establish reasonable limitations on the number of common household pets allowed in each dwelling unit. Other than these limitations, the proposed rules would not permit a project owner or PHA to place any quotas on overall pet occupancy. The preamble to the proposed rule specifically solicited comments addressing whether project quotas should be permitted and what factors should be taken into account when determining a building quota (49 FR 50564).

a. *Project pet quotas.* Ninety one commenters supported project quotas. These commenters argued that pet quotas would: (1) Allow the buildings to remain in compliance with State and local laws regarding pet density; (2) preserve the decent, safe, and sanitary condition of the building for all tenants; (3) allow for proper management and maintenance of the building; (4) preserve the rights of tenants who do not own pets regarding unit enjoyment and the right to have access to subsidized housing opportunities free from proximity to pets; and (5) minimize exposure of sensitive tenants to pets. Several commenters urged that special consideration be given to establishing pet quotas for high-rises, based on the inadequacy of the structure properly to house a large pet population. Quotas for group homes for the handicapped were supported, based on their special design and the special needs of the tenants.

Thirty two commenters opposed project quotas. These commenters argued that the setting of quotas discriminates against pet-owning tenants and gives preference to tenants without pets. These commenters argued that the ability to consider "tenant density" in the pet rules does not authorize the establishment of quotas. Rather, the ability to consider tenant density permits project owners to prescribe varying rules according to the nature of their projects, including rules governing where dogs may be exercised, limitations on the number of pets that may be in an elevator at once, limitations on the stairways available to pets, etc. These commenters urged HUD to redraft §§ 243.20(c)(1) and 942(b)(2) to address *tenant* rather than *pet* density.

The final rules generally retain the prohibition against project quotas. Section 227(a) stipulates that owners and managers may not prohibit or prevent tenants from owning common household pets or having such pets living in their dwelling accommodations. Project quotas could operate to deny individual tenants the right to own or keep a pet. It is true that section 227(b)(2) authorizes project owners to establish reasonable rules for the keeping of pets, and specifically lists "tenant density" as a factor to be considered in drawing these rules. The Department does not believe, however, that the living situation in elderly or handicapped projects (including high-rise projects), in which each family lives independently in its own dwelling unit, presents problems of such severity as to outweigh section 227(a)'s clear statement of tenants' rights to have pets. As the commenters pointed out and the proposed rules indicated, project owners have wide latitude to prescribe reasonable house pet rules tailored to the needs and requirements of their projects. Judicious use of this authority should be adequate to accommodate the needs and desires of both pet-owning and non-pet-owning tenants. To reinforce this point, the final rule revises §§ 243.20(c)(1) and 942.20(b)(2) to specify that house pet rules may take into account both tenant and pet density.

Even if project quotas were generally permitted, there may in fact be little need for them in many projects. Commenters indicated that experience in States where pet legislation similar to section 227 has been in effect shows that quotas are not necessary because of the low incidence of pet ownership (less than 10 percent), and the lack of any reported problems with pets in the housing units. As noted above, HUD has determined not to preempt State and local laws regarding tenant and pet density. The final rules so provides.

The final rule, however, does permit project owners and PHAs to impose reasonable limitations on the number of pets permitted in certain group home arrangements where planned programs of continual supportive services or supervision (other than nursing, medical, or psychiatric care) are provided.

Unlike other projects for the elderly or handicapped, these homes do not provide each tenant with a self-contained living unit, but rather provide communal living facilities that may involve the shared occupancy of bedrooms. Based on this close, interdependent environment and the unavoidable problems that would occur if pet ownership were unlimited in such facilities, HUD has concluded that project owners and PHAs managing these types of group homes may limit the right of each tenant to own a pet, by placing reasonable restrictions on the number of pets in the home.

For the purposes of Part 243, a group homes is defined as a small communal living arrangement designed specifically for individuals that are chronically mentally ill, developmentally disabled or physically handicapped and who require a planned program of continual supportive service or supervision (other than continual nursing, medical, or psychiatric care). PHAs, subject to Part 942, do not develop group homes or other housing specifically designated for occupancy by individuals that are incapable of living independently. Occasionally, however, detached houses or apartment units within a project are operated in a manner similar to such homes. In recognition of these residences, a group home is defined for Part 942 as a dwelling or dwelling unit for the exclusive residential use of elderly or handicapped individuals who are not capable of living completely independently and who require a planned program of continual supportive service or supervision (other than continual nursing, medical, or psychiatric care).

Some commenters urged HUD to provide specific guidance on pet quotas. Consistent with the approach taken elsewhere in the rule, the determination of what is a reasonable limitation on the number of pets permitted in each group home is left for the project owner or PHA operating the group home. Given the individual circumstances of each group home, it would be impossible to establish explicit national guidelines that would not be unduly restrictive in some cases and inappropriately lax in others. Consistent with the guidance given project owners concerning dwelling unit limitations, under § 243.20(c)(1), the number of four-legged, warm-blooded pets may be limited to one pet in each group home.

b. *Dwelling unit pet limitations.* As noted above, both proposed §§ 243.20(c)(1) and 942.20(b)(2) allowed reasonable limitations on the number of pets in each dwelling unit. In addition, proposed § 243.20(c)(1) provided that the number of "four-legged, warm-blooded" pets may be limited to one per dwelling unit.

Commenters opposed to the unit limitation argued that it is contrary to the statute. They asserted that while the keeping of pets may be regulated to assure the provision of decent, safe, and sanitary housing for the elderly and handicapped, there is nothing in the law allowing pets to be prohibited. Furthermore, since the plural ("pets") is used throughout the statute, they argued that the intent of the law clearly is *not* to limit pet ownership to one animal. Instead of what they considered to be arbitrary limitations on the number of animals, these commenters suggested that the criteria should be responsible pet ownership and the ability of the tenant to control the pet.

As noted earlier, section 227 does not generally permit project pet quotas because they may unreasonably conflict with tenants' rights to have a pet. While dwelling unit limitations are like project quotas in that they may restrict the overall pet population of a project, unit limitations do not deny any *individual* tenant his or her right to have a pet. Assuming that the unit limitations are reasonable under the circumstances, the Department does not believe that they would violate the statute.

Moreover, HUD does not believe that the use of the term "pets" in the statute was intended to preclude reasonable unit limitations. Nothing in the legislative history of section 227 indicates that Congress intended to grant elderly or handicapped tenants the right to keep any number of every type of pet in the dwelling unit. Since the use of the singular "pet" could have been interpreted to permit project owners or PHAs to limit pet ownership to one pet regardless of the circumstances, HUD believes that the choice of the plural "pets" was merely intended to imply that, under some circumstances, it would not be unreasonable for a tenant to keep more than one pet.

Other than dwelling unit limitations on four-legged, warm-blooded pets, the proposed rules did not provide specific guidance concerning permissible dwelling unit limitations. Several commenters urged that the allowable number of pets be left to the PHA and project owners. Others urged HUD to set specific pet limitations to avoid controversy during the development of individual project rules. Where unit pet limitations were discussed, they were generally aimed at four-legged, warm-blooded pets, and ranged from limits of one to four of these pets. Some commenters suggested that rodents, fish, or birds be exempted from unit limitations. Others suggested that aquaria be banned entirely.

Apart from the guidance given to project owners concerning permissible limitations on the number of four-legged, warm-blooded pets per dwelling unit, the final rule leaves the allowable number of pets in the units to management discretion. The project managers are most familiar with the environmental capabilities of their particular projects, and are in the best position to determine what is allowable in a given instance.

6. Pet Size, Weight, and Type Limitations

Both §§ 243.20(c)(2) and 942.20(b)(3) permit reasonable limitations on pet size, weight, and type. A number of commenters suggested that these limitations are contrary to section 227. While section 227(a) forbids owners from prohibiting or preventing tenants from keeping common household pets, section 227(b)(2) expressly permits project owners to establish reasonable rules that consider such factors as "pet size" and "type of pet". Based on these provisions, HUD has concluded that reasonable limitations on pet size, weight, and type are acceptable under the statute.

Notwithstanding the statutory basis for these limitations, some commenters argued that these restrictions should be prohibited because they may eliminate pets that are temperamentally best suited for living with the elderly or handicapped (e.g., large dogs); represent an inappropriate approach to the real issue (*i.e.*, tenants' ability to control their pets); and may be administratively burdensome to enforce.

In light of the express statutory authority to impose these limits, HUD is unable to conclude that pet size, weight, and type limitations are arbitrary under all circumstances. Like all house pet rules, these limitations must be reasonably related to the PHA's or project owner's legitimate interest, must be narrowly drawn to protect that interest, and may not impose unnecessary restrictions on pet owners. Based on these reasonableness standards, HUD anticipates that size, weight, and type limitations will be permissible only under a limited number of circumstances.

Because the reasonableness of the limitations on size, weight, and type will vary with the circumstances in each project, HUD will not establish national standards for projects for the elderly or handicapped. HUD will, however, provide guidance in administrative instructions concerning the factual circumstances that might justify the imposition of various size, weight, and type limitations.

Commenters to the proposed rule suggested specific size and weight limitations, some stated in pounds and inches and others stated in more subjective measurements (*i.e.*, "lap sized" or "small enough to be carried"). Project owners and PHAs that attempt to issue size or weight limitations should state the limits in quantifiable terms.

7. Financial Obligations of Pet Ownership

Commenters argued that the presence of pets in covered projects would increase project costs and administrative burdens on project management. Commenters predicted additional expenses as the result of (1) damage to pet owners' units; (2) damage to and maintenance of common areas; (3) increased fumigation and pest control costs; (4) pet boarding costs under § 243.45; (5) increased administrative costs of formulating pet rules, registering pets, monitoring pets, responding to pet complaints, changing leases and forms, complying with reporting requirements, and collecting pet charges; (6) costs associated with establishing pet and no-pet areas, maintaining pet and no-pet waiting lists, and moving tenants under proposed § 243.26; and (7) costs associated with establishing pet waste disposal facilities.

The proposed rules permitted project owners and PHAs to impose a pet deposit to compensate for costs associated with the presence of pets in the project (§§ 243.20(c)(3) and

942.20(b)(4)).[5] Section 243.20(c)(3) also permitted project owners to assess a separate pet waste removal charge against pet owners that fail to remove pet wastes in accordance with the house pet rules. Commenters proposed additional forms of project owner and PHA compensation. A discussion of these issues, and HUD's decisions with respect to the final rules, follow.

a. *Pet deposits.* One hundred seventy commenters addressed pet deposits. Of these, 88% either supported a pet deposit or assumed in their comments that a pet deposit would be imposed. The remainder opposed pet deposits, on grounds that (1) imposition of a deposit may prohibit or prevent pet ownership by lower income tenants; (2) there is no evidence to suggest that pets will increase the amount of damage done to an apartment; or (3) a pet deposit is redundant, and would accomplish no more than the general security deposit already required.

The Department has concluded that there is adequate basis for determining that the presence of pets may cause damage to the project premises, and may increase other project expenses that may not be adequately compensated for through general security deposits. The final rules, therefore, retain the provisions of the proposed rules permitting the imposition of a pet deposit. At the same time, the Department recognizes that the amount and other features of deposits can effectively deprive lower income tenants of their right under section 227 to own or keep pets in their units. Accordingly, the final rules contain a number of provisions designed to accomplish the objectives of minimizing the added project costs resulting from the presence of pets without imposing unnecessary burdens on lower income tenants who wish to own or keep pets.

The pet rules impose limitations on the use of the pet deposit. Under the final rules, the pet deposit may only be used to pay "reasonable expenses directly attributable to the presence of the pet in the project." The proposed rules would have permitted pet deposits that compensate PHAs and project owners "for costs associated with the presence of pets" in the project. The language used in the final rule makes it clear that a pet deposit may be used only if the tenant's pet causes the expense, and may not be used for expenses generally caused by the presence of pets in the project. In addition, the expenses incurred would explicitly be required to be reasonable. The Department believes that this approach strikes an appropriate balance between the interests of pet owners and PHAs and project owners. The final rules also provide an illustrative listing of the expenses that may be included under this provision: the cost of repairs and replacements to, and fumigation of, the tenant's dwelling unit, and the cost of animal care facilities under § 243.45.

Under Part 243, HUD will permit project owners to collect a pet deposit only from tenants owning or keeping cats and dogs. HUD believes that the other common household pets listed or described under § 243.3(a) pose little danger of causing significant damage to the project premises. To the extent that damage occurs, the existing general security deposit should be adequate to protect the project owner. Cats and dogs, on the other hand, are generally larger animals that present more significant waste disposal and sanitation problems. Since these animals are generally not restrained or contained while in the dwelling unit, they also present a greater potential for damage to the dwelling unit. Based on these factors, HUD believes that pet deposits are clearly appropriate for these animals.

Because PHAs are permitted to admit a broader range of animals under the Part 942 definition of common household pet than the pets permitted under Part 243, it is possible that other pets capable of causing significant damage to the units may be admitted. In light of this possibility and the greater deference accorded PHAs under the 1937 Act, Part 942 does not specifically restrict PHAs' ability to impose a pet deposit to cats and dogs. It should be noted, however, that any pet deposits assessed must be reasonable in all the circumstances.

Both rules require that the unused portion of the pet deposit must be refundable to the pet owner within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet in the dwelling unit. The Department has concluded that a nonrefundable or partially nonrefundable pet deposit may overcompensate the PHA or project owner for the costs attributable to the presence of pets in the project. Additionally, a nonrefundable pet deposit may constitute impermissible additional rent under certain HUD programs. (*See* section 3(a) of the 1937 Act).

Other than the general provisions governing the reasonableness of house rules, the proposed guidelines placed no monetary limit on the amount of the pet deposit. (Deposits under Part 243, however, were subject to HUD review of the cost justification of the deposit.) In the preamble to the proposed rule, HUD indicated that it was considering such limitations, and requested public comment on the issue. Commenters were invited to address whether monetary limitations were appropriate and how the limits should be set, how the amount of the deposit should relate to other deposits currently permitted, and what types of projects should or should not be affected. (49 FR 50564–50565).

Several PHAs and project owners urged HUD to leave the amount of the deposit to the discretion of local management. They argued that a national standard would be inadequate because it could not take into account the wide variety of physical structures and management practices in rental housing.

Others argued that HUD should limit the amount of the pet deposit. Without a limit, they feared that the deposit could negate section 227 by making it too difficult for tenants to own pets. Commenters also noted that HUD-imposed limits would prevent tenant lawsuits over the amount of the deposit and would prevent the project owner from setting a low deposit, merely to avoid a lawsuit.

Where specific national limitations were suggested (or where project owners and PHAs explained how they would compute their deposits), the limitations generally fell within the following categories:

—Project owners and PHAs argued that the pet deposit should be set at an amount that will ensure compensation for additional project expenses related to the presence of pets. The proposed amounts for deposits varied widely, based on the commenters' method of computation and whether the commenter advocated the recovery of all or a portion of project costs through deposits. Deposits proposed were as high as $2,000, although deposits in the $400 to $500 range were common.

—Other commenters argued that a deposit based on the project owner's potential exposure to harm would prohibit pet ownership by making it too expensive to own a pet. These commenters urged that a national limit be based on the tenant's ability to pay. Generally, such deposits reflected the tenant's share of monthly rent or a percentage of the tenant's monthly income, and were commonly subject to set dollar minimums or maximums of

[5] While the proposed rules referred to "pet security deposits", this final rule and preamble will refer to "pet deposits", to eliminate any confusion between the general security deposit required under all leases and the pet deposit required here.

$50 to $100. Several commenters argued that a deposit based upon a tenant's ability to pay would not adequately compensate the project owner, discriminate against lower income tenants since they would be required to pay more than very low income tenants and encourage pet ownership by those tenants who could not afford pets.

—Other suggested limitations were based on amounts equal to (1) one month's contract rent; (2) the general security deposit (or a percentage of the general security deposit); or (3) comparable pet deposits imposed in other projects.

Based on the greater deference accorded PHAs under the 1937 Act, the final Part 942 prescribes no fixed limitation on the amount of the pet deposit that may be charged. The rule provides that "The maximum amount of the pet deposit that may be charged by the PHA on a per unit basis shall not exceed the higher of the Total Tenant Payment (as defined in 24 CFR 913.102) or such reasonable fixed amount as may be required by the PHA." [6]

The Part 243 final rule takes a more prescriptive approach. Under the final rule, the maximum amount of the pet deposit that may be charged by the project owner, on a per unit basis, is dependent on several circumstances. For tenants (1) who are receiving a rental subsidy under the Rent Supplement, section 236 Rental Assistance Payments, Part 885 (Loans for the Elderly or Handicapped), or Section 8 programs, (2) who are living in lower income units developed under the Housing Development Grant program, or (3) who are living in projects subsidized under the section 236 Interest Reduction Payments, section 202 Elderly or Handicapped, or section 221(d)(3) (BMIR) programs, the pet deposit cannot exceed an amount that HUD will establish from time to time in a **Federal Register** Notice. In fixing the amount of the pet deposit, HUD will consider factors such as the projected expenses directly attributable to the presence of pets in the project, the ability of the project owners to offset such expenses by the use of other security deposits or HUD reimbursements, and the lower income status of tenants of projects for the elderly or handicapped.

The use of the **Federal Register** publication will permit the expeditious revision of pet deposit limitations without resorting to lengthy rule amendment procedures. Elsewhere in today's edition of the **Federal Register**, the Department is publishing a Notice of Pet Deposit Limitation, setting the maximum pet deposit at $300. As explained in greater detail in this Notice, this amount should compensate project owners for potential pet-related damages to their projects without being so high as to prevent tenants from owning or keeping pets. To ensure that the permissible deposit will continue to be adequate, the final rule permits owners of these projects to require tenants to pay additional sums to reflect periodic HUD increases to the pet deposit limitations.

For tenants of other projects under Part 243 (generally tenants of projects receiving assistance only in the form of HUD mortgage insurance, tenants of projects assisted under 24 CFR Part 511 (Rental Rehabilitation Grant program) and tenants who do not occupy lower income units in projects under the Housing Development Grant program), the final rule permits project owners to collect up to one month's rent at the time the pet is brought to reside on the premises. Since the monthly rent will vary with the amenities available in the unit, it is believed that this limitation adequately reflects the pet's ability to cause damage to the unit, as well as market rate tenants' abilities to pay a full month's rent. Any pet deposit that is within the amount set by HUD for tenants of the subsidy programs and within the one month's rent limitation for all other tenants will be deemed to be a reasonable amount for purposes of Part 243.

In recognition of the fact that a pet deposit may be difficult for many tenants of projects for the elderly or handicapped to pay in a lump sum, the final rules contain provisions for the gradual accumulation of the deposit. For most projects, this provision is left to the discretion of the project owner or PHA. However, because tenants whose rents are subsidized under the Rent Supplement, section 236 Rental Assistance Payments, Part 885 (Loans for the Elderly or Handicapped) or section 8 programs or who are occupying lower income units under the Housing Development Grant Program, are more likely to be lower income tenants who may find it difficult to pay the entire deposit in a lump sum, the final rule requires project owners to permit these tenants to pay the pet deposit incrementally. Under the final rule, a tenant may be charged up to $50 when the pet is brought onto the project premises, and up to $10 per month thereafter until the entire deposit is accumulated.

In light of the limitations on the amounts of the deposit, provisions in proposed § 243.20(c)(4), stating that fees and deposits are subject to prior HUD approval, have been eliminated. The Department believes that the pet deposit limitations imposed in the final rules should be sufficient to protect the interest and concerns of both project and pet owners.

A number of commenters proposed that the final rules explicitly address a number of features dealing with the administration of the pet deposits such as interest on deposits, replenishment of deposits, etc. Except as provided above, the final rule leaves the administration of the pet deposit to the discretion of the PHA or project owner, subject to the provisions of State and local law. Additionally, to the extent that house pet rules prescribed under HUD's final rules governing pet deposits conflict with any State or local law or regulation, the final rule provides that the State or local law or regulation shall apply.

b. *Noncompliance charges.* In addition to a pet deposit, proposed § 243.20(c)(3) permitted project owners to impose a pet waste removal charge on pet owners that fail properly to remove pet waste. This charge would be subject to HUD approval, and would be approved only if the owner provided a sufficient cost justification.

The final rule retains this provision with one modification. Since the collection of funds from the pet removal charge should be minimal, we do not believe that it is necessary for project owners to prepare separate cost justifications for each project. Accordingly, instead of the cost justification approach, the final rule permits project owners to establish a pet waste removal charge of up to five dollars ($5) per occurrence. Any pet waste removal charge that is within this limitation will be deemed to be a reasonable amount for the purposes of Part 243. This should be sufficient to cover project owner expenses in removing the waste and to encourage compliance with house pet waste removal rules.

Commenters suggested that the regulations permit the imposition of other charges based on other violations of the house pet rules (e.g., charges for leaving pets unattended). Given the lower income nature of HUD's elderly and handicapped population and the potential for abuse, Part 243 prohibits project owners from imposing additional charges for noncompliance with pet

[6] "Total Tenant Payment" is the monthly amount calculated under the formula for determining tenant rent under section 3(a) of the 1937 Act: *i.e.*, the higher of 30 percent of adjusted income, 10 percent of gross income, or welfare rent.

rules. As some commenters pointed out, tenants will be well aware of the fact that more severe penalties, such as removal of the pet or eviction, will be available to ensure compliance with the house rules.

Part 942 does not address the PHA's ability to impose charges for house pet rule violations. Based on the broader discretion accorded PHAs, charges for violation of PHA pet rules may be treated like charges for violation of other PHA tenancy rules or the PHA lease. (*See* 24 CFR 966.4(b)).

c. *Other sources of PHA and project owner compensation.* The preamble to the proposed rule invited commenters to address whether the pet rule guidelines should permit the imposition of a monthly pet fee. Fifty eight commenters supported the imposition of the monthly pet fee as an equitable allocation of financial responsibility. Twenty two other commenters opposed the pet fee.

In addition to pet deposits, monthly fees, and noncompliance charges, commenters also suggested miscellaneous fees and charges including: (1) The direct payment for damages based on a monthly unit inspection; (2) the purchase of a bond to ensure damage payments; (3) a structured entrance fee; (4) set cleaning charges; and (5) pet registration fees. Some commenters suggested that HUD provide additional compensation through subsidy and other payments to PHAs and project owners.

The Department believes that the pet deposit provisions are adequate to protect project owner and PHA financial interests and that imposition of additional financial obligations on pet owners would unduly burden their right to own and keep pets. Moreover, the final rules reflect the Department's efforts to give project owners and PHAs as much flexibility as possible in administering their pet rules and to reduce project owner and PHA administrative costs. Examples include the deletion of onerous tenant move provisions required to establish pet and no-pet areas under Part 243 and streamlining of the service of notice requirements under that part. The Department believes that management's remaining administrative and maintenance duties are not significant and often (like the registration process in Part 243) can be merged with existing management responsibilities that are performed on a routine basis. Accordingly, the final rules do not permit imposition of any additional HUD subsidy.

d. *Legal liability.* In addition to deposits and fees, 76 commenters addressed pet liability insurance. Of the commenters expressing an opinion, 95 percent would permit project owners and PHAs to require the pet owner to obtain a liability insurance policy in an amount sufficient to cover potential damages or injuries caused by the pet. Commenters claimed that the potential for serious injury will subject projects and sponsors to suit, and will cause dramatic increases in project liability insurance rates. They argued that most elderly and handicapped housing is nonprofit, and could not absorb the additional costs. One commenter feared that project insurance will be impossible to obtain if pets are allowed.

It is the Department's understanding that pet-related liability is commonly included under project policies, and that the admission of pets will not have a significant impact on the rates charged. Moreover, the Department understands that specific pet liability coverage is generally not available apart from more comprehensive personal injury and property damage insurance. In some instances, this coverage can be expensive (e.g., one commenter stated that a $100,000 liability insurance policy is available in Houston for an annual premium of $145). Under such circumstances, the liability insurance requirement may be so costly that it could make it impossible for many tenants to keep pets and, if required by the project rules, may constitute prohibited discrimination on the basis of pet ownership.

Both Parts 243 and 942 of the final rule, therefore, specifically prohibit project owners and PHAs from requiring liability insurance. The Department, however, encourages pet owners to consider obtaining such insurance if they feel it is necessary for their own protection.

In addition to liability insurance, 13 commenters discussed other liability provisions. These included requirements that pet owners agree to be strictly liable for all damages caused by the pet, and agree to indemnify the project owner for all costs of pet-related litigation, including attorneys' fees. Commenters also suggested that HUD reimburse project owners and PHAs for costs of litigation and legal claims arising from pet presence in the project, and urged that HUD provide that project owners may not be named as parties in any legal action.

The project owner and PHA should not be able to avoid liability imposed by State or local law or transfer the cost of defensive litigation to other parties. This policy against transferring the cost of litigation to tenants is recognized throughout the regulations (e.g., §§ 966.6, 883.707, 886.122, and 886.322, and the model lease provisions which prohibit confessions of judgment, exculpatory clauses, waivers of legal proceedings, etc.). Both Parts 243 and 942 contain specific provisions protecting tenants by prohibiting pet rules that would transfer legal liability or require indemnification for the costs of litigation.

8. Standards of Pet Care

Proposed §§ 243.20(c)(4) and 942.20(b)(5)(ii) permitted project owners to prescribe standards of pet care. Commenters addressed the following subjects.

a. *Spaying and neutering.* Proposed § 243.20(c)(4) would permit house rules that require the spaying and neutering of dogs and cats. Part 942 does not address this subject. Of 37 comments on the issue, all supported the spaying and neutering of pets. Some, however, would not support spaying and neutering where the age or condition of the pet would make the operation an unacceptable health risk. Commenters would: (1) Have HUD's final rule require the operation; (2) permit project owners to require the operation; or (3) encourage pet owners voluntarily to have their pets neutered by offering a financial incentive for the procedure.

The final rules leave the decision to require the spaying and neutering of cats and dogs with the project owner or PHA. Like all house rules, however, spaying and neutering requirements will be permitted only where the project owner or PHA can demonstrate that the rule is reasonably related to the legitimate interest of the project owner or PHA and where the imposition of the restriction will not impose unnecessary burdens or restrictions on pet owners or prospective pet owners.

Some commenters suggested that if spaying is required, pet owners should be required to provide proof of the pet operation. Such a requirement is permitted under § 243.20(b)(4), and is not prohibited under Part 942.

b. *Exclusion of pets from common areas.* Both proposed parts would permit project owners and PHAs to exclude pets from specified common areas. Fifteen commenters addressed this provision. Most supported this provision, provided the exclusion does not create undue hardships for the pet owner. In response to this comment, §§ 243.20(c)(4) and 942.20(b)(5)(ii) have been amended to prohibit rules that deny reasonable ingress and egress to the project or building.

One commenter suggested that the language of these sections should be amended to parallel proposed § 243.26(a)(2). Since proposed

§ 243.26(a)(2) addressed the exclusion of pets from units in buildings rather than exclusion from common areas, the adoption of this language in §§ 243.20(c)(4) or 942.20(b)(5)(ii) is clearly inappropriate. (The deletion of proposed § 243.26 is discussed later.)

Other commenters suggested that the final rules permit project owners and PHAs to prohibit the excessive use of common areas by pets. (For example, where a pet owner uses common hallways to exercise the pet or loiters with the pet during normal ingress or egress to the building). Such prohibitions are within the discretion of the PHA or project owner under the guidelines for exclusion of pets from common areas.

c. *Unattended pets.* Under proposed § 243.20(c)(4), project owners would be able to limit the amount of time a pet may be left unattended. Part 942 does not address this subject. Commenters generally supported this proposed provision, provided the limitations are reasonable. One commenter suggested that house rules should be flexible enough to permit pets to be cared for in the unit by others while the tenant is on vacation.

HUD's final rule adopts proposed § 243.20(c)(4) without change. The length of time that a pet may be left unattended (or under the temporary care of another individual) is within the discretion of the project owner. Whether this house rule would be reasonable would depend on the facts and circumstances in each project. *See* §§ 243.20(a) and 942.20(b).

d. *Noise and odor abatement.* Both proposed parts would permit house rules that require the pet owner to control the noise and odor caused by a pet. Twenty two commenters addressed this provision. One project owner would require the muzzling of pets during sleeping hours. Seventeen commenters objected strenuously to the suggestion (in the summary of public comment on the February 28, 1984 Notice that was published at the end of the proposed rule) that project owners may require dogs to be debarked.

HUD's guidelines are not designed to be overly prescriptive and, accordingly, they do not dictate the rules that a project owner or PHA may impose to control noise and odor. However, we can discern no instance in which requiring the surgical removal of an animal's vocal cords would be reasonable, and have amended both final rules to so provide.

e. *Pets temporarily on the premises.* Proposed § 243.20(c)(4) permitted the project owner to exclude pets that are not owned by a tenant Proposed Part 942 contained no equivalent provision. Thirteen commenters opposed this provision. These commenters asserted that this provision conflicts with section 227, since section 227 protects the *ownership* and the *presence* of pets. Three commenters supported the exclusion.

Section 227(a)(1) protects tenants "owning common household pets or having common household pets living in (their) dwelling accommodations." Section 227(a)(2) prohibits discrimination "by reason of the ownership of such pets by, or the presence of such pets in the dwelling accommodations of, such person." It is clear that pet *ownership* is to be protected under both provisions. The disjunctive use of the "living in dwelling accommodations" and "presence" language also makes clear that section 227's protection is not limited to pet ownership situations, as the proposed rule had provided. It is not clear, however, how far section 227's coverage was intended to reach. "Living in dwelling accommodations" connotes a strong measure of permanence; "presence," taken literally and by itself, could extend even to brief and casual pet visits. It is unclear, however, whether when taken in context, "presence" was intended to have such a long reach, or should be construed *pari materia* with the "living in dwelling accommodations" language.

A review of the legislative history indicates that section 227 was primarily intended to protect pet ownership and to foster the beneficial relationship between pet owners and their pets. Thus, the Senate report focused on pet ownership and the substantial physical and mental benefits to be derived from pets. (S. Rep. No. 98–142, 98th Cong. 1st Sess. 40–41 (1983)). Similarly, the floor debates focus on pet ownership and tenants' relationships with their pets (129 Cong. Rec. H5020–21 (Daily ed. July 12, 1983) (statement of Rep. Biaggi)], and 129 Cong. Rec. H10526 (Daily ed. November 18, 1983) (statement of Rep. Biaggi)). Indeed, the author of the legislation stated,

> My amendent seeks to prohibit by statute discrimination against millions of elderly and disabled persons living in federally funded housing who own pets. Put another way, my amendment seeks to establish by statute that basic human right of pet ownership for elderly and disabled persons living in federally funded housing. (129 Cong. Rec. H5020 (Daily ed. July 12, 1983) (statement of Rep. Biaggi).

Rep. Biaggi went on to adddress "the essential relationship which exists between an elderly or disabled person and their respective pet" and the fact that "for many elderly or disabled people in this Nation, a dog or whatever pet can be their only source of companionship—their only protection against criminals—their only link to the outside world" and their "only connection to people of their family who have predeceased them". (129 Cong. Rec. H5020–21 (Daily ed. July 12, 1983) (statement of Rep. Biaggi)).

Based on a reading of the statute and this legislative history, the Department has concluded that section 227 was not designed to protect all pet contact with residents of elderly or handicapped projects, no matter how brief or casual, but rather to safeguard the physical and emotional benefits of the human/animal relationship that can only be realized through interaction of a more permanent nature. Thus, the final rule has been modified to permit project owners and PHAs to exclude from the project all pets not owned by a tenant that are to be kept temporarily on the project premises. The rule defines pets kept "temporarily" as pets that are to be kept in the tenant's unit for a period less than 14 consecutive days and nights. Although the 14-day minimum has not been scientifically developed, the Department believes that it is appropriately responsive to section 227's intent of protecting human/pet relationships that are more than transitory in nature. The Department wishes to emphasize that even though brief pet visits are not covered by section 227's protections, project owners and PHAs are free to establish appropriate rules sanctioning them.

Several commenters asserted that a visiting pet program is an excellent alternative for tenants who are financially or physically unable to care for a resident pet. While not covered by section 227 or required in the regulations, the final rules encourage the use of visiting pet programs sponsored by a humane society or other non-profit organization.

Some commenters suggested that they be permitted to initiate a visiting pet program in lieu of full compliance with section 227. Despite the good intentions of such project owners and PHAs, this compromise is not sanctioned by the provisions of section 227. It should be pointed out, however, that the presence of a visiting pet program may meet tenants' needs and desires for pet companionship, thereby obviating the need for pet ownership.

f. *Flea and pest control.* Neither part contains provisions specifically addressing flea and pest control. Several commenters argued that the pet rules should require periodic proof that the pet owner has taken effective flea and

pest control measures with respect to the pet and its surroundings.

Because the need for such measures will vary from project to project and because of HUD's deference to project owners and PHAs on such matters, the regulations do not specifically require flea and pest control. However, such house rules, if reasonable, may be imposed as a discretionary rule under § 243.20(c)(4) or § 942.20(b)(5)(ii). Requirements for periodic proof of flea and pest control compliance may be required under § 243.20(b)(4) and are not prohibited under Part 942.

g. *Declawing.* Commenters suggested that cats be declawed to prevent damage to carpets, drapes, wooden doors, etc. This suggestion was vigorously opposed by numerous commenters who argued that declawing is inhumane and an unreasonable expense to the pet owner.

The final rules leave the decision to require cat declawing to the discretion of the project owner or PHA. As with all other house pet rules, project owners and PHAs must be able to demonstrate that the requirement is reasonably related to their legitimate interest in the project and that the imposition of the requirement will not impose unreasonable burdens or restrictions on the pet owner.

h. *Other.* Several commenters suggested that HUD require, or specifically permit, project owners or PHAs to establish rules that ensure the health and safety of pets (e.g., rules governing feeding, punishment, or proper pet care).

It is neither necessary nor desirable for HUD, project owners, or PHAs to impose house rules governing the humane treatment of pets. HUD's purpose in issuing the pet regulations, and project owners' and PHAs' goals in promulgating reasonable house rules, are the protection of the project owner or PHA interest in the project and the health and safety of tenants and individuals associated with the project. Language to this effect is retained in § 942.20(b)(5)(ii) and, for purposes of clarity, is extended to § 243.20(c)(4).

9. Pet Owners' Associations

Under proposed § 942.20(b)(6)(iii), the house rules could permit tenants to establish a voluntary pet owners' association. Part 243 has no similar provision. Five commenters suggested that all projects should be required (or permitted) to have animal care boards, and would expand the boards' functions to include the screening of pets, the management of pet deposits and pet fees, and assisting the project owner in situations under proposed § 243.45(b), in which the pet owner is unable to care for his or her pet. Some tenant commenters objected to the referral of pet complaints to such councils.

The establishment of pet tenant councils or pet owners' associations, and the functions to be delegated such councils and associations, are discretionary with the project owner or PHA. HUD has concluded that these associations and councils do not need to be treated specifically in the regulations. Accordingly, § 942.20(b)(6)(iii) has been deleted from the final rule.

G. Procedures for Development of House Pet Rules

HUD proposed detailed notice and comment procedures to govern the promulgation of house pet rules under Part 243, but permitted PHAs under Part 942 to develop their own procedures. Notwithstanding this difference in procedural specificity, both proposed parts contained common requirements for tenant consultation, during the development of rules, and gave the PHA or project owner sole discretion concerning the content of the rules.

Several commenters opposed any requirement for tenant consultation, on grounds of cost, administrative burden, and lack of tenant interest. Section 227(b)(2) specifically provides that HUD's regulations "establish guidelines under which the owner or manager of any federally assisted rental housing for the elderly or handicapped . . . shall consult with tenants of such housing in prescribing [reasonable house rules]." In light of this statutory requirement, the final rules retain the requirement for tenant consultation.

Some commenters would strengthen the tenant consultation provisions by requiring project owners and PHAs to incorporate the tenants' preferences in the house pet rules. Generally, these commenters would permit the exclusion of all pets based on the vote of the majority of tenants. Others objected to any erosion of the project owner's or PHA's discretion over the content of the rules. Several commenters would expand PHA and project owner discretion to permit house rules that exclude all pets.

The responsibility for management of projects in conformity with Federal requirements is vested in the project owner or PHA. To ensure that these responsibilities are properly discharged, the final decision on the content of the house rules must remain with the project owner and PHA. The final rules retain the provisions granting project owners and PHAs control over the content of the house rules.

The nondiscrimination provisions of section 227 do not permit the exclusion of all pets, even if the ban were consistent with the wishes of the owners and the majority of tenants. Consequently, a provision for a majority vote or project owner discretion for exclusion has not been included in the final rules. While some commenters suggested that the regulations should specifically prohibit such majority votes, this prohibition is adequately expressed in the nondiscrimination provisions of §§ 243.10 and 942.10.

1. Part 243 Procedures

As noted above, proposed § 243.22 contained detailed notice and comment procedures consisting of a notice of proposed house rules, a thirty-day tenant comment period (including provisions for owner/tenant meetings), and a notice of final house rules. Forty commenters objected to the specificity of this section, and argued that the rule is administratively burdensome, time consuming, and expensive to implement. As an alternative to the rule, several commenters supported a final rule that would allow private owners and managers the same flexibility in house rule development as PHAs under § 942.25. Other commenters suggested modification to the procedures, including: (1) The application of procedures similar to lease amendment procedures, (2) the addition of more stringent tenant consultation requirements (e.g., required tenant meetings, tenant input before notification of proposed house rules, and consultation with established tenant organizations or pet committees), and (3) other procedural changes (e.g. shortened time periods for tenant consultation, etc.).

With one modification, HUD's final rule incorporates the house pet rule development procedures contained in the proposed rules. As discussed above, HUD has concluded that owners of projects under Part 243 must be provided with more explicit guidance than PHAs subject to Part 942. Accordingly, § 243.22 provides specific procedures for house rule development and tenant consultation, and does not allow the procedural flexibility permitted under Part 942. Further, the Department does not believe that the tenant consultation requirements are overly burdensome, time consuming, or expensive to implement. In our view, they are necessary to give meaningful content to the statute's mandate for tenant consultation in the development of house pet rules.

Some of the proposed modifications to the Part 243 house rule development procedures have not been adopted because they would not ensure adequate tenant participation. For example, the suggestion that project owners use existing lease amendment procedures would provide no opportunity for tenant consultation. (*See* 24 CFR 247.4(d)). Other modifications, while providing greater tenant participation in the house rule development process, have not been incorporated because the Department believes that the procedures for written comments under § 243.22 are adequate to fulfill the statutory tenant consultation requirements, and the additional procedures may be too administratively burdensome, time consuming, and expensive to implement in many projects. We note, however, that project owners may elect to provide these additional procedures in their projects.

In response to comments, proposed § 243.22(f) has been revised in one significant respect. This section provided for the service of the proposed house pet rules (including the notice to tenants under § 243.15) and the final house pet rules, by both personal service *and* mail delivery. As noted by commenters, these service requirements would: (1) Exceed or equal notification requirements for more significant notices (e.g., eviction and rent increases); (2) result in the delivery of unnecessary multiple copies of the proposed and final house rules; and (3) greatly increase house rule development costs [e.g., one commenter estimated that the cost of mailing and serving the proposed and final rules would be $10,000 for 3,500 units]. Commenters suggested that HUD permit the project owner to elect to serve tenants by personal service, mail delivery, or posting.

Under the final rules, project owners may serve notice on tenants of high-rise buildings by mail delivery, personal service, *or* posting. (A high-rise building is a structure that is equipped with an elevator and has a common lobby.) Project owners may serve notice on tenants of non-high-rise buildings by mail delivery *or* personal service. The Department has concluded that posting in non-high-rise buildings may not ensure adequate notice to tenants, since these structures generally have few, if any, common entrances or other similar areas through which all tenants must pass to reach their individual units.

2. Part 942 Procedures

Under proposed § 942.25, PHAs could choose not to promulgate any pet rules. If the PHA chooses to promulgate rules, this section would permit the PHA to develop its own procedures governing tenant consultation, provided that these procedures were designed to give tenants (or, if appropriate, tenant councils) adequate opportunity for review and comment before the rules are issued for effect.

One commenter saw no need for *any* rules governing the promulgation of house pet rules, since the lease and grievance procedures for public housing already contain a very thorough process for tenant notification and comment. Section 966.5 contains specific procedures for the development of house rules. These procedures meet the requirements of § 942.25, and PHAs may follow these requirements if they so desire. Section 942.25, however, permits PHAs to craft alternate procedures specifically designed to address the subject of pets. In addition to written tenant comments, such procedures may call for tenant meetings or advisory consultations with veterinarians, State or local authorities, pet owners' associations, or humane societies. This provision has been retained in the final rule.

Several commenters objected to the feature of the proposed rule that would permit a PHA to refrain from publishing any house pet rules. They argued that the proposal invites PHAs to put pet provisions directly into the lease, thereby circumventing the content requirements under § 942.20 and the tenant consultation requirements under § 942.25. While it is impermissible to avoid tenant consultation procedures by modifying the lease to include pet-specific provisions (24 CFR 966.3), to decrease the possibility that PHAs will attempt to circumvent the pet content requirements with pet-specific provisions, § 942.20(a)(1) has been revised to prohibit PHAs from imposing, by lease modification or otherwise, any provision that is inconsistent with § 942.20.

Commenters also argued that the general obligations under the lease are not specific to pet-related problems, may be used to discriminate against pet owners, and are inadequate to assist a judge or jury in determining culpability in matters regarding pets. The general obligations under the lease may not be used to discriminate against pet ownership, because all PHAs are subject to the nondiscrimination provisions of § 942.10, without regard to whether they choose to promulgate house pet rules. While these general obligations do not specifically address pet-related matters, the leases require tenants: (1) To keep their dwelling units clean and in a safe condition; (2) to dispose of all waste in a sanitary and safe manner; (3) to use all facilities in a reasonable manner; (4) to refrain from damaging the premises; (5) to refrain from disturbing the neighbors' peaceful enjoyment of their accommodations; (6) to conduct themselves in a manner conducive to maintaining the project in a decent, safe, and sanitary manner; and (7) to refrain from activity that impairs the physical or social environment of the project (24 CFR 966.4(f)). PHAs are required, among other things: (1) To maintain the premises and the projects in a decent, safe, and sanitary manner; (2) to make necessary repairs; and (3) to provide waste receptacles (24 CFR 966.4(e)). These general obligations have, in the past, been adequate for dealing with a broad spectrum of landlord/tenant issues. The Department anticipates that they will be sufficient to aid judges and juries in adjudicating pet-related lease violations as well.

3. Review of House Rules

Neither proposed Part 243 nor 942 provided for HUD review of the house pet rules. Seven commenters supported a revision for such purpose. Tenant representatives predicted that certain rules may intimidate elderly residents, and discourage them from owning or keeping a pet. Owner representatives stated, "violation of the rules could result in eviction, and we wish to know in advance if our rules are acceptable to prevent the possibility of a lawsuit." As an alternative to HUD review of all house rules, some commenters suggested that the project owner or PHA be required to inform tenants that they may request a HUD review of any pet rule that they feel is unreasonable or not in keeping with HUD regulations. Another commenter suggested that HUD should have no review responsibilities and that project owners should be permitted to proclaim compliance.

The responsibility for compliance with regulatory requirements governing the day-to-day operations of housing projects lies primarily with the project owner or PHA, not with HUD. In recognition of this fact, HUD does not conduct "front-end" review of house rules promulgated by PHAs and project owners in many significant areas, such as house rules governing a myriad of landlord-tenant issues. The Department does not see the need to deviate from this policy with respect to pet rules.

HUD, of course, is aware of its duty to ensure compliance with the nondiscrimination provisions of the statute under section 227(b)(1). Rather than automatic review, however, HUD

believes that its role under the statute should be one of monitoring project owner and PHA compliance. To fulfill this responsibility, HUD will scrutinize the house pet rules during the course of the occupancy audit for projects under the United States Housing Act of 1937 (except sections 8 and 17) and the management review of other projects. As a part of this review, HUD intends to consider such matters as: (1) Whether PHAs and project owners have complied with applicable regulations governing tenant consultation and promulgation of house rules; (2) whether the house rules are reasonable and consistent with the regulations; and (3) whether PHAs and project owners are, in fact, complying with their own pet rules and the regulations.

H. Pet Rule Violation Procedures

1. Part 243 Procedures

Proposed § 243.24 established procedures to govern the project owner's investigation and disposition of pet rule violations, including notice of a pet rule violation, a pet rule violation meeting, and notice for pet removal. While four commenters supported the proposed procedures, 23 opposed or supported revision of this provision. These commenters complained that: (1) This section is excessive, onerous, and time-consuming; (2) there is no reason to treat a violation of pet rules differently from any other violation of the lease; and (3) such regulations are contrary to HUD's ongoing efforts to streamline administrative procedures. The commenters proposed that violation procedures be deleted entirely, or proposed that alternate procedures be imposed in the final rule.

The purposes of the pet rule violation procedures are: (1) To encourage project owners and pet owners to resolve allegations of pet rule violations without excessive delay and without resorting to judicial proceedings and (2) where resolution is impossible and the pet violation is a sufficient basis for eviction, to ensure that the project owner has developed a complete administrative record demonstrating that a sufficient basis for eviction exists. While other procedures have been suggested, HUD believes that the proposed violation procedures, as modified below, adequately serve these two goals, and their substance has been retained in the final rule.

As noted earlier, HUD has concluded that the service of notice requirements set forth in the proposed rule are excessive. The service requirements for § 243.24 notices have been revised to permit service by mail delivery *or* personal service. Since posting of notices is inappropriate for procedures that involve an individual tenant, however, this method of service is not permitted under the pet rule violation procedures.

a. *Pet violation notice.* Proposed § 243.24(a) required the owner to serve a notice of pet rule violation including: (1) A summary of facts, (2) a statement requiring the pet owner to correct the violation (including removal of the pet, if appropriate) or to request a meeting within 10 days, and (3) a statement indicating that failure to act within the 10 days or to appear at a scheduled meeting may result in pet removal or termination of tenancy procedures.

Commenters urged that the pet violation procedures be revised to prevent unfair complaints and tenant intimidation. These commenters urged that the notice provisions be amended: (1) To require project owners to inform pet owners of their right to have a third person of their choice present at the meeting and (2) to provide the right to a hearing on complaints without first suggesting the removal of the pet.

Because the face-to-face meeting with project management is a potentially intimidating confrontation, the final rule requires the pet violation notice to state that the tenant has the right to have a third party of his or her choice at the pet rule violation meeting. We have not, however, amended the final rule to prevent owners from suggesting in the notice that the tenant remove the pet. Under the proposed rule, the notice of pet violation must clearly state that pet owners may pursue two courses: *i.e.*, take steps to correct the pet violation or discuss an alleged violation with the project owner. It is important that the notice of pet rule violation contain each of these elements to ensure that the pet owner is aware of all of his or her options from the outset and that the disposition of the alleged violation can proceed on a reasonably expeditious basis. The Department does not find this aspect of the notice to be intimidating, particularly in light of its reference to a meeting with the project owner (accompanied by a third party of the tenant's choice) before formal procedures can begin.

One commenter suggested that the time period to request a meeting or correct a violation be shortened to 24 or 48 hours. The pet owner must be given an adequate opportunity to correct an alleged pet rule violation or to prepare for the pet meeting. HUD does not believe that one or two days will provide a sufficient opportunity to do so under most circumstances. While commenters argued that this 10-day period may permit a potentially dangerous health or safety hazard to exist for an extended period, we note that pets may be removed under emergency situations in accordance with State or local law and regulations, as provided in § 243.40.

b. *Pet rule violation meeting.* Proposed § 243.24(b)(1) described the procedures for scheduling and conducting the pet rule violation meeting. At the pet owner's request, the project owner would be required to schedule the pet rule violation meeting at a mutually agreeable time within 15 days of the service of the notice of the pet rule violation. To permit the imposition of the most effective time period for working out pet complaints, commenters suggested the elimination of the set 15-day period. The final rule provides that the meeting is to be held within 15 days of the effective date of the service of notice, unless the project owner agrees to a later date.

Commenters also urged the revision of § 243.24 to provide an appeal from the owner's decision at the pet meeting to a local community board or consultant group. Some would require the project owner to advise tenants of this right. While it is always within the discretion of project owners to permit their decisions to be reviewed by another individual or group, the final pet rule does not impose this requirement. Review of a project owner's actions will be adequately provided in the local courts, if the owner decides to enforce the decision by an eviction proceeding, and in HUD's management review.

c. *Notice for pet removal.* Under proposed § 243.24(b)(1), the project owner and pet owner may discuss the alleged pet rule violation, and attempt to correct any problem at the pet rule violation meeting. As a result of the meeting, the project owner may give the pet owner additional time to correct the violation. Proposed § 243.24(b)(1) also permitted the project owner to notify the pet owner to remove the pet within 10 days of the meeting, if the parties were unable to resolve the problem at the meeting. Proposed § 243.24(b)(2) provided that the project owner could serve a notice requiring removal of the pet within 10 days of the effective date of service, if the pet owner failed to correct a pet rule violation within "the time provided under paragraph (b)(1) . . . including any additional time permitted by the owner" at the pet meeting.

The final rule revises proposed §§ 243.24(b) (1) and (2) to clarify their operation. Under the final rule,

provisions of proposed § 243.24(b)(1) that permitted the project owner to inform the pet owner that the pet must be removed within 10 days of the pet rule violation meeting have been consolidated with § 243.24(b)(2). Thus, § 243.24(b)(1) now deals only with the pet rule violation meeting and § 243.24(b)(2) contains all the provisions dealing with the notice for pet removal. Specifically, final § 243.24(b)(2) now provides that if the pet owner and project owner are unable to resolve the pet rule violation at the pet rule violation meeting or if the project owner determines that the pet owner has failed to correct the pet rule violation within any additional time provided for this purpose at the pet rule violation meeting, the project owner may serve a written notice on the pet owner requiring the removal of the pet. The notice must contain: (1) A summary of the facts; (2) a statement that the pet must be removed within 10 days of the effective date of the service of notice or 10 days of the pet rule violation meeting, if the notice is served at the meeting; and (3) a statement indicating that failure to remove the pet may result in initiation of procedures to terminate the pet owner's tenancy.

Commenters noted that the project owner could demand removal for any violation, and suggested that the final rule be revised to provide a standard for the severity of the offense. The regulation has not been amended to provide such standards. The notices of pet rule violation and pet removal will clearly inform the pet owner that they can be enforced only through State or local eviction proceedings, and that State or local law will ultimately govern the adequacy and validity of the project owner's demand for pet removal.

Another commenter objected to the provisions allowing the pet owner 10 days from the pet meeting or from the notice of pet removal to remove the pet before termination of tenancy procedures can begin. This commenter suggested that the 10-day period for pet removal be incorporated into the termination process, so that two different notices are not needed. As noted above, to commence eviction procedures, a project owner must develop an administrative record demonstrating a sufficient basis for eviction. Without the issuance of a notice requiring removal and the failure of the pet owner to comply with the notice, the administrative record will not be complete. These two provisions have not been consolidated.

d. *Initiation of removal or termination procedures.* Proposed § 243.24(c) governed the initiation of procedures for removal of the pet or termination of the pet owner's tenancy.

One commenter proposed that this section be clarified to state that project owners must follow the procedures of § 243.24 before instituting eviction procedures. This commenter also noted that there is no need to require § 243.24 procedures for animals that present a health or safety hazard, since State and local laws provide for the removal of such animals.

Section 243.24(c) has been revised slightly to express the Department's position that eviction proceedings may not be commenced until the project owner has completed the pet rule violation procedures.

The Department agrees that there is no need to require § 243.24 procedures before the initiation of pet removal procedures under State and local law. As noted earlier, the primary purposes of the pet rule violation procedures are to encourage the resolution of complaints and to ensure that the project owner has developed a sufficient administrative record to begin an eviction of a tenant under HUD regulations governing termination of tenancy. These procedures are not intended to delay State and local pet removal remedies under § 243.40, nor are they intended to provide an additional Federal remedy for pet removal. Section 243.24 has been revised to make it clear that a project owner may initiate a removal action at any time, in accordance with State and local law.

Several commenters urged the Department to provide more specificity concerning the grounds for removal of pets and evictions. For example, can a pet be removed, or the tenant evicted, for failure to comply with house pet rules?

As noted above, the removal remedy is purely a State and local matter. Commenters should refer to the law of their local jurisdictions for answers to these inquiries. The grounds for eviction are not stated in § 243.24, but are included in the lease provisions at § 243.30. This section provides that pet rule violations may be grounds for eviction, in accordance with applicable eviction or termination of tenancy regulations and State or local law.

Some commenters would permit eviction for any violation of the house pet rules. To ensure the legal sufficiency of the eviction and to prevent discriminatory behavior forbidden under section 227(a), evictions for pet rule violations must be judged by the same standards as all other lease violations. This proposal has not been included in the final rules.

Finally, one commenter suggests that § 243.24(c) should provide that no tenant may be evicted because of violations before referral (by consent) to an appropriate social agency in order to assure adequate subsequent housing. The ability to proceed with the eviction remedy is dependent upon applicable regulations and State and local law. We see no reason to impose this additional step to the eviction process merely because the lease violation is pet-related.

2. Part 942 Procedures

Proposed Part 942 contained no pet rule violation procedures. Rather, under § 942.27, the lease would incorporate the pet rules, state that the tenant agrees to comply with the rules, and state that violations of the pet rules may be grounds for removal of the pet or for termination of tenancy in accordance with applicable State or local law and applicable regulations, e.g., 24 CFR Part 966 (Lease and Grievance Procedures). Where the PHA chooses not to adopt pet rules, the keeping of pets would be subject to the general obligations imposed on parties to the lease. Violations of these general obligations could be grounds for the removal of a pet or termination of a pet owners tenancy, or both, in accordance with the applicable State and local remedies. Some commenters believed that the violation procedures in § 243.24 are well formulated and fair, and should apply to Part 942 housing. These commenters argued that the failure to impose pet rule violation procedures on PHAs would result in inequitable exercises of discretion by the PHAs.

The final Part 942 provides no additional pet rule violation procedure, because of the broader discretion given PHAs under the 1937 Act. It should be noted in this regard that the Lease and Grievance Procedures found at 24 CFR Part 966 currently afford the tenant an opportunity to dispute a PHA action or failure to act.

I. Special Rules Governing Designated Areas and Tenant Moves

Both proposed parts would permit project owners and PHAs to establish and maintain areas in the projects as pet or no-pet areas. There are, however, differences between the two parts.

1. Part 243 Procedures

Based on a perceived need to protect tenants from serious allergic reactions to pets, proposed Part 243 would have *required* project owners to designate

buildings, sections of buildings, or floors of buildings as areas for occupancy by tenants for whom the presence of a pet would constitute a serious health threat, and to direct such tenant moves as may be necessary to establish and maintain such areas. The proposed rule also contained rules governing tenant and project owner rights and responsibilities when, despite reasonable efforts, the presence of a pet in the project would seriously threaten the health of an individual. Under the proposed rule, a serious threat to health was defined as a strong allergic reaction that is brought on by the presence of pets and is not reasonably avoidable. Three hundred six commenters opposed the special rules, or opposed one or more of the provisions of the special rules. These commenters argued: (1) The rule is too complex to administer; (2) the rule is an overreaction to an insignificant health threat to tenants; (3) it is impossible to establish a no-pet area that is completely safe; (4) the rule will increase project expenses associated with tenant moves and the administration of the rules; and (5) the rule will cause needless suffering by tenants who are moved and isolation of tenants in no-pet areas.

To assist in determining whether the special rules governing designated areas and tenant moves were necessary or desirable, the preamble to the proposed rule requested commenters to address the range of allergic reactions that pets that may cause; suggest ways of mitigating the risk of exposure; identify the situations and reactions that constitute a serious threat to the health of an individual; and estimate the percentage of the population that would experience seriously threatening reactions based on exposure to pets. (49 FR 50565)

Despite the numerous comments submitted to the proposed pet rule, there was no conclusive scientific evidence presented concerning the incidence or severity of pet allergies. The comments generally indicated that among the general population, the incidence of *serious* allergies to pets is minute (generally 1 to 2 percent) and the incidence of mild pet allergy is small (20 to 25 percent). One commenter warned that these percentages may misstate the problem, since a perception of allergy by a nonallergic person can often lead to the same symptoms as those in a truely allergic reaction. There were allegations that the elderly are both less and more allergic than the general population, and that cats constitute a greater problem than dogs.

In response to commenters' suggestions, HUD contacted outside sources, including concerned staff at the National Institute of Allergies and Infectious Diseases at the National Institutes of Health, in an effort to obtain more precise data from the medical community. These contacts indicated that there is no clear body of information concerning the percentage of the population that would experience serious allergic reactions based on exposure to pets and that the only material available are extrapolations from other studies and anecdotal information. Based on the lack of credible medical evidence, anecdotal evidence that the occurrence of serious allergic reaction is very small, and the indications (mentioned earlier) that the incidence of pet ownership in projects should be low, HUD cannot assume that a health concern of sufficient gravity exists to warrant the prescription of a solution on a national level—particularly a solution that generated such strong and widespread opposition among the commenters. Accordingly, with the exceptions stated below, final Part 243 deletes the special rules governing designated areas and tenant moves.

Even in the absence of § 243.26, there is reason to believe that tenants' health should not be jeopardized. The mere presence of a pet in one apartment should have little effect on allergic tenants in other apartments. Commenters indicate that allergens are not transmitted through the air or through air circulation systems, but are generally transmitted through contact with the carpet or direct contact with pets. While commenters suggest that there could be a problem if unfiltered air is circulated between apartments, these air circulation systems are rarely, if ever, found in projects for the elderly or handicapped. Moreover, commenters indicated that the likelihood of there being a high enough concentration of allergens to be dangerous is low, and that disease, germs, and irritants (such as smoke and odors) would be more of a threat under these circumstances. While there may be a problem of residual dander in apartments previously occupied by pets, commenters indicate that residents may be protected by a thorough cleaning of carpets and drapes. In the rare instance that cleaning is not sufficient, project owners retain discretion to take additional actions (such as the replacement of these items or voluntary tenant moves to protect affected tenants).

The main problem appears to be when tenants have direct or indirect contact with pets on common areas. It is likely that brief contact in hallways and elevators will not cause a serious problem, since commenters indicate that there is a need for more continuous exposure to create symptoms. Moreover, project owners retain the ability to mitigate this exposure by taking steps, such as limiting the presence of pets in hallways, elevators, lobbies, and other common areas under § 243.20(c)(4). For example, pets may be banned from elevators (if a reasonable route for egress and ingress is maintained), or may be required to use freight elevators only. In response to another public comment, managers and employees of covered projects who have pet allergies will benefit from the same mitigation measures adopted for the tenants.

In the proposed rule HUD recognized that there may be circumstances, other than allergic reactions, where a pet could pose a serious health threat. The public was invited to submit comments addressing any additional health threats that may be caused by the presence of pets (49 FR 50565). In response to this invitation, commenters urged HUD to address such health threats as: (1) Diseases transmitted from animals to man; (2) illnesses and allergies caused by fleas, ticks, and parasites; (3) bites and other injuries caused by pets; and (4) nervous reactions caused by abnormal fear of animals and low tolerance to noise.

HUD has taken these potential threats into account throughout the regulations. Protection of tenants from these threats forms part of the basis of the regulations involving inoculation and licensing (§§ 243.20(b)(1), 243.20(c)(5) and 942.20(b)(6)); sanitary standards (§§ 243.20(b)(2) and 942.20(b)(5)(i)); pet restraint (§§ 243.20(b)(3) and 942.20(b)(5)(ii)); registration and screening (§ 243.20(b)(4)); density of tenants and pets (§§ 243.20(c)(1) and 942.20(b)(2)); pet size, weight, and type limitations (§§ 243.20(c)(2) and 942.20(b)(3)); standards of pet care (§§ 243.20(c)(4) and 942.20(b)(5)(ii)); pet rule violation procedures (§ 243.24); lease provisions (§ 243.30); provisions dealing with pets that are a nuisance or a threat to health and safety (§§ 243.40 and 942.30).

One commenter suggested that HUD perform a study to determine what types of disease can be transmitted from pets to humans, and whether the dangers of disease are increased in high-density living situations. Information on pet-transmitted diseases appears to be readily available (*see* appendices to comments #357, Pet Rights Organization and #532 National Leased Housing

Association). A HUD-sponsored study would seem to be unnecessary.

The final rule retains one provision of the proposed special rules, with a slight modification. Proposed § 243.26(b)(2) would permit an applicant for tenancy to reject a unit offered by the project owner if a tenant of the project owns or keeps a common household pet in his or her dwelling unit, and the presence of the pet would constitute a serious threat to the health of the applicant (or a resident member of the applicant's family). The rejection would have no effect on the applicant's position on the waiting list or qualification for any tenant selection preference.

The Department is cognizant of the fact that some individuals will not want to live in close proximity to pets. To accommodate such individuals, the final rule (§ 243.26(a)) permits applicants to reject a unit offered by the project owner, if the unit is in close proximity to a dwelling unit in which a pet resides. As in the proposed rule, this refusal will not adversely affect the individual's application for tenancy, including his or her place on the project waiting list or qualification for any tenant selection preference.

Commenters to the proposed rule stated that the right to reject a unit without any effect on the individual application for tenancy should increase vacancy costs. These costs, however, should be minimal, since indications are that the incidence of pet ownership will be small. Moreover, there will generally be other individuals on the project waiting list that will accept the unit. If no waiting list exists, project expenses should not be significantly affected by this provision, since applicants in such circumstances already may reject units without significant consequences.

This provision does not extend to existing residents. Accommodation of tenant preferences under such circumstances would result in substantial expenses to project owners from tenant moves within the building. The final rule (§ 243.26(b)) also makes it clear that Part 243 imposes no duty on project owners to provide alternate dwelling units to existing or prospective tenants based on the proximity of pets to a particular unit or the presence of pets in the project.

A number of commenters proposed alternatives to the special rules. These commenters suggested that HUD: (1) Permit the establishment of pet rather than no-pet areas; (2) prohibit occupancy by individuals for whom the presence of pets constitute a health hazard; and (3) establish pet areas if the majority of the tenants does not want pets, and pet-free areas if the majority does. In light of the discussion above concerning the need to take action segregating pet owning tenants from tenants without pets, we reject these proposals.

2. Part 942 Procedures

Part 942 would permit, but not require, PHAs to designate buildings, floors, or sections of buildings where pets generally may not be permitted. PHAs may also designate areas for residency generally by pet-owning tenants. The PHA would be permitted to direct such tenant moves as may be necessary to establish these areas. If the PHA elects to establish these areas, it would not be permitted to deny or delay admission of an applicant for tenancy on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA would be permitted to adjust the areas or direct such additional tenant moves (or both) as may be necessary to accommodate applicants for tenancy and to meet the changing needs of existing tenants. *See* § 942.20(b)(6)(ii).

Many of the arguments that commenters made against the proposed Part 243 procedures apply to Part 942 as well: e.g., (1) the establishment and maintenance of pet/no-pet areas would be costly and would impose a complex administrative burden on PHAs; (2) there may be no need to establish such areas under many circumstances; (3) there can be no guarantee that a no-pet area will be completely safe from pet-related problems; (4) pet areas may, under some circumstances, constitute a health hazard; and (5) accomplishing tenant moves necessary to establish and maintain the areas would impose needless financial, physical, and psychological hardships on tenants forced to move.

The final rule adopts proposed § 942.20(b)(6)(ii) without change. This approach gives PHAs the broadest discretion to determine whether the establishment of pet or no-pet areas is a benefit to the project and its residents. Since the establishment of these areas is left entirely to the discretion of the PHA, the administrative burdens and financial costs are subject to control by the individual PHA. While it is possible that mandated moves may impose some measure of inconvenience on individual tenants, it is reasonable to assume that the PHA will try to minimize the number of these moves since the PHA will bear the costs associated with them.

One commenter requested that proposed § 942.20(b)(6)(ii) be amended by eliminating provisions that prohibit PHAs from refusing tenancy to pet owners. Instead, the commenter would permit PHAs to establish separate pet and no-pet waiting lists, and would retain provisions allowing the PHA to adjust the size of pet and no-pet areas based on tenant need.

We have not made the requested amendments. Such provisions may provide an opportunity for discrimination against pet owners, and may serve as a "back door" for the establishment of pet quotas. Additionally, such lists would unduly compound the waiting list process, make it difficult to treat applicants in a fair manner, increase rent loss days as a result of time necessary to coordinate the lists, and may be open to manipulation by tenants (e.g., a tenant could acquire or discard an animal depending on whether it would speed admission to the project).

J. Lease Provisions

Proposed §§ 243.30, 243.35 and 942.27 contained lease provisions necessary to implement the pet regulations and transitional regulations governing the incorporation of these provisions into existing leases.

1. Incorporation by Reference

Proposed § 243.30 stated that tenant leases shall incorporate by reference the pet rules promulgated by the project owner. Proposed § 942.27(a)(1) required the incorporation by reference if the PHA chose to promulgate house pet rules. Commenters suggested that it was unnecessary to have a specific provision incorporating house pet rules since all house rules are incorporated by reference in existing leases. Other commenters urged that house pet rules be written out in provisions of the lease.

To avoid potential misunderstandings concerning whether the house pet rules have been incorporated into the lease, the final rules retain provisions for incorporation by reference. This approach is sufficient to ensure that project owners, PHAs, and tenants are aware of, and bound by, the rules. Inclusion in the lease of the text of all pet house rules is both unnecessary and very costly, and is not required in the final rule.

2. Inspections

Several commenters urged that project owners and PHAs be given the right to enter apartments on a regular basis to inspect the physical condition of the unit, to check the health and condition of the pet, and to ensure that pet wastes are being disposed of properly. Other commenters would permit the right to inspect only on notice and after the receipt of a signed complaint concerning the condition of the unit. Commenters

proposed that the right to inspect be included in the lease or be included in a consent form signed by the pet owner at the time of registration of the pet.

The final rule adds § 243.30(b). (Proposed § 243.30(b) has been redesignated § 243.30(c)). This new provision provides that tenant leases must state that the project owner may enter the unit and inspect the premises during reasonable hours, upon reasonable notice to the tenant. To protect pet owners from intrusive behavior by project owners, the right to inspect will arise only if the project owner has received a signed, written complaint alleging (or the project owner has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes a nuisance or a threat to the health or safety of the occupants of the project or of other persons in the community where the project is located. HUD will issue guidance in administrative instructions concerning the amount of advance notice to inspect that will be required under this new provision.

In the Department's view, existing rules regarding inspection of a unit's physical condition adequately protect project owners' interests. The health and condition of a pet is primarily the concern of the pet owner (unless, of course, its health or condition causes it to become a nuisance or a health or safety threat). The final rule is unchanged on these points.

The Part 942 lease provisions have not been amended to expand PHAs' inspection rights. PHA rights to inspect units are adequately provided in the Lease and Grievance Procedures.

3. Review of Lease Amendments

Some commenters urged HUD to review all lease amendments implementing Parts 243 and 942. Others argued that HUD should include in the final rule a standard lease clause acknowledging pet ownership and addressing other matters.

For the reasons stated in the section discussing HUD's review of house pet rules, the Department will not conduct a "front end" review of tenant leases, but will scrutinize the leases during the course of the occupancy audit or the management review. To assist project owners, HUD administrative instructions will contain model lease provisions addressing various aspects of pet ownership under Part 243. Since PHAs are not generally provided with model lease provisions, no standard provisions will be formulated for projects under Part 942.

K. Nuisance and Threat to Health or Safety

In accordance with section 227(c), proposed §§ 243.40 and 942.30 would preserve the rights of project owners, PHAs, and appropriate community authorities to require the removal of any pet that is duly determined to constitute, under State or local law, a nuisance or a threat to the health and safety of the occupants of the project or other members of the community. Proposed §§ 243.45(a) and 942.35 would permit project owners and PHAs to require the emergency removal of a pet that constitutes an immediate threat to health or safety by requesting the pet owner to remove the pet or contacting the appropriate State or local authority (or an entity designated by such an authority). Proposed § 243.45(b) would permit project owners to act to protect the health and safety of the pet in limited circumstances.

1. General

Commenters objected to the nuisance and threat to health and safety provisions on grounds that they would place ultimate responsibility for pets on project owners and PHAs, rather than on the pet owner. The Department disagrees with this contention. Parts 243 and 942 place the primary responsibility for day-to-day pet care squarely on the pet owner. While these final rules place certain responsibilities regarding pets on project owners and PHAs, these responsibilities are generally limited to establishing rules for the keeping of pets and enforcing these rules through eviction or pet removal. Project owners' responsibility for pet care is very limited.

Some commenters noted that PHAs' and project owners' responsibility for enforcement through removal will arise during nonbusiness hours. They wondered how management can be expected to deal with these situations. Since project owners and PHAs are experienced in dealing with other emergency situations (e.g., boiler breakdowns and fires) occurring during nonbusiness hours, HUD sees no reason to address this specific problem in the regulations.

2. Nuisance and Threat to Health and Safety

Sections 243.40(a) and 942.30 permit project owners, PHAs, and community authorities to require the removal of any pet that is duly determined to constitute, under State or local law, a nuisance or a threat to health and safety.

One commenter objected to these sections because they do not permit the removal of pets that are in violation of house pet rules. Other commenters asserted that many localities have no laws providing for the removal of pets and that in these areas, the project owner or PHA would be placed in the position of having to threaten eviction of the resident in order to remove the pet. Some urged that the definition of nuisance should not be left to State or local law, and that management should be able to make a fair decision based upon full documentation of each case.

The proposed rules contemplated a system in which a pet could be removed from a project only through an eviction proceeding against the tenant, except where the pet was found to constitute a nuisance or a threat to health and safety under State or local law. As with local laws governing the licensing and inoculation of pets, the Department assumes that State and local laws adequately address the community's perception of its health and safety needs. The Department does not believe that it is appropriate for these rules to provide an additional Federal remedy for the removal of pets in federally assisted projects for the elderly or handicapped. Thus, consistent with the proposed rules, the final rules provide that eviction is the sole method of enforcement available to a project owner or PHA where: (1) A tenant keeps a pet in violation of the house pet rules and the violation does not constitute a nuisance or a threat to health and safety under State or local law or (2) there is no State or local law providing for pet removal on these grounds.

3. Emergencies

Proposed §§ 243.45(a) and 942.35 addressed the removal of pets whose behavior constitutes an *immediate* threat to health or safety. Since the pet regulation does not provide removal remedies in addition to State and local law and since §§ 243.40 and 942.35 already preserve the rights of project owners, PHAs and community authorities to require the removal of pets that are duly determined to constitute, under State or local law, a threat (including an immediate threat) to health and safety, proposed §§ 243.45(a) and 942.35 have been deleted as redundant.

As a related matter, however, the final rule contains an amendment to the lease provisions at § 243.30(c)(1) to cover emergency situations in which there is no State or local entity authorized to remove a pet that has become an immediate threat to health and safety. This section provides that if there is no State or local authority (or designated

agent of such an authority) authorized under applicable State or local law, to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the project owner may place a provision in tenant leases permitting the project owner to enter the premises (if necessary), remove the pet, and take such action as may be permissible under State and local law. Such actions may include placing the animal in a facility that will provide the pet with care and shelter for a period not to exceed 30 days. (The cost of the facility is payable as provided in § 243.45.) The lease shall permit the project owner to take these actions only if the project owner requests the pet owner to remove the pet from the project premises and the pet owner refuses to do so, or if the project owner is unable to contact the pet owner to make a removal request. The definitions of viciousness, severe illness, and behavior that constitutes a serious threat, and the range of permissible actions, are determined by reference to State and local law. This provision gives the owner clear legal authority under the lease to take appropriate action in case of emergencies where no State or local entity has the power to act.

4. Protection of Pet

Proposed § 243.45 would permit the project owner to act if the health or safety of a pet is threatened by the death or incapacity of the pet owner. Under this section, a project owner may contact the responsible party designated by the pet owner in the pet registration. If that person is unavailable or unwilling to care for the pet, the project owner may contact the appropriate State or local authority (or designated agent) to remove and care for the pet. Because of the possibility that there may be local jurisdictions without an authority (or a designated agent of such an authority) empowered to remove and care for an animal, the proposed rule provided that a project owner may insert a clause in the lease that permits the project owner to enter the premises, remove the pet and arrange for pet care for no less than 30 days.

(a) *General.* Several commenters requested that the protection of pet provisions be inserted into Part 942. Nothing in the proposed rule or other HUD regulations governing PHAs' operations prevents a PHA from including procedures in the house rules and in tenant leases to act for the protection of the pet. It is not necessary, however, to incorporate these provisions in Part 942.

Several commenters suggested miscellaneous amendments to § 243.45, or asked whether project owners could establish alternate procedures for dealing with situations where the health of the pet is threatened. For example, one commenter suggested a modified procedure in which the project owner would contact the pet's veterinarian. The veterinarian would accept responsibility for the pet based on a pre-existing contract signed by the pet owner. Another commenter suggested that project owners be permitted to require pet owners to provide up to three designated parties to care for a pet.

The provisions of § 243.45 are permissive, and a project owner is under no duty to adopt these procedures. There may be other reasonable procedures or modifications to the § 243.45 procedures that may be more appropriate in a given area for dealing with pets that are endangered by the pet owner's death or incapacity. This rule does not prohibit project owners or PHAs from establishing such procedures. Like other provisions of Parts 243 and 942, this section is applicable, and modifications to the § 243.45 procedures are permissible, only to the extent that the procedures are reasonable and do not conflict with State and local laws governing the care of abandoned pets. As noted above, to accommodate project owners that wish to require pet owners to designate more than one responsible individual to care for the pet, the registration provisions of § 243.20(b)(4) have been amended. Similar amendments have been made to final § 243.45.

Proposed § 243.45 would be applicable "if the health and safety of a pet is threatened by the death or incapacity of the pet owner." Some commenters asked whether this provision would permit the project owner to act if the pet is improperly cared for, or shows signs of abuse. HUD believes that such circumstances may fall within the purview of this section. Further guidance on this issue, and other matters associated with § 243.45, will be provided in administrative instructions and HUD handbooks.

b. *Care by responsible party.* Under proposed § 243.45, if the pet's health is threatened, the project owner must first contact the responsible party listed in the pet registration. If that individual is either unwilling or unable to care for the pet, the project owner may contact State or local authorities.

In response to comments, the final rule has been amended to provide that project owners may contact State or local authorities if the responsible party or parties are unwilling or unable to care for the pet *or* if the project owner is unable to contact the responsible party or parties, despite reasonable efforts.

c. *Removal by local authority.* Under § 243.45, if the designated responsible party or parties are unwilling or unable to care for the pet, or the project owner was unable, despite reasonable efforts, to contact the responsible party or parties, the project owner may contact the appropriate State or local authority and request the removal of the pet.

Some commenters requested that HUD require the State or local authority to kennel the pet for up to 30 days, or permit pet owners to designate which State or local authority would be permitted to remove the pet. State or local jurisdictions will generally delegate animal control responsibilities to one agency and will regulate the length of time that a pet can be retained by the agency. HUD and the project owner must defer to the State and local exercise of authority in these areas.

One commenter would eliminate the provisions requiring the project owner to contact State and local agencies to remove the pet, and would permit the project owner to board the pet at an animal care facility, if the responsible party or parties designated in the registration are not available. Such a procedure may be imposed by the project owner, if it is consistent with State and local law governing the care of abandoned pets.

d. *Removal by project owner.* Because of the possibility that there may be local jurisdictions without a State or local authority empowered to remove an abandoned pet, proposed § 243.45 permitted the project owner to enter the premises and remove the pet if the designated responsible individual is unavailable and no appropriate State or local authority exists. Commenters were requested to inform the Department whether there are any jurisdictions without such an authority, and if such jurisdictions exist, how HUD should address the problem. 49 FR 50566. In response to this request, several commenters indicated that areas exist where there are no governmental agencies or private animal welfare facilities, and where there are no animal control facilities that will accommodate animals other than dogs.

To address these problems, some commenters supported the proposed rule's provisions governing removal by the project owner. Project owners objected to the provisions because they did not want to accept the responsibility of dealing with pets in the absence of

the pet owner. Other commenters feared that project owners would abuse the right to enter.

The final rule retains provisions for project owner removal of abandoned pets. It should be emphasized that the provisions of § 243.45 are permissive and that project owners who do not wish to undertake any responsibility under this section may avoid it entirely. The Department does not consider the potential for project owner abuse under this section to be substantial, since the circumstances under which the project owner can take action are narrowly drawn.

One individual asked what the project owner's liability would be for wrongful removal of a pet. Another requested that project owners be relieved of legal liability for wrongful removal under the lease. Liability for wrongful removal of a pet will be determined by State or local law. As noted earlier, the Department does not favor lease provisions relieving the project owner of liability for its actions in the context of this rule making. The final rule has been amended to reflect this position (*See* § 243.30(c) (1) and (2)).

The proposed regulation required the project owner to place the pet in a facility that would provide care and shelter for "no less than thirty days." While some commenters urged the reduction of this time period, HUD continues to believe that 30 days is an adequate time for the pet's owner to resume care of the pet or for other arrangements to be made. Since proposed § 243.45 would require the care for 30 days despite the immediate recovery of a pet owner from incapacity, this section has been revised to require the project owner to provide care and shelter until the pet owner or a representative of the pet owner is able to assume responsibility for the pet, up to a maximum of 30 days.

Some commenters would require the project owner to take certain additional actions during the care period including: (1) Attempting to locate absent pet owners or designated responsible Parties; (2) notifying the pet owner of the pet's removal; and (3) contacting the pet's veterinarian and making other attempts to secure a new home for the pet.

HUD's final rule only addresses the actions to be taken by a project owner to ensure the pet's health and safety in an emergency. It does not *require* the project owner to undertake these actions or additional steps to locate the pet owner or designated parties, or to make attempts to secure a future home for the pet. Project owners are free, however, to assume these additional responsibilities, if they so choose.

Several commenters asked what the project owner will be required to do with the animal at the expiration of the 30-day period. The final rules leave this matter to the discretion of the project owner. The proper action, of course, will vary with the circumstances. For example, if a designated responsible party or the executor of a decedent's estate is found during the 30-day period and accepts responsibility, the pet should be transferred to these individuals. If no responsible party is found, it may be reasonable to place the pet with the local humane society or other facilities that care for abandoned pets. HUD's administrative instructions and handbooks will provide further guidance on this matter.

e. *Costs.* Proposed § 243.45 provided that the cost of the animal care facility may be paid from the pet deposit, and if there is no pet deposit, the cost shall be a project expense. Commenters argued that if there is a pet deposit, it must first be applied to damages to a tenant unit; then if there are any funds left over, it could be applied to the boarding bill. In any case, these commenters protested that the *project* should never be required to bear this expense and that the expense should always rest with the resident. In addition to the ability to recover such costs through the pet deposit, some commenters believed that the project owners should be able to attempt recovery of the expense through relatives or the tenant's estate (upon death), or that the project owners should be permitted to require pet owners to make prior arrangements for the pet. Under such an arrangement, the project owner might require the pet owner to place a donation (from $25 to $50) in escrow with a local humane society to be used if the pet owner dies, or to file a certificate, signed by the pet owner and a veterinarian, in which the tenant assumes all responsibility for the cost of care that is necessary to protect the pet, up to 30 days.

The final rule has been revised to provide clearly that the cost of pet care under § 243.30(c)(1) or § 243.45 is to be borne by the pet owner or the pet owner's estate. Should these resources be inadequate, the pet deposit will also be available to cover these costs. We believe that these resources should be adequate to cover pet care expenses under most circumstances.

As stated above, the project owner may establish alternate procedures for dealing with situations where a pet's health is threatened. We note that the project owners ability to formulate alternative procedures is limited by § 243.20(c)(3)(v). This provision prohibits the imposition of financial obligations on pet owners that are designed to compensate the project owner for the costs associated with the presence of pets, except for the pet deposit and the pet waste removal charge.

L. Miscellaneous Matters

Commenters disagreed with the Department's finding that the rule is not a major rule under Executive Order 12291. They argued that the rule could potentially have an annual impact of § 100 million or more, would cause major increases in cost to government agencies resulting in increased taxes, and would have a negative effect on the economic feasibility of the projects. Other commenters found the Regulatory Flexibility certification to be improper, absent full compensation to project owners and PHAs for the costs of pet presence.

The Department continues to believe that the Regulatory Impact Analysis and the Regulatory Flexibility certification contained in the preamble to the proposed rule properly reflected the impact of this rule making. Moreover, the revisions to the proposed rule made in this proceeding will reduce the economic impacts originally anticipated in the proposed rule (e.g., the elimination of the required pet and no-pet area provisions, deletion of tenant move requirements, the reduced service of notice requirements, and the provisions dealing with the assessment and uses of pet deposits).

Thus, the Department finds that this rule does not constitute a "major rule", as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the rules will require project owners and PHAs to permit common household pets to reside in projects for the elderly or handicapped, it is possible

that the rule may cause some increased costs for owners of these projects, some of which may constitute small entities. However, since the rule also permits recovery of costs through pet deposits and noncompliance charges, it is not believed that the effect will be substantial.

Several commenters believed that the proposed rule passed all development, review, monitoring, and form-generation activities from the Federal government to the project owners and PHAs. They argued that this will increase their paperwork by up to 25 percent in covered projects, and that this increase is inconsistent with the Paperwork Reduction Act. In developing the final rules, the Department has attempted to keep the information collection requirements and other administrative burdens imposed on PHAs and project owners to the minimum necesssary to implement section 227's mandate and to carry out HUD's statutory role under section 227(b)(1) of ensuring compliance with that mandate. As noted throughout this preamble, the Department has taken steps to reduce administrative costs through measures such as relaxing he service of notice requirements in Part 243 and eliminating the tenant move and related requirements in § 243.26. With specific regard to the Paperwork Reduction Act, the Department has consciously chosen to keep information collection requirements subject to the Act to a minimum, most notably by eschewing "front-end" review of material such as the draft and final house pet rules and lease provisions prescribed by project owners and PHAs. Thus, although compliance with section 227 will entail some increased administrative costs, the Department has attempted to reduce them wherever possible.

The information collection requirements contained in this rule have been approved the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB Control Numbers are 2502–0342 (Part 243) and 2577–0078 (Part 942).

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, at the address listed above.

This rule was listed as item 782 in the Department's Semiannual Agenda of Regulations published October 27, 1986 (51 FR 38424, 38436) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program numbers and titles for Part 243 are: 14.103 Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families, 14.135 Mortgage Insurance—Rental Housing for Moderate Income Families, 14.137 Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate, 14.138 Mortgage Insurance—Rental Housing for the Elderly, 14.156 Lower Income Housing Assistance Program, 14.157 Housing for the Elderly and Handicapped, 14.174 Housing Development Grant Program.

There are no Catalog of Federal Domestic Assistance Program numbers and titles for Part 511.

The Catalog of Federal Domestic Assistance Program numbers for Part 842 are: 14.156 Lower Income Housing Assistance Program (section 8), 14.157 Housing for the Elderly and Handicapped.

The Catalog of Federal Domestic Assistance Program number for Part 942 is: 14.146 Low-Income Housing—Assistance Program (Public Housing).

List of Subjects

24 CFR Part 243

Housing, Aged, Handicapped, Pets.

24 CFR Part 511

Rental rehabilitation grants, Administrative practice and procedure, Grant programs—Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 842

Housing, Aged, Handicapped, Pets.

24 CFR Part 942

Public housing, Aged, Handicapped, Pets.

For reasons set out in the preamble, Title 24 of the Code of Federal Regulations is amended as follows:

1. Part 243 is added to read as follows:

PART 243—PET OWNERSHIP IN HOUSING FOR THE ELDERLY OR HANDICAPPED

Subpart A—General

Sec.

243.1 Purpose.
243.2 Exclusion for animals that assist the handicapped.
243.3 Definitions.
243.4 Effective date.

Subpart B—Nondiscrimination Provisions

243.10 Prohibition against discrimination.
243.15 Notice to tenants.

Subpart C—Rules Governing the Keeping of Pets

243.20 Content of pet rules.
243.22 Procedure for development of pet rules.
243.24 Pet rule violation procedures.
243.26 Rejection of units by applicants for tenancy.

Subpart D—Lease Provisions

243.30 Lease provisions.
243.35 Implementation of lease provisions.

Subpart E—Nuisance or Threat to Health or Safety

243.40 Nuisance or threat to health or safety.
243.45 Protection of the pet.

Authority: Sec. 227(b), Housing and Urban-Rural Recovery Act of 1983, 12 U.S.C. 1701n–1; and sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 243.1 Purpose.

(a) This part implements section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n–1) as it pertains to the housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner. 24 CFR Part 942 implements this provision as it pertains to the public housing programs administered by the Assistant Secretary for Public and Indian Housing.

(b) Section 227 provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may as a condition of tenancy or otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units, or restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets. The statute directs HUD to issue regulations necessary to ensure compliance with these provisions and to ensure attaining the goal of providing decent, safe, and sanitary housing for the elderly or handicapped. The statute also requires that these regulations establish guidelines under which owners and managers may prescribe reasonable rules for the keeping of pets by tenants and must consult with tenants in prescribing the rules.

§ 243.2 Exclusion for animals that assist the handicapped.

(a) This part does not apply to animals that are used to assist the handicapped. This exclusion applies to animals that reside in projects for the elderly or handicapped, as well as to animals that visit these projects. A

project owner may require resident animals to qualify for this exclusion. Exclusion must be granted if the tenant or prospective tenant certifies in writing that the tenant or a member of his or her family is handicapped, the animal has been trained to assist persons with that specific handicap, and the animal actually assists the handicapped individual. Project owners may not apply or enforce any pet rules developed under this part against individuals with animals that are used to assist the handicapped.

(b) Nothing in this part:

(1) Limits or impairs the rights of handicapped individuals,

(2) Authorizes project owners to limit or impair the rights of handicapped individuals, or

(3) Affects any authority that project owners may have to regulate animals that assist the handicapped, under Federal, State, or local law.

§ 243.3 Definitions.

(a) *Common household pet* means a domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pet does not include reptiles (except turtles). If this definition conflicts with any applicable State or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the State or local law or regulation shall apply. This definition shall not include animals that are used to assist the handicapped.

(b) *Elderly or handicapped family* means an elderly or handicapped person or family for purposes of the program under which a project for the elderly or handicapped is assisted or has its mortgage insured.

(c) *Project for the elderly or handicapped* means a specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(1) That is assisted under section 202 of the Housing Act of 1959 (Housing for the Elderly or Handicapped);

(2)(i) That was designated for occupancy by elderly or handicapped families when funds for the project were reserved, or when the commitment to insure the mortgage was issued or, if not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and (ii) that is assisted (with or without HUD mortgage insurance) under section 221(d)(3) (BMIR) of the National Housing Act or 24 CFR Part 236;

(3)(i) That was designated for occupancy by elderly or handicapped families when the commitment to insure the mortgage was issued, or if not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and

(ii) That is insured under section 221(d)(3) (Market Rate) or section 221(d)(4) of the National Housing Act, or 24 CFR Part 231 (Housing Mortgage Insurance for the Elderly);

(4)(i) For which preference in tenant selection is given (with HUD or PHA approval) for all units in the project to elderly or handicapped families and (ii) that is assisted under Part 880 (Section 8 New Construction), Part 881 (Section 8 Substantial Rehabilitation), Part 882 (Subparts D and E) (Section 8 Moderate Rehabilitation), Part 883 (Section 8 State Housing Agency programs), Part 884 (Section 8 Rural Set-Aside), or Part 886 (Subparts A and C) (Section 8 Loan Management and Property Disposition).

(5)(i) For which preference in tenant selection is given for all units in the project to elderly or handicapped families and (ii) that is assisted under 24 CFR Part 850 (Housing Development Grant program); or

(6)(i) That is owned by HUD and (ii) for which HUD gives preference in tenant selection for all units in the project to elderly or handicapped families.

This term does not include health and care facilities that have mortgage insurance under the National Housing Act, such as nursing homes, intermediate care facilities, or board and care homes with insurance under 24 CFR Part 232 and hospitals with insurance under 24 CFR Part 242. This term also does not include any of the project owner's other property that does not meet the criteria contained in any one of paragraphs (c) (1) through (6) of this section, even if the property is adjacent to or under joint or common management with such specific property.

(d) *Project owner* means an owner (including HUD, where HUD is the owner) or manager of a project for the elderly or handicapped, or an agent authorized to act for an owner or manager of such housing.

§ 243.4 Effective date.

This part shall be effective on (*insert effective date of final rule*). However, project owners shall have until (*insert date 60 days after effective date*) to implement the provisions of this part.

Subpart B—Nondiscrimination Provisions

§ 243.10 Prohibition against discrimination.

Except as otherwise specifically authorized under this part, no owner of a project for the elderly or handicapped may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in that person's dwelling unit.

§ 243.15 Notice to tenants.

(a) Along with the notice of proposed pet rules described in § 243.22(b), project owners shall serve written notice on all tenants of projects for the elderly or handicapped in occupancy at the time of service of the notice, stating that:

(1) Tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules promulgated under Subpart C of this part;

(2) Animals that are used to assist the handicapped are excluded from the requirements of this part, as provided in § 243.2; and

(3) Tenants may request that their leases be amended in accordance with § 243.30 to permit common household pets.

(b) Project owners shall provide to each applicant for tenancy when he or she is offered a dwelling unit in the project a copy of the current pet rules developed under § 243.22 (as well as any current proposed rule or proposed amendment to an existing rule) and the written notice specified in paragraphs (a)(1) and (2) of this section:

(Approved by the Office of Management and Budget under control number 2502-0342)

Subpart C—Rules Governing the Keeping of Pets

§ 243.20 Content of pet rules.

(a) *General.* The project owner shall prescribe reasonable rules to govern the keeping of common household pets. The pet rules must include the mandatory rules described in paragraph (b) of this section and may include the discretionary provisions described in paragraph (c) of this section. Since the

"reasonableness" of a rule will frequently depend on the facts and circumstances in each case, this part does not define with specificity the limits of the project owners' discretion to promulgate pet rules. As a matter of general guidance, however, the pet rules must be reasonably related to furthering a legitimate interest of the project owner, such as the owner's interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and in protecting and preserving the physical condition of the project and the owner's financial interest in it. In addition, the pet rules should be drawn narrowly to achieve the owner's legitimate interests, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners. Where a project owner has discretion to prescribe pet rules under this section, the owner may vary the rules' content among projects owned by the project owner, provided that the applicable rules are reasonable and do not conflict with any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(b) *Mandatory rules.* The project owner must prescribe the following pet rules:

(1) *Inoculations.* The pet rules shall require pet owners to have their pets inoculated in accordance with State and local laws.

(2) *Sanitary standards.* The pet rules shall prescribe sanitary standards to govern the disposal of pet waste. These rules may designate areas on the project premises for pet exercise and the deposit of pet waste; may forbid pet owners from exercising their pets or permitting their pets to deposit waste on the project premises outside the designated areas; may require pet owners to remove and properly dispose of all removable pet waste; and may require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area in the project is designated for such purposes. In the case of cats and other pets using litter boxes, the pet rules may require the pet owner to change the litter (but not more than twice each week), may require pet owners to separate pet waste from litter (but not more than once each day), and may prescribe methods for the disposal of pet waste and used litter. If there is an applicable State or local law or regulation governing the disposal of pet waste, the pet rules prescribed under this paragraph (b)(2) shall not conflict with such law or regulation. If such a conflict may exist, the State and local law or regulations shall apply.

(3) *Pet Restraint.* The pet rules shall require that all cats and dogs be appropriately and effectively restrained and under the control of a responsible individual while on the common areas of the project. If there is an applicable State or local law or regulation governing pet restraint, the pet rules prescribed under this paragraph (b)(3) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(4) *Registration.* The pet rules shall require pet owners to register their pets with the project owner. The pet owner must register the pet before it is brought onto the project premises, and must update the registration at least annually. The project owner may coordinate the annual update with the annual reexamination of tenant income, if applicable. The registration must include:

(i) A certificate signed by a licensed veterinarian or a State or local authority empowered to inoculate animals (or designated agent of such an authority) stating that the pet has received all inoculations required by applicable State and local law;

(ii) Information sufficient to identify the pet and to demonstrate that it is a common household pet; and

(iii) The name, address, and phone number of one or more responsible parties who will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet. The project owner may require the pet owner to provide additional information necessary to ensure compliance with the discretionary rules prescribed under paragraph (c) of this section, and shall require the pet owner to sign a statement indicating that he or she has read the pet rules and agrees to comply with them. The pet rules shall permit the project owner to refuse to register a pet if the pet is not a common household pet; if the keeping of the pet would violate any applicable house pet rule; if the pet owner fails to provide complete pet registration information or fails annually to update the pet registration; or if the project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament may be considered as a factor in determining the prospective pet owner's ability to comply with the pet rules and other lease obligations. The project owner may not refuse to register a pet based on a determination that the pet owner is financially unable to care for the pet or that the pet is inappropriate, based on the therapeutic value to the pet owner or the interests of the property or existing tenants. The pet rules shall require the project owner to notify the pet owner if the project owner refuses to register a pet. The notice shall state the basis for the project owner's action and shall be served on the pet owner in accordance with the requirements of § 243.22(f)(1)(i) or (ii). The notice of refusal to register a pet may be combined with a notice of pet violation as required in § 243.24. If there is an applicable State or local law or regulation governing the registration of pets, the pet rules prescribed under this paragraph (b)(4) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(c) *Discretionary rules.* The project owner may prescribe other reasonable rules to govern the keeping of common household pets. These rules may include, but are not limited to, consideration of the following factors:

(1) *Density of tenants and pets.* (i) The pet rules established under this section may take into account tenant and pet density. The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. Under these rules, the number of four-legged, warm-blooded pets may be limited to one pet in each dwelling unit. In the case of group homes, the pet rules may place reasonable limitations on the number of common household pets that may be allowed in each home. Under these rules, the number of four-legged, warm-blooded pets may be limited to one pet in each group home. Other than these limitations, the pet rules may not limit the total number of pets allowed in the project. If there is an applicable State or local law or regulation governing the density of tenants or pets (or both) with respect to the ownership or presence of pets in dwelling accommodations, the pet rules prescribed under this paragraph (c)(1) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(ii) As used in this paragraph (c)(1), the term "group home" means a small, communal living arrangement designed specifically for individuals who are chronically mentally ill, developmentally disabled, or physically handicapped who require a planned program of continual supportive services or supervision (other than continual nursing, medical, or psychiatric care).

(2) *Pet size and pet type.* The pet rules may place reasonable limitations on the types of pets and the size and weight of pets allowed in the project. If there is an applicable State or local law or regulation governing the size, weight or type of pets allowed in dwelling accommodations, the pet rules prescribed under this paragraph (c)(2) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(3) *Potential financial obligation of tenants.* (i) The pet rules may require tenants who own or keep cats or dogs in their units to pay a refundable pet deposit. This deposit is in addition to any financial obligation generally imposed on tenants of the project. The project owner may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the project, including (but not limited to) the cost of repairs and replacements to, and fumigation of, the tenant's dwelling unit, and the cost of animal care facilities under § 243.45. The owner shall refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a dog or cat in the dwelling unit.

(ii) The maximum amount of the pet deposit that may be charged by the project owner on a per dwelling unit basis is determined as follows:

(A) For tenants whose rents are subsidized (including tenants of a HUD-owned project, whose rents were subsidized before HUD acquired it) under 24 CFR Part 215 (Rent Supplement Payments), Part 236 (Subpart D—Rental Assistance Payments), Part 880 (Section 8 New Construction), Part 881 (Section 8 Substantial Rehabilitation), Part 882 (Subparts D and E) (Section 8 Moderate Rehabilitation), Part 883 (Section 8 State Housing Agency Program), Part 884 (Section 8 Rural Set-Aside), Part 885 (Loans for Housing for the Elderly or Handicapped), or Part 886 (Subparts A and C) (Section 8 Loan Management and Property Disposition) and for tenants occupying lower income units under 24 CFR Part 850 (Housing Development Grant program), the pet deposit shall not exceed an amount periodically fixed by HUD by publication of a Notice in the **Federal Register.** The pet rules shall provide for gradual accumulation of the deposit by the pet owner through an initial payment not to exceed $50 when the pet is brought onto the premises, and subsequent monthly payments not to exceed $10 per month until the amount of the deposit is reached. The owner may (subject to the HUD-prescribed limit) increase the amount of the pet deposit by amending the house pet rules in accordance with § 243.22(e). The house pet rules shall provide for gradual accumulation of any such increase not to exceed $10 per month for all deposit amounts that are being accumulated.

(B) For tenants whose rents are not subsidized under the programs listed in paragraph (c)(3)(ii)(A) of this section, but who live in a project assisted (including tenants who live in a HUD-owned project that was assisted before HUD acquired it) under 24 CFR Part 236 (Subpart C—Interest Reduction Payments), section 202 of the Housing Act of 1959, or section 221(d)(3)(BMIR) of the National Housing Act, the pet deposit shall not exceed an amount periodically fixed by HUD by publication of a Notice in the **Federal Register.** The house pet rules may provide for gradual accumulation of the deposit by the pet owner. The project owner may (subject to the HUD-prescribed limits) increase the amount of the pet deposit by amending the house pet rules in accordance with § 243.22(e).

(C) For all other tenants of projects for the elderly or handicapped, the pet deposit shall not exceed one month's rent at the time the pet is brought onto the premises. The house pet rules may permit gradual accumulation of the pet deposit by the pet owner.

(iii) In fixing the amount of the pet deposit under paragraphs (c)(3)(ii) (A) and (B), HUD will consider factors such as projected, estimated expenses directly attributable to the presence of pets in the project; the ability of project owners to offset such expenses by use of security deposits or HUD-reimbursable expenses; and the lower income status of tenants of projects for the elderly or handicapped. Any pet deposit that is within the applicable amount set by HUD under paragraphs (c)(3)(ii) (A) and (B) or its applicable limit under paragraph (c)(3)(ii)(C) shall be deemed a reasonable amount for purposes of this part.

(iv) The pet rules may permit the project owner to impose a separate pet waste removal charge of up to five dollars ($5) per occurrence on pet owners that fail to remove pet waste in accordance with the prescribed pet rules. Any pet waste removal charge that is within this five dollar ($5) limitation shall be deemed to be a reasonable amount for the purposes of this part.

(v) The pet deposit and pet waste removal charge described in this paragraph (c)(3) are not part of rent payable by the tenant. Except as provided in this paragraph (c)(3), the project owner may not prescribe pet rules that impose on pet owners additional financial obligations that are designed to compensate the project owner for the costs associated with the presence of pets in the project, including (but not limited to) requiring pet owners to obtain liability or other insurance to cover damage caused by the pet, to agree to be strictly liable for all damages caused by the pet where this liability is not otherwise imposed by State or local law, or to indemnify the project owner for pet-related litigation or attorney's fees.

(vi) If there is an applicable State or local law or regulation governing the financial obligations of tenants for their pets, the pet rules prescribed under this paragraph (c)(3) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(4) *Standards of pet care.* The pet rules may prescribe standards of pet care and handling, but must be limited to those necessary to protect the condition of the tenant's unit and the general condition of the project premises, or to protect the health or safety of present tenants, project employees, and the public. Permitted rules may require pet owners to have their dogs and cats spayed or neutered; may bar pets from specified common areas (such as lobbies, laundry rooms, and social rooms), unless the exclusion will deny a pet reasonable ingress and egress to the project or building; may limit the length of time that a pet may be left unattended in a dwelling unit; and may require the pet owner to control noise and odor caused by a pet. The pet rules may not require pet owners to have any pet's vocal cords removed. If there is an applicable State or local law or regulation governing the care and handling of pets, the pet rules prescribed under this paragraph (c)(4) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(5) *Pet licensing.* The pet rules may require pet owners to license their pets in accordance with applicable State and local laws and regulations. (Failure of the pet rules to contain this requirement does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing requirements.)

(6) *Pets temporarily on the premises.* The pet rules may exclude from the project pets that are not owned by a tenant that are to be kept temporarily on the project premises. For the purposes of this paragraph (c)(6), pets are to be kept

"temporarily" if they are to be kept in the tenant's dwelling accommodations for a period of less than 14 consecutive days and nights. The Department, however, encourages project owners to permit the use of a visiting pet program sponsored by a humane society or other non-profit organization. If there is an applicable State or local law or regulation governing pets temporarily in dwelling accommodations, the pet rules prescribed under this paragraph (c)(6) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(Approved by the Office of Management and Budget under control number 2502-0342)

§ 243.22 Procedure for development of pet rules.

(a) *General.* Project owners shall use the procedures specified in this section to promulgate the pet rules referred to in § 243.20.

(b) *Development and notice of proposed pet rules.* Project owners shall develop proposed rules to govern the owning or keeping of common household pets in projects for the elderly or handicapped. Notice of the proposed pet rules shall be served on each tenant of the project as provided in paragraph (f) of this section. The notice shall include the text of the proposed rules, state that tenants or tenant representatives may submit written comments on the rules, and state that all comments must be submitted to the project owner no later than 30 days from the effective date of the notice of the proposed rules. The notice may also announce the date, time, and place for a meeting to discuss the proposed rules (as provided in paragraph (c) of this section).

(c) *Tenant consultation.* Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. The project owner must consider comments made at these meetings only if they are summarized, reduced to writing, and submitted to the project owner before the end of the comment period.

(d) *Development and notice of final pet rules.* The project owner shall develop the final rules after reviewing tenants' written comments and written summaries of any owner-tenant meetings. The project owner may meet with tenants and tenant representatives to attempt to resolve issues raised by the comments. Subject to this part, the content of the final pet rules, however, is within the sole discretion of the project owner. The project owner shall serve on each tenant of the project, a notice of the final pet rules as provided in paragraph (f) of this section. The notice must include the text of the final pet rules and must specify the effective date of the final pet rules.

(e) *Amendment of pet rules.* The project owner may amend the pet rules at any time by following the procedure for the development of pet rules specified in paragraphs (b) through (d) of this section.

(f) *Service of notice.* (1) The project owner must serve the notice required under this section by: (i) Sending a letter by first class mail, properly stamped and addressed to the tenant at the dwelling unit, with a proper return address; or (ii) Serving a copy of the notice on any adult answering the door at the tenant's leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by attaching the notice to the door; or (iii) for service of notice to tenants of a high-rise building, posting the notice in at least three conspicuous places within the building and maintaining the posted notices intact and in legible form for 30 days. For purposes of this paragraph (f), a high-rise building is a structure that is equipped with an elevator and has a common lobby.

(2) For purposes of computing time periods following service of the notice, service is effective on the day that all notices are delivered or mailed, or in the case of service by posting, on the day that all notices are initially posted.

(Approved by the Office of Management and Budget under control number 2502-0342)

§ 243.24 Pet rule violation procedures.

(a) *Notice of pet rule violation.* If a project owner determines on the basis of objective facts, supported by written statements, that a pet owner has violated a rule governing the owning or keeping of pets; the project owner may serve a written notice of pet rule violation on the pet owner in accordance with § 243.22(f)(1) (i) or (ii). The notice of pet rule violation must:

(1) Contain a brief statement of the factual basis for the determination and the pet rule or rules alleged to be violated;

(2) State that the pet owner has 10 days from the effective date of service of the notice to correct the violation (including, in appropriate circumstances, removal of the pet) or to make a written request for a meeting to discuss the violation;

(3) State that the pet owner is entitled to be accompanied by another person of his or her choice at the meeting; and

(4) State that the pet owner's failure to correct the violation, to request a meeting, or to appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.

(b) (1) *Pet rule violation meeting.* If the pet owner makes a timely request for a meeting to discuss an alleged pet rule violation, the project owner shall establish a mutually agreeable time and place for the meeting but no later than 15 days from the effective date of service of the notice of pet rule violation (unless the project owner agrees to a later date). At the pet rule violation meeting, the pet owner and project owner shall discuss any alleged pet rule violation and attempt to correct it. The project owner may, as a result of the meeting, give the pet owner additional time to correct the violation.

(2) *Notice for pet removal.* If the pet owner and project owner are unable to resolve the pet rule violation at the pet rule violation meeting, or if the project owner determines that the pet owner has failed to correct the pet rule violation within any additional time provided for this purpose under paragraph (b)(1) of this section, the project owner may serve a written notice on the pet owner in accordance with § 243.22(f)(1) (i) or (ii) (or at the meeting, if appropriate), requiring the pet owner to remove the pet. The notice must:

(i) Contain a brief statement of the factual basis for the determination and the pet rule or rules that have been violated;

(ii) State that the pet owner must remove the pet within 10 days of the effective date of service of the notice of pet removal (or the meeting, if notice is served at the meeting); and

(iii) State that failure to remove the pet may result in initiation of procedures to terminate the pet owner's tenancy.

(c) *Initiation of procedures to remove a pet or terminate the pet owner's tenancy.* (1) The project owner may not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation, unless (i) the pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period specified in this section (including any additional time permitted by the owner) and (ii) the pet rule violation is sufficient to begin procedures to terminate the pet owner's

tenancy under the terms of the lease and applicable regulations.

(2) The project owner may initiate procedures to remove a pet under § 243.40 at any time, in accordance with the provisions of applicable State or local law.

(Approved by the Office of Management and Budget under control number 2502-0342)

§ 243.26 Rejection of units by applicants for tenancy.

(a) An applicant for tenancy in a project for the elderly or handicapped may reject a unit offered by a project owner if the unit is in close proximity to a dwelling unit in which an existing tenant of the project owns or keeps a common household pet. An applicant's rejection of a unit under this section shall not adversely affect his or her application for tenancy in the project, including (but not limited to) his or her position on the project waiting list or qualification for any tenant selection preference.

(b) Nothing in this part imposes a duty on project owners to provide alternate dwelling units to existing or prospective tenants because of the proximity of common household pets to a particular unit or the presence of such pets in the project.

Subpart D—Lease Provisions

§ 243.30 Lease provisions.

(a) *Pet provisions.* The leases for all tenants of projects for the elderly or handicapped shall state that tenants are permitted to keep common household pets in their dwelling units (subject to the provisions of this part and the pet rules promulgated under § 243.20); shall incorporate by reference the pet rules promulgated by the project owner; shall provide that the tenant agrees to comply with these rules; and shall state that violation of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both), in accordance with the provisions of this part and applicable regulations and State or local law. These regulations include 24 CFR Part 247 (Evictions From Certain Subsidized and HUD-Owned Projects) and provisions governing the termination of tenancy under the Section 8 Housing Assistance Payments programs (*see* 24 CFR 880.607, 881.607, 882.511, 883.708, 884.216, 886.128, and 886.328).

(b) *Inspections.* In addition to other inspections permitted under the lease, the leases for all tenants of projects for the elderly or handicapped may state that the project owner may, after reasonable notice to the tenant and during reasonable hours, enter and inspect the premises. The lease shall permit entry and inspection only if the project owner has received a signed, written complaint alleging (or the project owner has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

(c) *Emergencies.* (1) If there is no State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the project owner may place a provision in tenant leases permitting the project owner to enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days. The lease shall permit the project owner to enter the premises and remove the pet or take such other permissible action only if the project owner requests the pet owner to remove the pet from the project immediately, and the pet owner refuses to do so, or if the project owner is unable to contact the pet owner to make a removal request. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet. The cost of the animal care facility shall be paid as provided in § 243.45.

(2) The project owner may place a provision in tenant leases permitting the project owner to enter the premises, remove the pet, and place the pet in a facility that will provide care and shelter, in accordance with the provisions of § 243.45. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet.

§ 243.35 Implementation of lease provisions.

The lease for each tenant of a project for the elderly or handicapped who is admitted on or after the date on which the project owner implements this part shall contain the lease provisions described in § 243.30(a) and, if applicable, §§ 243.30 (b) and (c). The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the provisions described in § 243.30(a) and, if applicable, §§ 243.30 (b) and (c):

(a) Upon renewal of the lease and in accordance with any applicable regulation (*see*, for example, 24 CFR 247.4(d)); or

(b) When a tenant registers a common household pet under § 243.20(b)(4).

Subpart E—Nuisance or Threat to Health or Safety

§ 243.40 Nuisance or threat to health or safety.

Nothing in this part prohibits a project owner or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

§ 243.45 Protection of the pet.

If the health or safety of a pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet, the project owner may contact the responsible party or parties listed in the pet registration required under § 243.20(b)(4)(iii). If the responsible party or parties are unwilling or unable to care for the pet, or the project owner, despite reasonable efforts, has been unable to contact the responsible party or parties, the project owner may contact the appropriate State or local authority (or designated agent of such an authority) and request the removal of the pet. If there is no State or local authority (or designated agent of such an authority) authorized to remove a pet under these circumstances and the project owner has placed a provision in the lease agreement (as described in § 243.30(c)(2)), the project owner may enter the pet owner's unit, remove the pet, and place the pet in a facility that will provide care and shelter until the pet owner or a representative of the pet owner is able to assume responsibility for the pet, but not longer than 30 days. The cost of the animal care facility provided under this section shall be borne by the pet owner. If the pet owner (or the pet owner's estate) is unable or unwilling to pay, the cost of the animal care facility may be paid from the pet deposit, if imposed under the pet rules.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

2. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17, United States Housing Act of 1937, 42 U.S.C. 1437o; sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

3. In Part 511, § 511.11 is amended by adding a new paragraph (h) to read as follows:

§ 511.11 Other Federal requirements.

* * * * *

(h) *Pet ownership in housing for the elderly or handicapped.* The provisions of 24 CFR Part 243 apply to any project assisted under this part for which preference in tenant selection is given for all units in the project to elderly or handicapped persons or elderly or handicapped families, as defined in 24 CFR 812.2.

4. Part 842 is added to read as follows:

PART 842—PET OWNERSHIP IN HOUSING FOR THE ELDERLY AND HANDICAPPED

Authority: Sec. 227(b), Housing and Urban-Rural Recovery Act of 1983, 12 U.S.C. 1701n–1; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 842.1 Pet ownership in housing for the elderly or handicapped.

(a) Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n–1) provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may as a condition of tenancy or otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units or restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets. The statute directs HUD to issue regulations necessary to ensure compliance with these provisions and to ensure attaining the goal of providing decent, safe, and sanitary housing for the elderly or handicapped. The statute also requires that these regulations establish guidelines under which owners and managers may prescribe reasonable rules for the keeping of pets by tenants and must consult with tenants in prescribing the rules.

(b) Part 243 of this title implements section 227 as it pertains to the housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner. The provisions of Part 243 apply to projects assisted under the programs contained in this Chapter VIII that meet the definition of project for the elderly or handicapped contained in 24 CFR 243.3(c).

5. Part 942 is added, to read as follows:

PART 942 — PET OWNERSHIP IN PUBLIC HOUSING FOR THE ELDERLY AND HANDICAPPED

Subpart A—General

Sec.
942.1 Purpose.
942.2 Exclusion for animals that assist the handicapped.
942.3 Definitions.
942.4 Effective date.

Subpart B—Nondiscrimination Provisions

942.10 Prohibition against discrimination.
942.15 Notice to tenants.

Subpart C—Rules Governing the Keeping of Pets

942.20 Content of pet rules.
942.25 Consultation with tenants on pet rules.
942.27 Lease provisions.

Subpart D—Nuisance or Threat to Health or Safety

942.30 Nuisance or threat to health or safety.

Authority: Sec. 227(b), Housing and Urban-Rural Recovery Act of 1983, 12 U.S.C. 1701n–1; and sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 942.1 Purpose.

(a) This part implements section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n–1) as it pertains to the public housing programs administered by the Assistant Secretary for Public and Indian Housing. 24 CFR Part 243 implements this provision as it pertains to the programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner.

(b) Section 227 provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may as a condition of tenancy or otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units or restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets. The statute directs HUD to issue regulations necessary to ensure compliance with these provisions and to ensure attaining the goal of providing decent, safe, and sanitary housing for the elderly or handicapped. The statute also requires that these regulations establish guidelines under which owners and managers may prescribe reasonable rules for the keeping of pets by tenants and must consult with tenants in prescribing the rules.

§ 942.2 Exclusion for animals that assist the handicapped.

(a) This part does not apply to animals that are used to assist the handicapped. This exclusion applies to animals that reside in projects for the elderly or handicapped, as well as to animals that visit these projects. PHAs may not apply or enforce any pet rules developed under this part against individuals with animals that are used to assist the handicapped.

(b) Nothing in this part:

(1) Limits or impairs the rights of handicapped individuals,

(2) Authorizes PHAs to limit or impair the rights of handicapped individuals, or

(3) Affects any authority that PHAs may have to regulate animals that assist the handicapped, under Federal, State or local law.

§ 942.3 Definitions.

(a) *Elderly or handicapped family* means an elderly or handicapped person or family, as defined in 24 CFR 912.2.

(b) *Indian Housing Authority* means a public housing agency established:

(1) By exercise of an Indian tribe's powers of self-government, independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians.

(c) *Project for the elderly or handicapped* means any project assisted under the United States Housing Act of 1937 (other than under section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly or handicapped at its inception or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed-use project) to elderly or handicapped families. This term does not include projects assisted under the Mutual Help Homeownership Opportunity program (24 CFR Part 905, Subpart D) or the Low-Rent Housing Homeownership Opportunity program (Turnkey III–24 CFR Part 904).

(d) *Public Housing Agency ("PHA")* means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality) that is authorized to engage in or assist in the development or operation of housing for lower income families. As used in this part, PHA includes an Indian Housing Authority.

§ 942.4 Effective date.

This part shall be effective *[insert effective date of final rule]*. However, the PHA shall have until *[insert date 60*

days after effective date] to implement the provisions of this part.

Subpart B—Nondiscrimination Provisions

§ 942.10 Prohibition against discrimination.

Except as otherwise specifically authorized under this part, no PHA that owns or manages a project for the elderly or handicapped may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in that person's dwelling unit.

§ 942.15 Notice to tenants.

(a) During the tenant consultation process described in § 942.25, PHAs shall serve written notice on all tenants of projects for the elderly or handicapped administered by the PHA who are in occupancy at the time of service, stating that: (1) Tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules (if any) promulgated under Subpart C of this part; (2) animals that are used to assist the handicapped are excluded from the requirements of this part as provided in § 942.2; (3) tenants may, at any time, request a copy of any current pet rule developed under § 942.25 (as well as any current proposed rule or proposed amendment to an existing rule); and (4) where leases prohibit pets, tenants may request that their leases be amended in accordance with § 942.27. If a PHA chooses not to promulgate pet rules, the notice shall be served within 60 days of the effective date of this part, as provided in § 942.4. Notice under this paragraph shall be served according to the normal service of notice procedures used by the PHA.

(b) The PHA shall provide to each applicant for tenancy when he or she is offered a dwelling unit in a project for the elderly or handicapped, the written notice specified in paragraphs (a) (1), (2), and (3) of this section.

(Approved by the Office of Management and Budget under control number 2577–0078)

Subpart C—Rules Governing the Keeping of Pets

§ 942.20 Content of pet rules.

(a) *General.* (1) PHAs may choose not to promulgate rules governing the keeping of common households pets. If they so choose, tenants must be permitted to own and keep pets in their units in accordance with the terms and conditions of their leases, the provisions of this part, and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations. PHAs that choose not to promulgate pet rules, shall not impose, by lease modification or otherwise, any requirement that is inconsistent with the provisions of this section.

(2) PHAs may, if they choose, prescribe reasonable rules to govern the keeping of common household pets, as provided in paragraph (b) of this section. These rules must be reasonably related to furthering a statutory or contractual interest of the PHA, such as its interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and in protecting and preserving the physical condition of the project and its financial interest in it. In addition, the pet rules should be drawn narrowly to achieve the PHA's legitimate interests, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners. PHAs may vary the content of the pet rules among projects administered by the PHA and within individual projects, based on factors such as the size, type, location, and occupancy of the project or its units, provided that the applicable rules are reasonable and do not conflict with any applicable State or local law or regulation governing the owning and keeping of pets in dwelling accommodations.

(b) *Discretionary rules.* Pet rules promulgated by PHAs may include, but are not limited to, consideration of the following factors:

(1) *Common household pet.* The pet rules may contain a reasonable definition of a common household pet. If there is an applicable State or local law or regulation defining the term, the definition described under this paragraph (b)(1) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply. This term does not include animals that are used to assist the handicapped.

(2) *Density of tenants and pets.* (i) The pet rules established under this section may take into account tenant and pet density. The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. In the case of group homes, the pet rules may place reasonable limitations on the number of common household pets that may be allowed in each home. Other than these limitations, the pet rules may not limit the total number of pets allowed in the project. If there is an applicable State or local law or regulation governing the density of tenants or pets (or both), the pet rules prescribed under this paragraph (b)(2) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(ii) As used in paragraph (b)(2), the term "group home for the handicapped" means a dwelling or dwelling unit for the exclusive residential use of elderly or handicapped individuals who are not capable of living completely independently and who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(3) *Pet size and pet type.* The pet rules may place reasonable limitations on the size, weight, and type of common household pets allowed in the project. If there is an applicable State or local law or regulation governing the size, weight, or type of pets allowed in dwelling accommodations, the pet rules prescribed under this paragraph (b)(3) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(4) *Potential financial obligations of tenants.* (i) The pet rules may require tenants who own or keep pets in their units to pay a refundable pet deposit. This deposit is in addition to any other financial obligation generally imposed on tenants of the project. The PHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the project, including (but not limited to) the cost of repairs and replacements to, and fumigation of, the tenant's dwelling unit. The PHA shall refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet in the dwelling unit. The maximum amount of pet deposit that may be charged by the PHA, on a per dwelling unit basis, shall not exceed the higher of the Total Tenant Payment (as defined in 24 CFR 913.102) or such reasonable fixed amount as the PHA may require. The pet rules may permit gradual accumulation of the pet deposit by the pet owner.

Except as provided under this paragraph (b)(4) and 24 CFR 966.4(b), PHAs may not prescribe pet rules that impose additional financial obligations on pet owners that are designed to compensate the PHA for costs associated with the presence of pets in the project, including (but not limited to) requiring pet owners to obtain liability or other insurance to cover damage caused by the pet, to agree to be strictly liable for all damages caused by the pet where this liability is not otherwise imposed by State or local law, or to indemnify the project owner for pet-related litigation and attorney's fees. The pet deposit is not part of the rent payable by the tenant.

(ii) If there is an applicable State or local law or regulation governing financial obligations of tenants for their pets, the pet rules prescribed under this paragraph (b)(4) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(5) *Standards of pet care.* The pet rules may address standards of pet care and handling.

(i) The pet rules may prescribe sanitary standards to govern the disposal of pet waste. For example, the rules may designate areas on the project premises for pet exercise and the deposit of pet waste; may forbid pet owners from exercising their pets or permitting their pets to deposit waste on the project premises outside the designated areas; may require pet owners to remove and properly dispose of all removable pet waste; and may require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area on the premises is designated for such purposes. If there is an applicable State or local law or regulation governing the disposal of pet waste, the pet rules prescribed under this paragraph (b)(5)(i) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(ii) The pet rules may address other aspects of pet care and handling, but must be limited to those necessary to protect the condition of the tenant's unit and the general condition of the project premises, or to protect the health or safety of present tenants, PHA employees, and the public. The pet rules may require that all cats and dogs be appropriately and effectively restrained and under the control of a responsible individual while on the project's common areas. Other permitted pet rules may include requirements for: The exclusion of pets from specified common areas (such as lobbies, laundry rooms and social rooms), unless the exclusion will deny the animal reasonable ingress and egress to the project or building; and control by the pet owner of noise and odor caused by the pet. The pet rules may not require pet owners to have any pet's vocal cords removed. If there is an applicable State or local law or regulation governing the care and handling of pets, the pet rules prescribed under this paragraph (b)(5)(ii) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(6) *Other.* (i) The pet rules may require pet owners to comply with applicable State or local laws or regulations governing the licensing and inoculation of pets. (Failure of the pet rules to contain these requirements does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing and inoculation requirements.)

(ii) The pet rules may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Similarly, the pet rules may designate buildings, floors of buildings, or sections of buildings for residency generally by pet-owning tenants. The PHA may direct such initial tenant moves as may be necessary to establish pet and no-pet areas. The PHA may not refuse to admit (or delay admission of) an applicant for tenancy on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary (or both) to accommodate such applicants for tenancy or to meet the changing needs of existing tenants. If there is an applicable State or local law or regulation governing the establishment and maintenance of pet or no-pet areas, the pet rules prescribed under this paragraph (b)(6)(ii) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

(7) *Pets temporarily on the premises.* The pet rules may exclude from the project pets not owned by a tenant that are to be kept temporarily on the project premises. For the purposes of this paragraph (b)(7), pets are to be kept "temporarily" if they are to be kept in the tenant's dwelling accommodations for a period of less than 14 consecutive days and nights. The Department, however, encourages PHAs to permit the use of a visiting pet program sponsored by a humane society, or other nonprofit organization. If there is an applicable State or local law or regulation governing pets temporarily in dwelling accommodations, the pet rules prescribed under this paragraph (b)(7) shall not conflict with such law or regulation. If such a conflict may exist, the State or local law or regulation shall apply.

§ 942.25 Consultation with tenants on pet rules.

PHAs that choose to promulgate pet rules shall consult with tenants of projects for the elderly or handicapped administered by them with respect to their promulgation and subsequent amendment. PHAs shall develop the specific procedures governing tenant consultation, but these procedures must be designed to give tenants (or, if appropriate, tenant councils) adequate opportunity to review and comment upon the pet rules before they are issued for effect. PHAs are solely responsible for the content of final pet rules, but must give consideration to tenant comments. PHAs shall send to the responsible HUD field office, copies of the final (or amended) pet rules, as well as summaries or copies of all tenant comments received in the course of the tenant consultation.

(Approved by the Office of Management and Budget under control number 2577–0078)

§ 942.27 Lease provisions.

(a) *Lease provisions.* (1) Where a PHA has established pet rules under Subpart C of this part, the leases for all tenants of projects for the elderly or handicapped shall not contain any provisions prohibiting the owning or keeping of common household pets (subject to the provisions of this part and the pet rules); shall incorporate by reference the pet rules promulgated by the PHA; shall provide that the tenant agrees to comply with these rules, including those governing tenant moves as provided in this part; and shall state that violation of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both), in accordance with the provisions of this part and applicable regulations, *e.g.*, 24 CFR Part 966 (Lease and Grievance Procedures) and State and local law.

(2) Where a PHA has not established pet rules under Subpart C, the leases of all tenants of such projects shall not contain any provisions prohibiting the owning or keeping of common household pets, and shall state that owning and keeping of such pets will be subject to the general obligations imposed on the PHA and tenants in the lease and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(b) *Implementation of lease provisions.* The lease for each tenant of a project for the elderly or handicapped who is admitted on or after the date on which this part is implemented shall contain the lease provisions described in paragraph (a) (1) or (2) of this section, as appropriate. The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the appropriate provisions of paragraph (a) of this section as follows:

(1) Upon annual reexamination of tenant income in accordance with any applicable regulation, or

(2) When a tenant wishes to own or keep a common household pet in his or her unit.

Subpart D—Nuisance or Threat to Health or Safety

§ 942.30 Nuisance or threat to health or safety.

Nothing in this part prohibits a PHA or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

Dated: November 14, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-26747 Filed 11-28-86; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-86-1587; FR-2177]

Pet Ownership in Housing for the Elderly or Handicapped; Notice of Pet Deposit Limitation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of pet deposit limitation.

SUMMARY: 24 CFR 243.20(c)(3) requires HUD periodically to fix by Notice published in the **Federal Register**, a limitation on the amount of the pet deposit that project owners may charge tenants who own or keep cats or dogs in certain projects for the elderly or handicapped. This Notice announces a pet deposit limitation of $300.

EFFECTIVE DATE: This notice is related to FR-1936—Pet Ownership in Assisted Housing for the Elderly or Handicapped, published elsewhere in today's edition of the **Federal Register**. Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), the related final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of the related final rule and this notice following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, the related final rule and this notice will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Office of Multifamily Housing, Room 6180, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410, Telephone (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Elsewhere in today's edition of the **Federal Register**, HUD is publishing a final rule implementing section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n-1). This regulation provides for the ownership and keeping of common household pets in federally assisted housing for the elderly or handicapped. In order to compensate owners of projects for the elderly or handicapped for reasonable expenses directly attributable to the presence of pets in projects covered under 24 CFR Part 243, § 243.20(c)(3) permits project owners to establish house pet rules that require tenants who own or keep cats or dogs in their units to pay a refundable pet deposit.

Section 243.20(c)(3)(ii) provides that for certain tenants, the maximum amount of the pet deposit that may be charged by the project owner, on a per dwelling unit basis, may not exceed an amount periodically fixed by HUD by publication of a Notice in the **Federal Register**. These limitations apply to the following classes of tenants residing in projects that meet the definition of project for the elderly or handicapped under § 243.3(c):

(1) Tenants assisted (including tenants of a HUD-owned project, who were assisted before HUD acquired it) under:

(A) Section 202 of the Housing Act of 1959 or section 221(d)(3) (BMIR) of the National Housing Act, or

(B) 24 CFR Part 215 (Rent Supplement Payments), Part 236 (Subpart C—Interest Reduction Payments and Subpart D—Rental Assistance Payments), Part 880 (Section 8 New Construction), Part 881 (Section 8 Substantial Rehabilitation), Part 882 (Subparts D and E) (Section 8 Moderate Rehabilitation), Part 883 (Section 8 State Housing Agency Program), Part 884 (Section 8 Rural Set-Aside), or Part 886 (Subpart A (Loan Management) and Subpart C (Property Disposition)); and

(2) Tenants occupying "lower income units" under 24 CFR Part 850 (Housing Development Grant program).

In fixing the amount of the pet deposit applicable to these tenants, § 243.20(c)(3)(iii) requires HUD to consider factors such as projected, estimated expenses directly attributable to the presence of pets in the project; the ability of project owners to offset such expenses by the use of security deposits or HUD-reimbursable expenses; and the lower income status of tenants of projects for the elderly or handicapped.

Expenses Attributable to Pet Presence

Commenters to the proposed pet regulation (49 FR 50562 (1984)) noted that the presence of pets in covered projects would increase project costs and administrative burdens on project management. These commenters predicted additional expenses as the result of: (1) Damage to pet owners' units; (2) damage to, and maintenance of, common areas; (3) increased fumigation and pest control costs; (4) pet boarding costs under emergency situations; (5) increased administrative costs from formulating pet rules, registering pets, monitoring pets, responding to pet complaints, changing leases and forms, complying with reporting requirements, and collecting pet charges; (6) costs associated with establishing pet and no-pet areas, maintaining pet and no-pet waiting lists, and moving tenants to establish and maintain such areas; and (7) costs associated with establishing pet waste disposal facilities.

To ensure compensation for these additional expenses, the commenters proposed various amounts for the pet deposit. The proposed amounts for deposits varied widely, based on the commenter's method of computation and whether the commenter advocated the recovery of all or a portion of project costs through security deposits. Deposits proposed were as high as $2,000, although deposits in the $400 to $500 range were more common.

Based on the comments to the proposed rule, it is impossible to predict with precision the expenses directly attributable to the presence of pets in the project. Most commenters merely suggested deposit amounts, and did not explain what costs were included in their computations or include any cost breakdowns. Where commenters described the various costs considered, many included general costs associated with the presence of pets in the project that under the final rule cannot be recouped through pet deposits, or costs that would have been incurred under the proposed pet regulation, but were eliminated in the final pet rule (e.g., costs associated with establishing and maintaining pet and no-pet areas, including tenant moves). In most cases, it was impossible to isolate these expenses, because cost breakdowns were not provided.

Where commenters offered data concerning the expenses that would be directly attributable to the presence of pets, the expenses were generally limited to the costs of repairs and replacements to, and fumigation of, the pet owner's dwelling unit, and pet boarding costs under emergency situations. Where specific component costs were provided: general cleaning expenses ranged from $24–$75; painting expenses from $75–$350; carpet cleaning costs from $25 to $150; carpet replacement from $300 to $800; drapery cleaning from $25–$48; fumigation costs from $35–$100, carpentry expenses from $50–$100; and boarding costs from $90–$210, based on a 30-day stay; and drapery replacement costs were approximately $200.

While consideration of all conceivable costs would result in a high deposit limitation, the Department believes that the probable financial liability caused by pets will be considerably less. The

Department considers the costs associated with damage to the dwelling unit claimed by many commenters to be excessive because they are based on a "worst case" scenerio. For example, one commenter's estimate of costs included expenses for the replacement of such items as doors, woodwork, appliances, floorboards, subflooring, and concrete floors. It would appear that the likelihood of such extensive damage to a unit would be extremely remote. Even the lower estimates based on carpet and drapery replacement, complete fumigation, carpentry costs, etc., may overstate the probable liability, since most pets will cause limited damage to the unit.

Similarly, inclusion of 30-day pet boarding costs in the calculation overstates such expenses. Boarding of a pet is provided for under very narrowly defined circumstances. Under § 243.45, a pet may be boarded if its health or safety is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet; the party (or parties) designated by the pet owner in the pet registration are unavailable to care for the pet; and there is no State or local agency authorized to care for abandoned pets. (Situations providing for boarding under § 243.30(c)(1) are similarly limited). Even if a pet is boarded under these provisions, the pet rule states that kenneling costs are to be borne by the tenant or the tenant's estate and that the pet deposit may be used only if these resources are inadequate. In addition, the final rule states the boarding period as a maximum—not more than 30 days—unlike the proposed rule, which provided for a 30-day minimum. Finally, project owners may avoid potential liability for this expense entirely by not incorporating in the tenant leases the provisions of § 243.30(c)(1) and (2) that deal with emergencies.

Moreover, under the final rule, the project owner is able to take reasonable measures to limit the potential expense directly attributable to pets by: (1) Refusing to register pets in the project if the project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with pet rules and other lease obligations (§ 243.20(b)(4)), (2) prescribing sanitary standards governing the proper disposal of pet wastes (§ 243.20(b)(2)); limiting the number, size, weight, and type of pets permitted in the dwelling unit (§ 243.20(c)(1) and (2)), and addressing standards of pet care and handling that are necessary to protect the condition of the tenant's unit and the general condition of the project premises (§ 243.20(c)(4)); and (3) enforcing these pet rules under § 243.24.

Based on all of these factors, the Department concludes that the financial liability that the presence of pets will cause project owners is not amenable to precise determination, but viewing the rule in its entirety and taking into consideration reasonably anticipated pet-related expenses, project owner liability should be lower than most of the estimates the commenters provided.

Ability of the Project Owner to Offset Expenses

In addition to the pet deposit, project owners have other resources available to offset pet-related expenses. As noted above, many of the expenses associated with the presence of pets in the project are related to the damage that the pet may cause to the dwelling unit. Most facilities have in place some form of security deposit to be used to offset damage caused to the dwelling unit.

Moreover, project owners' potential exposure to expenses from pet damage to dwelling units may be limited under certain programs that require HUD to pay reimbursement if the general security deposit is insufficient to cover all damages and rent arrearages. For example, for projects receiving Section 8 assistance under Parts 880, 881, and 883, this amount will be the lesser of the amount owed to the owner or one month's contract rent (minus the amount of the tenant's security deposit plus accrued interest). *See*, §§ 880.608(f), 881.608(f), and 883.709(f). *See also*, §§ 886.116(a) and 886.315(d).

Lower Income Status of Tenants

The third factor to be taken into account in setting the pet deposit limitation is the lower income status of tenants. The most recent information within the Department indicates that approximately 90 percent of all assisted families are very low-income families, with income levels below 50 percent of median income for their area. Moreover, there are factors that may increase the percentage of families with incomes of less than 50 percent of median income. For example, under section 16(b) of the United States Housing Act of 1937, not more than 5 percent of the dwelling units that initially become available for occupancy under public housing ACCs and Section 8 HAP contracts on or after October 1, 1981 are available for leasing by families with incomes between 50 and 80 percent of the area median. Except with the prior approval of HUD, after July 1, 1984 no families in this income range may be approved for admission under the Section 8 assistance programs under Parts 880 through 886, if the effective date of the HAP contract is October 1, 1981 or after. (§ 813.105(a)).

Based on the national median income, this means that the vast and growing majority of assisted tenants' family incomes is below $9,450 (based on a family of one) or $10,800 (based on a family of two). Unfortunately, HUD does not have further income level breakdowns (e.g., the percentage of families with incomes of less than 40%, 30%, 20%, etc., of median income for their area). However, the available data clearly indicate that tenants subject to this Notice possess a limited amount of disposable income.

To protect tenants of covered projects for the elderly or handicapped, a large number of commenters to the proposed pet regulation urged that the pet deposit reflect this limited ability to pay. Generally, suggested deposits were based on the tenant's share of monthly rent or a percentage of the tenant's monthly income, and were subject to overall limitations ranging from $50 to $100.

Conclusion

This Notice attempts to balance the interests of project owners and potential pet owners by carefully weighing the factors described in § 243.20(c)(3)(iii). In this process, the Department has attempted to set a limitation that provides adequate security to the project owner against reasonably anticipated pet-related damages that are not likely to be recovered from other sources, and that does not unreasonably strain tenants' financial capabilities.

HUD has concluded that a pet deposit limitation of $300 is appropriate as an initial limitation. This limitation is less than the deposits that most project owners and managers proposed. However, given the Department's conclusion noted above, that many of these deposit estimates are inflated or based on the "worst case" scenario, the fact that damages can be limited by the pet registration procedures and judicious prescription and enforcement of house pet rules, and the fact that other resources for project owner compensation may be available, the Department believes that this limitation will enable project owners to require a security deposit that will provide adequate protection under reasonably anticipated circumstances.

This figure exceeds the deposits proposed by commenters who focused on tenants' financial capabilities. While

the pet deposit will be paid by individuals with limited discretionary income, the Department does not believe that the $300 limitation is so high that it imposes an unreasonable financial barrier to the exercise of the right to pet ownership. In this regard, the Department notes that the financial impact on pet owners is mitigated by the pet deposit accumulation provisions contained in the final rule. In the case of tenants whose rents are subsidized under the Rent Supplement, section 236 Rental Assistance Payments, or Section 8 programs, or tenants who are occupying lower income units under the Housing Development Grant program, the final rule *requires* that pet owners be permitted to accumulate the deposit through an initial payment of up to $50, and subsequent monthly payments of up to $10. Gradual accumulation of the pet deposit is specifically authorized with respect to other covered tenants. Other matters regarding the administration of the pet deposit (such as interest on the deposit and replenishment of deposit) are left to the discretion of the project owner, subject to the provisions of State and local law.

This Notice has attempted to balance the relevant factors in the final rule using the best information available to the Department. HUD will continue to monitor the adequacy of the limitation set in this Notice, and solicits data on a continuing basis concerning the effect of the limitation on project owners and tenants. Greater accuracy regarding the computation of the pet deposit limitation can be achieved in future Notices, based on more accurate data reflecting greater HUD and project owner experience with pets in assisted housing.

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, at the address listed above.

Authority: Sec. 227(b), Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n-1); and sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: November 17, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-26746 Filed 11-28-86; 8:45 am]

BILLING CODE 4210-32-M

Federal Register

Monday
December 1, 1986

Part III

Department of Education

34 CFR Part 692

State Student Incentive Grant Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 692

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the State Student Incentive Grant (SSIG) Program to require a State which participates in the SSIG Program to match its Federal allotment with State appropriations and to allow a State to match its Federal allotment at the program level rather than at the individual grant level. The Secretary also amends the SSIG Program regulations to conform the regulations to the recently enacted Comprehensive Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, and to the Compact of Free Association, Pub. L. 99–239.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of the amendments to §§ 692.3 and 692.40(a)(6). The amendment to § 692.3 takes effect on July 1, 1987, the beginning of the 1987–88 award year. The amendment to § 692.40(a)(6) will become effective after the information collection requirement contained in that section has been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, Regional Office Building 3, Room 4018, 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 245–9720.

SUPPLEMENTARY INFORMATION: Under the existing SSIG Program regulations, a State may force an institution participating in its SSIG Program to provide the required State matching funds as a condition of participation in its program. The Secretary believes that this practice is not in keeping with the underlying purpose of the SSIG Program which is to encourage States to establish or expand their own grant programs of student financial assistance. Therefore, the Secretary has amended § 692.3 to make Subpart G of 34 CFR Part 74 (Administration of Grants) inapplicable to the SSIG Program. Subpart G permits grantees to meet their cost-sharing obligations with donated funds from third parties. As a result of the amendment to § 692.3, each State must match its Federal allotment of SSIG funds with direct State appropriations. As amended, § 692.3 will not preclude a State from receiving voluntary contributions from private sources which it could then use in its SSIG program as long as those funds are not used as part of the State's required match.

Under the existing regulations, a State must match each SSIG grant it awards. In order to provide a State with greater flexibility in its administration of its SSIG program, the Secretary has amended § 692.21(g)(1) to permit a State to match the Federal funds it receives on a program rather than on a grant basis. As a result, if the State matches its Federal SSIG allotment with an equal amount of State funds, it will no longer have to use State funds to pay fifty percent of each SSIG Program grant it awards.

The Federal rules established by statute and regulations, which govern the administration of the SSIG Program, apply equally to those aspects of funded programs supported by Federal funds and State appropriations. States still will be required, for example, to select all SSIG recipients on the basis of substantial financial need.

Changes to Program Regulations

Several changes have been made to § 692.40 of the SSIG Program regulations to reflect changes made to the SSIG Program by section 16032(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, and by the Compact of Free Association, Pub. L. 99–239.

Consolidated Omnibus Budget Reconciliation Act of 1985

Section 16032(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 amended the Higher Education Act of 1965 to make statutorily ineligible for SSIG Program assistance a student who is in default on an NDSL, GSL, or PLUS loan made for attendance at any institution or who owes a repayment on an SSIG, SEOG, or Pell Grant awarded for attendance at any institution.

Section 692.40 has been amended to incorporate this eligibility criterion and to specify that a student who is in default on a National Defense (or Direct) Student Loan may receive further SSIG Program assistance if the institution that made the loan or the Secretary (in the case of an assigned loan) certifies that the student has made satisfactory arrangements to repay the loan.

Compact of Free Association

On January 14, 1986, President Reagan signed the Compact of Free Association, which will terminate the trusteeship status of certain islands in the Pacific that were previously part of the Trust Territory of the Pacific Islands. This Compact will create two new entities—the Federated States of Micronesia and the Marshall Islands. In addition, another separate Compact is currently under consideration by the Congress which will create an independent entity, the Republic of Palau. Although the first Compact was signed into law on January 14, 1986, the effective date is being delayed, pending enactment of the Palau Compact.

Although the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau will not be eligible to participate in the SSIG Program, citizens of these islands who are in attendance at institutions of higher education in States that are participating in the program will continue to be eligible for SSIG Program assistance, under the Compacts of Free Association. Therefore, the Secretary is revising the student eligibility criteria in § 692.40 to include the citizens of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, in anticipation that the Compacts will become effective in the near future.

However, the Secretary has also retained the references to the Trust Territory of the Pacific Islands to maintain the eligibility of permanent residents of the Trust Territory until the Compacts become effective.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Compact of Free Association require the Secretary to revise the program's student eligibility provisions. Since these regulations merely implement statutory amendments and do not establish substantive policy, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Summary of Comments and responses

The following is a summary of the significant comments received and the

Department's responses to those comments.

Section 692.3

Comment: Several commenters objected to the requirement that a State match its Federal allotment from direct State appropriations, thereby eliminating the practice of having participating institutions provide the required State matching funds as a condition of participation in the State's SSIG Program. Several commenters expressed the opinion that if this proposal were adopted, many needy students would be deprived of student financial assistance because economically depressed States depend upon institutions for this required match. The commenters stated that many of these economically depressed States will find it difficult if not impossible to provide the required 50 percent match from direct State appropriations. A majority of the commenters approved of allowing States to have the option of using a third party to contribute the required match, which they claim gives States more flexibility in providing support for students.

Response: No change has been made. The Secretary believes that the underlying purpose of the SSIG Program is to encourage States to establish and expand their own grant programs of student aid. Institutions should not be required to take on the State's responsibility to match its Federal SSIG allotment. These regulations, however, will not preclude a State from receiving voluntary contributions from private sources which it could use in tis State SSIG Program as long as those funds are not used as part of the State's required match.

Comment: One commenter stated that the proposed change would result in a 50 percent reduction in SSIG assistance for students attending private institutions.

Response: The Secretary disagrees with the commenter. This regulatory change should not work to the disadvantage of any category of student, because under the change made to § 692.21(g)(1), a State may match its Federal allocation of SSIG funds at the program rather than the grant level, and thereby continue to provide assistance on the basis of need to students at both public and private institutions. For a further explanation of § 692.21(g), see the comments and responses for that section.

Comment: Most of the commenters objected to the timing of the requirement to match the Federal program funds from direct State appropriations, claiming the issuance of new rules should await the enactment of the legislation reauthorizing the Higher Education Act, since both houses of Congress have provisions before them that would accomplish the purpose of this rule. Two commenters were opposed to the effective date of July 1, 1987 (the beginning of the 1987–88 award year) for implementation of the requirement because they were concerned that some State legislatures might not be able to take action to appropriate and budget funds for the program prior to July 1, 1987. One commenter urged the Department to maintain the proposed July 1 effective date.

Response: No change has been made. Publication of the regulations is necessary at this time, as is the July 1, 1987, effective date, in order to fulfill the legislative intent of the SSIG Program and to provide States with adequate lead time for implementation. The Department has not been made aware of any State affected by this program change that would not be able to appropriate and budget the required funds in time for grants for academic year 1987–88. If regulatory changes are necessary as a result of revised legislation, the changes will be incorporated after the legislation is enacted.

Comment: One commenter questioned whether there was any statutory provision to support the Secretary's view that funds for the non-Federal match must be provided from direct State appropriations.

Response: Section 415C(b)(5) of the Higher Education Act of 1965 as amended authorizes the Secretary to allot program funds only to States that provide for the non-Federal share from "Funds supplied by the State." Moreover, that section provides that these State funds must represent an additional expenditure by the State over the amount it expended for grants for students before the State initially received SSIG funds. The Secretary believes that this section requires a State's matching share to be provided by the State rather than by an institution.

Comment: One commenter questioned what would happen to a State that does not appropriate funds for the SSIG Program. The commenter expressed concern that if no State funds were appropriated to satisfy the matching requirement, higher education institutions in the State would lose a valuable form of assistance.

Response: If a State does not appropriate funds for the SSIG Program, the State would not be eligible to receive its allotment of SSIG funds.

Section 692.21(g)

Comment: One commenter felt that allowing States to match at the program rather than grant level will impose a greater burden on small private colleges.

Response: The Secretary disagrees with the commenter. Changing the matching requirement from a grant to a program basis places no burden on institutions.

Comment: One commenter requested an explanation of the following sentence in the preamble to the NPRM: "Thus a State could use its SSIG Federal allotment to provide grants to students at private institutions as long as it provides at least as much money from direct State appropriations for grants to students at public institutions for the same academic year".

Response: Under § 692.21(g), a State will be allowed to match its Federal allotment of SSIG funds on a program rather than an individual grant basis. Therefore if a State receives $500,000 of Federal SSIG funds, it must spend $500,000 of State SSIG funds. However, if a State is precluded from using State SSIG funds to award grants to students attending private institutions, it could use the Federal funds it receives for that purpose and use its State SSIG funds for awards to students attending public institutions.

Comment: One commenter asked what was meant by "direct State appropriations" in the preamble to the NPRM. Specifically, the commenter wanted to know if a State could require participating public institutions to provide for the State match from funds which had been appropriated by the State for the general operating expenses of the institutions.

Response: A State must provide for its required match of SSIG Federal funds from it has specifically appropriated for its SSIG Program. Section 415C(b)(5) of the program statute provides that State matching funds must be an expenditure by the State for grants for students.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The information collection requirement contained in these regulations in § 692.40(a)(6) will become effective after it has been approved by the Office of Management and Budget.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 692

Education, Grant programs, Education, State-administered, Education, Student Aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.069: State Student Incentive Grant Program)

Dated: October 17, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 692 of Title 34 of the Code of Federal Regulations as follows:

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

1. The authority citation for Part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c–1070c–3, unless otherwise noted.

2. In § 692.3, paragraph (b) is revised to read as follows:

§ 692.3 What regulations apply to the State Student Incentive Grant Program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants) except for Subpart G, Part 76 (State-Administered Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

* * * * *

3. In § 692.21, paragraph (g)(1) is revised to read as follows:

§ 692.21 What requirements must be met by a State program?

* * * * *

(g) * * *

(1) The State will pay an amount for grants under this part for each fiscal year that is not less than the payment to the State under this part of that fiscal year; and

* * * * *

4. In § 692.40, paragraphs (a)(1), (5), and (6) are revised to read as follows:

§ 692.40 What are the requirements for student eligibility?

(a) * * *

(1)(i) Be a U.S. citizen or national;

(ii) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iii) Be a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; or

(iv) Be a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

* * * * *

(5)(1) Not owe a refund on a grant received for attendance at any institution under the Pell Grant, Supplemental Educational Opportunity Grant, or State Student Incentive Grant programs;

(ii) Not be in default on a loan made at any institution under the National Defense Student Loan or National Direct Student Loan programs unless he or she has made arrangements, satisfactory to the institution, to repay the loan; and

(iii) Not be in default on a loan made under the Guaranteed Student Loan program or the PLUS program to meet the cost of attending any institution unless the Secretary (for a federally insured loan) or a guarantee agency (for a loan guaranteed by a guarantee agency) determines that the student has made satisficatory arrangements to repay the loan; and

(6) File with the institution a statement (which need not be notarized but which must include the student's social security number or, if the student does not have a social security number, the student's student identification number) that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution.

* * * * *

[FR Doc. 86–26878 Filed 11–28–86; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Monday
December 1, 1986

Part IV

Department of the Treasury

Fiscal Service

Notice to Awardees Under the International Settlement Act of 1949 and the Czechoslovakian Claims Settlement Act of 1981

DEPARTMENT OF THE TREASURY

Fiscal Service

Notice to Awardees Under the International Claims Settlement Act of 1949 and the Czechoslovakian Claims Settlement Act of 1981

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: The persons listed in the supplementary information section of this notice have been granted awards by the Foreign Claims Settlement Commission (FCSC) under the International Claims Settlement Act of 1949, 22 U.S.C. 1621–1645o (1986), and the Czechoslovakian Claims Settlement Act of 1981, 22 U.S.C. 1642–1642p (1986), but have failed to file valid applications in order to receive these payments. Pursuant to the Czechoslovakian Claims Settlement Act of 1981, 22 U.S.C. note 8 preceding section 1642 (1986), unless valid applications for payment are made by January 30, 1987, the awards of persons listed below shall lapse and amounts payable to these persons shall be paid on a pro rata basis by the Financial Management Service on account of all other awards under title IV of the International Claims Settlement Act of 1949 and the Czechoslovakian Claims Settlement Act of 1981.

DATE: Claims must be submitted by January 30, 1987.

ADDRESS: Inquiries should be submitted to: Department of the Treasury, Financial Management Service, Program Accounting Section Treasury Annex #1, Rm. 340, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Bernice Mays, Chief Program Accounting Section, (202) 566–8642.

BILLING CODE 4810-35-M

SUPPLEMENTARY INFORMATION: These are the names of persons granted awards under the International Claims Settlement Act of 1949 and the Czechoslovakian Claims Settlement Act of 1981 who must file applications:

CZECHOSLOVAKIA 1st PROGRAM

ABELES JULIUS
ALT ELSE
ALTSCHUL KURT
ANDEL JOHN
ARMSTRONG ANNA
ASCHNER JOSEPH
AUERBACH MARIANNE H
BANCAK OTOKAR J
BARDOCI MARY ANNA
BARGER JOHN SR
BATES CHARLES V
BAUM HERMA
BAUM THOMAS
BEDNARIK MARTIN
BEDNO ALEXANDER
BEER HELEN
BELAN JOHN
BELAN STEPHEN
BELDOVIC JOSEPH
BELFORD BARBARA
BENEDICT ANNIE
BENEDICT EMIL
BENES HELEN
BENOVITZ ESTHER
BERGMANN HENRY
BERGMANN VERA
BERKOWITZ BEN
BERKOWITZ HERMAN
BERKOWITZ JOSEPH
BERKOWITZ LOUIS
BERKOWITZ SAM
BIER MARIE
BLOCK MARTHA
BLUM SIEGFRIED
BODLAK JAROSLAV
BODNAR JULIANNA
BODNAR MARY
BOOR JOHN
BORGIDA EDITH
BRNKO ZUZANA
BROCK KATE S
BROD JOSEPH
BRUCKNER FRITZ
BRUNNER FREDERICK B
BUBLINEC ROSE
BUCEK LOUIS & ANNA
BUCENEC PAUL
BYSTRICKY JOSEPH
CAMBALA ANNA
CAPEK BARNEY
CERMAK FRANCES
CHRVALA VINCENT
CICAK NICHOLAS
CIHAK MARIE
CINTULA KAROLINA
COREN OLGA B
CRAIG FRANK B
CRAIG WILLIAM
CROMES MARY SOLTIS
CSAUCSIK ANDRASZ
CUCH GUSTAVRD S
CVIK MICHAEL
CVINCEK PAUL
DAMKO VERA
DANO VINCENT
DE FLORIAN MARIE T
DE LEON LORE EDITH H
DENNL OSCAR W
DE SINGLY ELIZABETH S
DEUTSCH RISA
DIAMOND MARGARET
DIESENDRUCK LILLI
DIESTENFELD ERNESTINE
DIRR EMILIE
DOBOS JOHN
DOCAR RUDOLPH J
DRACH JOHN SR
DUNDALA IRENE
DUNDALA MICHAEL
DVORAK JOSEPH
EATON LEO
ECKES ANNA GALL
EISENSTEIN GERTRUDE
EISLER ARTHUR
EVANKO JOHN
FANTA VIOLA WELSH
FARBER BERTHA
FECKO MARIA
FILJAC BENEDICT
FINE MATILDA
FISCHER JACQUES
FISCHER MARIE
FISCHER MARIE G
FOLTINEK MATTHEW
FOLTYN ANDREW
FOLTYN MIKLOS
FRANCHAK MARIE MARGARET
FROEHLICH PETER G
FURTH WALTER
GALL ANDREW
GALL JOHN F
GAYDOS JOHN
GEHRING MATILDA
GERGEL BARBARA
GIANETTA CAROLINE
GOLD ANNA
GOLDBERGER LOUIS LARRY
GOLDNER DEZSO
GOPPOLD ALOIS
GOPPOLD MARIE
GOTLEY JOSEPHINE
GRAMKE MARIE
GRASGREEN SAMUEL
GROON FRANCIS
GRUNEWALD EDITH R
GRUNTHAL PAUL
GULASH WILLIAM
GUTAN ETHEL
GUTMAN GERTRUDE
HALUSKA STEPHEN
HANAUER KLARA
HANZL MATHEW
HARTMAN HELEN
HENSEL IGNATZ
HESSE ANNA
HIBSCHMAN JACOB
HITSCHMANN HEDWIG
HLAVA MARY
HLAVKA MARY
HNATEK ANNA ROSE
HOCKE CHARLES JOSEPH
HOCKE STEFANIE
HODGSON JAMES F
HOFFER SIEGMUND
HOLUB FRANK
HRABOUSKY VICTORIA
HRACHOVSKY KATHERINE
HRDLICKA AGNES
HRDLICKA PETER
HRICISAK ANTONIE
HRYSL JOHN W
HUDCOVIC ANTHONY M
HUDCOVIC THERESA
HUDECEK ANNA

HUDECEK PAULINE
ILKOVITZ LENA
ILLE LOUISE
IMRICH EVA
INDRISEK ANNA
JAKES FRANK J
JANECEK MARGARET
JANOS JOHN
JANOS LEOPOLDINA
JELINEK ROSE
JOHNSON MARGARETE
JOZEFEK KATARINA
JURCIK BERTHA SOBAN
JURKULAK AGNES
KAEUFFL LUDWIG W
KAIFER FRANK
KANTOR RICHARD
KARLIK JOHN
KARLIK JOHN JR
KAUFMAN VERNON
KECSKEMETHY HELEN
KESSLER ARTHUR IZYDOR
KISEL STEPHEN
KLAUBARF JACK
KLEIN JOHN
KLEIN NORMAN
KLIMES ALOIS
KLINGER FRANK JOSEPH
KOENIG ANNA
KOESER JOHN WILLIAM
KOHN BERTHA
KOHN ELSA
KOHN EMIL
KOHN HANS
KOHLER JUNE
KOLBERT ERNEST A
KOLIBAS ANNA
KONDRCKA MARTIN
KONTA EMMA MARIA
KOPPER CHRISTEL H
KOSEMPEL PAUL
KOSEMPEL SELMA
KOSEMPEL WILLIAM
KOTES ANNA
KOTZ ILSE H.
KOVAC JOHN
KOVAR ANNA
KOVAR JOHN
KRAMAR FRANCES
KRAMAR LEOPOLD J
KRAUS FRANK ARNOLD
KRAVEC GEORGE
KRCEK JOSEPH
KROUPA ANTONIE
KUBANIK MARTIN
KURUCZ GEORGE
LANDON EDITH DOROTHY
LANGMAJER EMILIE
LASCH JINDRA HANNA
LAWRENCE KENNETH H
LEDERER THERESE
LEE ANNE LIESE
LEE THOMAS FREDERICK
LEHR GENE
LEISCHNER MAX
LEMES ANDRO
LENGHART MICHAL
LERMER AUGUST S
LISI ELLA ROCKWELL
LOEBMANN ANNELIES RUTH
LOEWY JOSEPH
LORBER LAWRENCE
LOW MARGARET
LOWRY FRED
LUMBERDING CHARLES
LUPTAK ANDREW
MAGYAR ANDI
MALA STEPHEN
MARMORSTEIN EUGENE
MARTIN BRADLEY
MARTIN ELIZABETH
MATULA PAUL
MATOVCIK ANN
MATOVCIK MICHAEL
MATUSEK MARY
MATZKO ANNA WABREK
MAY ROZALIA
MAZSAR HERMINE
MEAD HERBERT
MEAD RONALD
MEDACEK GEORGE
MEDITZ HILDA
MEDVECKY MICHAEL
MELICHAREK ELIZABETH
MELICHAREK JOHN
MENTO JOHN
MEYER AUGUST K
MEZDEJ JOSEPH
MICOVSKY JOSEPH
MIFKOVIC MARY
MIHAL JOSEPH
MIHALIK VERONICA
MOLL WILHELM
MOROZ NICK
MUCHA VERA
MUDRY ZUZANNA
MULLER ERNEST
MULLER GERTRUDE E
MURCEK JOHN RUDOLF JR
MURTZ THERESA
MUSKA GEORGE
NEMECEK JOSEPH
NEMECEK MARY
NESENKAR PAUL
NEWMAN ALFONS CHARLES
NOHEJL JOSEPH
NOVAK OTTO E
NOVAKY ADAM J
NOVAKY ANDREW J
NOVAKY FRANK
OLDEN PAUL
ONTL PETER
OPPENHEIM JULIA
OPPENHEIM MAXIMILIAN M
ORGON JULIA A
ORGON STEPHEN
OTEVREL ANTON
OTTE RICHARD
PALENCAR ALZBETA
PALIATKA CYRIL
PAVLUS OSLEJ KRISTINA
PAVLUS VIOLET
PECENANSKY MARGARET
PESEK ROSE
PETCOFF VILMA
PETRILAK MARY
PETRILAK MICHAEL
PETRUS MARGIT PLACID
PICK WILLIAM
PIPES ALICE
POKORNY ANNA
POLACEK JOHN
POLASEK JOHN
POSTEK ANDREW
PRIKAZKSY HELEN
RAFFAC JOHANNA WALLEK
RAFFAC STEPHAN
RAMM KATHERINE
RASTOCKY ADELINE
RAUSCHER CLEMENTINE

RAUSCHER JULIA
RAWNER HERMINE
REICHER MARGARET
RINDOS ANDREW
RING ALBERT
ROBERT JOHN
ROESLER ANTHONY
ROLAND PAUL
ROLINC CHARLES
ROLINC LILLIAN
ROSENBAUM MAX
ROSENBERG JOSEPHINE
ROSENWASSER ADOLF
ROSENWASSER ISIDORE
ROSENWASSER SAMUEL
RUSNAK JOSEF
RUSNAK MARY
SALIVAR JOSEPHINE L
SALZ MARTHA
SALZ OSCAR
SAMKO BELLA
SANDER ELSE
SASKE ELEANOR
SCHAEFER EVA M
SCHAFER ROSE
SCHATTEN ANNA MARIA
SCHMEGNER JOHN
SCHMEGNER MARY
SCHMID ADOLF L
SCHULLER JOSEPHINE
SCHULLER JULIA
SCHUSTER KURT
SCHUSTER SOPHIE
SCHWARTZ PHYLLIS
SCHWARZKOPF OTTO
SEDIVY GUSTAV
SEDLAK MARIA
SEFCIF JOHN
SEFCIF KRISTINA
SEMAK MARY HODOVANEC
SENKAR JUDITA BOOR
SIEBERT HERBERT A
SIEGEL FUERST KATHERINA
SILADY ELIZABETH
SILADY FRANK
SINGER FRED
SKODACHEK MARIA DARULA
SLADKY JOSEPH
SLADKY MARIE
SLINTAK JOHN
SLINTAK ZUZANA
SLOBODNIK STEFAN
SMOLIK ALBIA
SMOLIK FRANK
SMOLIK JOSEF
SMOLIK STEFAN
SOBEK RUDOLF
SOFFER MARGARET
SOLTESZ JOSEPH
SOLTIS GEORGE
SOLTIS HELEN
SOLTIS JOHN
SOLTIS JOHN B
SOLTIS ROSE
SORDAN VICTOR
SOTAK JOSEPH
SOUCEK ANTOINE F
SOYKA FRANCIS
SPICKA GEORGE
SPISAK GEORGE
STANEK JOHN
STEPANIK JOHN
STEPHAN M MAGDA
STEVENSON MARTHA
STORA JOHN
STRBA KATHERINA
SUDOVSKY JOHANNA
SUPLAT JOHN
SVARIN MAGDELINA
SVEC THOMAS
SVETZ TEREZIA
SYKORA CLEMENT
SZCZESNIAK JAN
TAUBER KAROLINE
TESARIK VLASTA KLIMES
THEBNER LEAH
THUMIN MAX
TIMFELD JOSEPH
TOMAN FRANK
TOMAN JULIA
TOMASOVIC STEFAN
TOTH JULIUS
TOTKA MARIE
TREMBA JOHN
UHLIAR ANNA
UHLIAR MARTIN
UKROPEC THERESA HEREGA
ULACCO ANNA SOLTIS
USIAK JOHN
VACENDAK ANNA
VADOVIC JOSEPH
VALYO MARY
VARADY ANNA PETRIK
VASS HELEN
VESECKY RUDOLPH
VITANYI ELIZABETH
VNUK ANNA
VNUK JOHN
VODVARKA AGNES
VOLCSKO ANDREW
VOLCSKO HELEN
VOLEK FRANK
VON HOHENLANGEN JOSEPHINE
WALDER ERIC
WASICEK JOHN
WEIGARTEN BERTHA GLUCK
WEINMANN GRETE
WEISHUT FREDERIC T
WEISS SYLVIA
WICHE ANNIE
WILSON EMILIA CATHERINE
WINDSOR VICTORIA
WINKLER CAMILLA
WINKLER MAX
WINTER CHARLES
WINTER SOBOTKA PETER
WISSOW CHARLOTTE
WITTMAN MARGARET
WOLF CHAIM
WOLF HAROLD
WOLF JOSEPH
WOLF KAREL
WONISCH HEDWIG
WRABEL PAUL
YUREK ZUZANNA
ZDRAVECKY ANNA
ZDRAVECKY STEPHEN
ZENTER HEDY
ZITNEY ANNA
ZORKOCY JOHN JOSEPH

BILLING CODE 4810-35-C

BENES CLAIMS

DANIEL, EDITH
KLINGER, ANTHONY J
SOBEK, RUDOLF

CZECHOSLOVAKIAN II CLAIMS PROGRAM

BLESKAN KRESTINA
BLESKAN MARGARET
BLESKAN PETER J
MERVA JOHN
SZABO WILLIAM

W.E. Douglas,
Commissioner, Financial Management Service.

FR Doc. 86-26956 Filed 11-28-86; 8:45 am]
BILLING CODE 4810-35-M

Federal Register

Monday
December 1, 1986

Part V

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: As a result of the Secretary's review of current regulations, the Secretary amends Subparts D, F, and G of the Student Assistance General Provisions regulations to simplify procedures, clarify requirements, and reduce administrative burden while maintaining program integrity.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred Sellers or Joyce Coates, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue SW. (Regional Office Building 3, Room 4318), Washington, DC 20202. Telephone number: (202) 472-4300.

SUPPLEMENTARY INFORMATION: A notice of Proposed Rulemaking (NPRM) for the Student Assistance General Provisions regulations was published in the **Federal Register** of December 22, 1984, 49 CFR 48494. These regulations were proposed to clarify requirements, reduce administrative burden on institutions of higher education and vocational schools, and consolidate provisions and definitions common to all the programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). The Title IV, HEA programs include the Pell Grant, Guaranteed Student Loan (GSL), PLUS, State Student Incentive Grant (SSIG), Perkins Loan (formerly National Direct Student Loan (NDSL)), College Work-Study (CWS) and Supplemental Educational Opportunity Grant (SEOG) programs. The latter three programs are known collectively as the campus-based programs.

In the **Federal Register** of November 19, 1986, 51 FR 41920, the Secretary published Subpart A of the Student Assistance General Provisions regulations, which included definitions and provisions common to all the Title IV, HEA programs, so those definitions and provisions would become effective at the same time that regulations for the GSL Program became effective. The Secretary has reviewed the comments with regard to Subparts D, F, and G of the Student Assistance General Provisions regulations, has determined his response to those comments, and is therefore publishing Subparts D, F, and G as final regulations at this time.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made to Subparts D, F, and G based on public comment on the notice of proposed rulemaking, the Secretary has amended § 668.44 to incorporate a new requirement contained in the Higher Education Amendments of 1986, Pub. L. 99-498.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on the proposed regulations. However, this change does not implement substantive policy, but merely implements the terms of the Higher Education Amendments of 1986, Pub. L. 99-498. Therefore, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B)

Revisions to the Notice of Proposed Rulemaking

Subpart D—Student Consumer Information Services

Section 668.44 Institutional information. The Secretary has incorporated in this section a new requirement that an institution which advertises its job placement rates must provide to prospective students the most recent available data that substantiates the truthfulness of the advertisements. This requirement is contained in the Higher Education Amendments of 1986, Pub. L. 99-498.

Subpart F—Misrepresentation

The section numbers of Subpart F have been redesignated to accommodate Subpart E, "Verification of Student Aid Application Information," which was published in the **Federal Register** of March 14, 1986, 51 FR 8946.

Subpart G—Fine, Limitation, Suspension and Termination

The section numbers of Subpart G have been redesignated to accommodate the addition of Subpart E and the redesignation of Subpart F.

Section 668.71 (Proposed rule); § 668.81 (Final rule) Scope and special definitions. The Secretary has added a definition of the term "otherwise eligible institution" in § 668.81(a)(2) and has revised § 668.81(c)(1) and (2) to make even clearer that the procedures set forth in Subpart G, which are, in turn, required by sections 487(b)(1)(D) and 487(b)(2) of the Higher Education Act of 1965, as amended (HFA), do not apply to ED determinations regarding whether an institution or vocational school initially satisfies, or continues to satisfy, the appropriate statutory definition of that institution or school.

Section 668.72 (Proposed rule); § 668.82 (Final rule) Standards of conduct. The Secretary has revised § 668.82(c) to clarify that a violation of an institution's fiduciary duty with respect to its administration of the Title IV, HEA programs may warrant sanctions other than termination including fine, limitation or suspension.

The Secretary has revised § 668.82(d) to specify that an institution violates its fiduciary duty with respect to its administration of the Title IV, HEA programs if the institution itself, its owner or its chief executive officer pleads guilty to, or is convicted of, a crime involving the unlawful acquisiton, use or expenditure of Title IV, HEA program funds.

Section 668.73 (Proposed rule); § 668.83 (Final rule) Emergency action. The Secretary has revised § 668.83(b) to make explicit that the notice initiating an emergency action must inform the institution or school that it is entitled to a show cause hearing that the emergency action is unwarranted.

Section 668.74 (Proposed rule); § 668.84 (Final rule) Fine. Section 668.75 (Proposed rule); § 6651.85 (Final rule) Suspension. Section 668.76 (Proposed rule); § 668.86 (Final rule) Termination. The Secretary has amended §§ 668.84(b), 668.85(b) and 668.86(b) to provide that an institution's written submissions contesting a fine, suspension, limitation or termination action, or a written request for a hearing on the record to contest that action, must be received by the designated ED official by the effective date of the proposed sanction rather than five days before that date.

Section 668.78 (Proposed rule); § 668.88 (Final rule) Hearing on the record. In order to facilitate settlement of administrative proceedings, the Secretary has revised § 668.83(c)(1) to specify that settlement discussions between parties, or the terms of a proposed settlement agreement, are not admissible in an administrative proceeding.

Section 668.80 (Proposed rule); § 668.90 (Final rule) Initial and final decisions. The Secretary has revised § 668.90(a) to limit the discretion of the administrative law judge in determining

the appropriate sanction in two instances. In the first instance, consistent with the provisions of § 668.82(d), if the administrative law judge finds that the institution itself, its owner or its chief executive officer has pled guilty to, or has been convicted of, a crime involving the acquisition, use or expenditure of Title IV, HEA program funds, the administrative law judge must find that the termination of the institution's eligiblity to participate in the Title IV, HEA programs is warranted.

In the second instance, if the action brought against an institution involves its failure to demonstrate its financial responsibility because it failed to provide a letter of credit or performance bond in the amount established by the Secretary, the administrative law judge must find that the amount established by the Secretary is appropriate unless the institution can demonstrate that the amount was unreasonable. The Secretary has clarified the authority of the administrative law judge in this matter for the following reasons.

In the usual termination proceeding, where an institution has violated program statutes or regulations, the administrative law judge is called upon to decide whether the sanction proposed by the designated ED official, some other sanction or no sanction is appropriate. The administrative law judge would base his decision on the number, duration and seriousness of the institution's violations. However, when determining the appropriate amount of a letter of credit or performance bond, the administrative law judge would be substituting his judgment for the judgment of program administrators in a specialized area of program administration. Under those circumstances, the Secretary believes it is appropriate for the administrative law judge to defer to the experience and expertise of program administrators unless the institution can demonstrate that the amount of the performance bond or letter of credit requested was unreasonable.

Miscellaneous

Subpart D—Student Consumer Information Services

Section 668.44 Institutional information. In the preamble to the NPRM, the Secretary proposed deleting the requirement that an institution provide a discussion of whether its instructional or other facilities are accessible to the handicapped in its student consumer information material. However, the proposed regulations included that requirement in § 668.44(a)(6), and the Secretary has decided to keep that requirement. This was supported by the comments received.

Comments and Responses

The following is a summary of the comments received on Subparts D, F, and G and the Secretary's response to those comments.

Subpart D—Student Consumer Information Services

Comment: One commenter questioned the difference between "disseminate" and "make readily available" when referring to the information an institution must provide to a student.

Response: For the purpose of Subpart D, the terms "disseminate" and "make readily available" have the same meaning. Both terms are used in the statute.

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Section 668.72 (Proposed rule); § 668.82 (Final rule) Standard of conduct.—Comment: One commenter stated that the violations of an institution's fiduciary duty, that form the grounds for its termination, should also serve as grounds for other sanctions such as fine, limitation and suspension.

Response: A change has been made. The Secretary partially agrees with the commenter and has revised § 668.82(c) accordingly. However, the Secretary has not revised § 668.82(d) because the Secretary wishes to put institutions on notice in § 668.82(d), and in § 668.90(a)(3)(i), that termination is the consequence for criminally mishandling Title IV, HEA program funds.

Comment: One commenter asked what constituted an "owner" of an institution for the purpose of § 668.82(d) and suggested that the Secretary provide a definition of an "owner" in the regulations.

Response: A change has been made. When the Secretary used the term "owner" of an institution in the NPRM, he meant to include those individuals who operate and control the institution as well as those individuals who have an ownership interest in the institution. The Secretary has revised § 668.82(d) to make this intent explicit. The term "owner" is now used in § 668.82(d) in its ordinary dictionary meaning, *i.e.*, one who has an ownership interest in the institution.

Comment: One commenter asked what the Secretary meant when he indicated that conviction of a crime involving the acquisition, use or expenditure of Title IV, HEA program funds constituted an automatic ground for terminating the eligibility of an institution to participate in the Title IV, HEA programs.

Response: The Secretary has determined that if an institution, its owner or its chief executive officer pleads guilty to, or is convicted of, a crime involving the acquisition, use or expenditure of Title IV, HEA program funds, the appropriate sanction in every case is termination of the institution's eligibility to participate in the Title IV, HEA programs. Accordingly, the Secretary has revised §§ 668.82(d), 668.90(a)(3) and 668.90(f)(3) of the final regulations to require termination as a remedy in such instances. Thus, if the designated ED official begins a termination action against an institution alleging that the institution, its owner or its chief executive officer has pled guilty to, or has been convicted of, a crime involving the acquisition, use or expenditure of Title IV, HEA program funds, the hearing on the record will determine, as a factual matter, whether the designated ED official's allegation is accurate. If it is, the administrative law judge must determine that termination of the institution's eligibility to participate in the Title IV, HEA programs is warranted and the Secretary must affirm that decision.

Comment: One commenter asked whether a person is considered "convicted of a crime" if the person pleads guilty to a crime or is indicted for that crime, or if the person's conviction is being appealed. This commenter further asked whether a plea bargain is considered a conviction.

Response: A change has been made. The Secretary has amended §§ 668.82(d), 668.90(a), and 668.90(f) of the final regulation to clarify that it includes guilty pleas as well as convictions.

An indictment is not a conviction, and the Secretary will not consider a person convicted until the normal appeal process is exhausted with regard to that person. As for plea bargaining, what is relevant is the result of the plea bargain, namely, whether an individual has agreed to plead guilty to a crime involving the acquisition, use, or expenditure of Title IV, HEA program funds.

The designated ED official is not precluded from seeking the termination of an institution based on the allegations that make up an indictment or the facts established during a trial of a person whose conviction is on appeal. However, the administrative law judge under these circumstances has the discretion to determine that another

sanction, or no sanction, rather than termination is appropriate.

Comment: One commenter asked whether the provisions of § 668.82(d) (and § 668.90(a)(3)) will be applied against an institution if the conviction occurred before those sections go into effect.

Response: The Secretary believes that a person convicted of a crime involving the acquisition, use or expenditure of Title IV, HEA program funds cannot be trusted to act in accordance with the high standards required of a fiduciary of public funds. The fact that such a conviction took place before the regulations setting forth this belief became effective is irrelevant with regard to that determination.

Comment: One commenter asked if the conviction of an owner of more than one institution of a crime involving the acquisition, use or expenditure of Title IV, HEA program funds at one of his institutions could result in the termination of all his institutions.

Response: If an owner of more than one institution is convicted of a crime involving the acquisition, use or expenditure of Title IV, HEA program funds at one of his institutions, his other institutions will be subject to termination as a result of that conviction.

Comment: One commenter objected to the limited time available to an institution that receives a notice concerning a fine, limitation, suspension or termination action to decide whether to contest that action. The commenter pointed out that under §§ 668.74(b), 668.75(b) and 668.76(b) in the NPRM, a fine, suspension, limitation or termination goes into effect 20 days from the date the notice was mailed unless the designated ED official receives, at least five days from the effective date, the institution's written submissions contesting the action or a written request for a hearing on the record. The commenter noted that if it took the institution five days to receive the notice from ED and an additional five days for ED to receive the institution's response, the institution would only have five days to decide on its course of action. This commenter also felt that the procedures resulted in persons being considered guilty as the first step and thereby placing the burden on the institution to prove itself innocent.

Response: A change has been made. The Secretary believes that an institution does not need a great deal of time to decide whether to contest an administrative action. However, the Secretary agrees with the commenter that five days is too short a period. The Secretary has therefore amended §§ 668.84(b), 668.85(b), and 668.86(b) to provide that the institution's written submissions contesting the action or a written request for a hearing on the record must be received by the designated ED official by the effective date of the proposed sanction. Further, the Secretary believes that the commenter did not properly characterize the notification process. The institution's burden under the notification procedures is merely to notify the designated ED official in a timely manner of its challenge to the designated ED official's action.

The Department is reviewing its various sets of hearing regulations with an eye towards simplification and consolidation, to the extent consistent with applicable statutory provisions and the nature of the various proceedings involved. Any new procedures developed will be published for public comment as a notice of proposed rulemaking.

Comment: One commenter asked whether § 668.84(a) (§ 668.74(a) in the NPRM) would permit the Secretary to fine an institution $25,000 for each violation of program statutes and regulations and for each substantial misrepresentation.

Response: Section 668.84(a) would permit the Secretary to fine an institution $25,000 for each violation of program statutes and regulations and for each substantial misrepresentation. However, under § 668.92 (§ 668.82 in the NPRM), the administrative law judge and the Secretary, in determining the amount of a fine, must take into account the gravity of the violation or misrepresentation and the size of the institution.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States..

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: November 25, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 668 as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. The Table of Contents for Subparts D, F, and G of Part 668 is revised to read as follows:

Subpart D—Student Consumer Information Services

Sec.

668.41 Scope and special definition.
668.42 Preparation and dissemination of materials.
668.43 Financial assistance information.
668.44 Institutional information.
668.45 Availability of employees for information dissemination purposes.

* * * * *

Subpart F—Misrepresentation

668.71 Scope of special definitions.
668.72 Nature of educational program.
668.73 Nature of financial charges.
668.74 Employability of graduates.
668.75 Procedures.

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

668.81 Scope of special definitions.
668.82 Standard of conduct.
668.83 Emergency action.
668.84 Fine proceedings.
668.85 Suspension proceedings.
668.86 Limitation or termination proceedings.
668.87 Pre-hearing conference.
668.88 Hearing on the record.
668.89 Authority and responsibilities of the administrative law judge.
668.90 Initial and final decisions—Appeals.

668.91 Verification of mailing and receipt dates.
668.92 Fines.
668.93 Limitation.
668.94 Termination.
668.95 Reimbursements, refunds and offsets.
668.96 Reinstatement after termination.
668.97 Removal of limitation.

3. Part 668 is amended by revising Subparts D, F, and G to read as follows:

Subpart D—Student Consumer Information Services

§ 668.41 Scope and special definition.

(a) Each institution participating in any Title IV, HEA program shall disseminate to all enrolled students, and to prospective students upon request, through appropriate publications and mailing, information concerning—

(1) The institution (see § 668.44); and

(2) Any student financial assistance available to students enrolled in the institution (see § 668.43).

(b) The following definition applies to this subpart: *Prospective student:* An individual who has contacted an institution participating in any Title IV. HEA program for the purpose of requesting information concerning admission to the institution.

(Authority: 20 U.S.C. 1092)

§ 668.42 Preparation and dissemination of materials.

For each award year in which it participates in any Title IV, HEA program, an institution shall—

(a) If necessary, prepare and publish materials covering the topics set forth in § 668.43 and § 668.44; and

(b) Make those materials available through appropriate publications and mailings to—

(1) All currently enrolled students; and

(2) Any prospective student, upon request of that student.

(Authority: 20 U.S.C. 1092)

§ 668.43 Financial assistance information.

(a)(1) Information on financial assistance that the institution must publish and make readily available to current and prospective student's under this subpart includes, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program referred to in paragraph (a) of this section, the information provided by the institution must describe—

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student's award.

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of those disbursements;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans; and

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package.

(Approved under OMB Control Number 1840–0537)

(Authority: 20 U.S.C. 1092)

§ 668.44 Institutional information.

(a) Institutional information that the institution must publish and make readily available to current and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus; and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding the distribution of any refund due to the Title IV, HEA programs as required by § 668.21;

(4) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(6) A description of any special facilities and services available to handicapped students; and

(7) The titles of persons designated under § 668.45 and information regarding how and where those persons may be contacted.

(b) The institution shall make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(c) If the institution advertises job placement rates as means of attracting students to enroll in the institution, the institution must make available to prospective students, at or before the time of application, the most recent available data concerning—

(1) Employment statistics for students who have attended that institution;

(2) Graduation statistics for students who have attended that institution; and

(3) Any other information that is necessary to substantiate the truthfulness of the advertisements.

(Approved under OMB Control Number 1840–0537)

(Authority: 20 U.S.C. 1092)

§ 668.45 Availability of employees for information dissemination purposes.

(a) *Availability.* (1) Except as provided in paragraph (b) of this section each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information specified in § § 668.43 and 668.44.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that institution.

(3) If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver.* (1) the Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in the Title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of Title IV, HEA program recipients is too small, the Secretary considers whether there will be an insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution shall apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(Authority: 20 U.S.C. 1092)

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Subpart F—Misrepresentation

§ 668.71 Scope and special definitions.

(a) This subpart establishes the standards and rules by which the Secretary may initiate a proceeding under Subpart G against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges or the employability of its graduates.

(b) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary. Misrepresentation includes the dissemination of endorsements and testimonials that are given under duress.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(Authority: 20 U.S.C. 1094)

§ 668.72 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for—

(1) Acceptance into a labor union or similar organization; or

(2) Receipt of a local, State or Federal license or a non-governmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended by—

(1) Vocational counselors, high schools or employment agencies; or

(2) Governmental officials for governmental employment;

(e) Its size, location, facilities or equipment;

(f) The availability, frequency and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

(j) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course; or

(k) The nature of extent of any prerequisites established for enrollment in any course.

(Authority: 20 U.S.C. 1094)

§ 668.73 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

(Authority: 20 U.S.C. 1094)

§ 668.74 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment.

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning government job market statistics in relation to the potential placement of its graduates.

(Authority: 20 U.S.C. 1094)

§ 668.75 Procedures.

(a) On receipt of a written allegation or compliant from a student enrolled at the institution, a prospective student, the family of a student or prospective student, or a governmental official, the designated department official as defined in § 688.81 reviews the allegation or compliant to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated department official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated department official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution or the employability of its graduates, the official—

(1) Initiates action to fine or to limit, suspend or terminate the institution's eligibility to participate in the Title IV,

HEA programs according to the procedures set forth in Subpart G, or

(2) Take other appropriate action.

(Authority: 20 U.S.C. 1094)

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

§ 668.81 Scope and special definitions.

(a)(1) This subpart establishes rules for the imposition of a fine upon, or for the suspension, limitation or termination of an otherwise eligible institution's participation in any or all of the Title IV, HEA programs.

(2) An "otherwise eligible institution" is an institution that the Secretary has determined—

(i) Satisfies the appropriate definition of the term "public or private nonprofit institution of higher education," "proprietary institution of higher education," "postsecondary vocational institution" or "vocational school" set forth in Subpart A of this part; and

(ii) Initially satisfies the factors of financial responsibility and standards of administrative capability set forth in Subpart B of this part.

(b) This subpart applies to an institution which violates any Title IV, HEA program statute, regulation, special arrangement, agreement or limitation prescribed under authority of Title IV of the HEA;

(c) This subpart does not apply to a determination that—

(1) An institution of higher education fails at any time to meet the statutory definition set forth in section 435, 481 or 1201 of the HEA;

(2) A vocational school fails at any time to meet the statutory definition set forth in section 435(c) of the HEA; or

(3) An institution fails to qualify for initial certification to participate in any Title IV, HEA program because it does not meet the fiscal and administrative standards set forth in Subpart B of this part.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to an institution (*i.e.*, advance payments and payments by way of reimbursements) participating under any Title IV, HEA program.

(e) This subpart does not apply to administrative action by the Department of Education based on any alleged violation of—

Subject	Statute	Regulation
Discrimination on the basis of race, color, or natural origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4).	34 CFR Part 100.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR Part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794).	34 CFR Part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(f) The following definitions apply to this subpart:

Designated department official: An official of the Education Department to whom the Secretary has delegated responsibilities indicated in this subpart.

Funds: Any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all Title IV, HEA programs to an institution or to or on behalf of students enrolled and attending an institution.

(Authority: 20 U.S.C. 1094)

§ 668.82 Standard of conduct.

(a) A participating institution acts in the nature of a fiduciary in its administration of the Title IV, HEA programs.

(b) In the capacity of a fiduciary, the institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs.

(c) An institution's failure to administer the Title IV, HEA programs, or to account for the funds it receives under those programs, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for a fine, or the suspension, limitation or termination of the eligibility of the institution to participate in those programs.

(d) If the owner of an institution, the institution itself or the chief executive officer of the institution is convicted of or pleads guilty to a crime involving the unlawful acquisition, use, or expenditure of Title IV, HEA program funds, that conviction or guilty plea is a violation of the institution's fiduciary duty and is an automatic ground for terminating the institution's eligibility to participate in any Title IV, HEA program.

(Authority: 20 U.S.C. 1070 *et seq.*)

§ 668.83 Emergency action.

(a) *Scope and consequences.* The Secretary, may take an emergency action against an institution under which the Secretary withholds funds from the institution or its students and withdraws the authority of the institution to obligate funds under any or all Title IV, HEA programs if the Secretary—

(1) Receives information, determined by the official to be reliable, that the institution is violating applicable laws, regulations, special arrangements, agreements or limitations.

(2) Determines that immediate action is necessary to prevent misuse of Federal funds; and

(3) Determines that the likelihood of loss outweights the importance of following the procedures set forth in this subpart for suspension, limitation or termination.

(b) *Procedures.* A designated department official begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the emergency action and the basis on which the action is taken. The notice also states that the institution has an opportunity to show cause that the emergency action is unwarranted. The effective date of the action is the date on which the notice is received by the institution.

(c) *Duration.* An emergency action may not exceed 30 days unless a suspension, limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(d) *Opportunity to show cause.* The Secretary provides the institution, if it so requests, an opportunity to show cause that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1094)

§ 668.84 Fine proceedings.

(a) *Scope and consequences.* The Secretary may impose a fine of up to $25,000 per violation on an institution that—

(1) Violates any provision of Title IV of the HEA or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its financial charges or the employability of its graduates.

(b) *Procedures.* (1) A designated department official begins a fine proceeding by sending the institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the Secretary's intent to fine the institution and the amount of the fine and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the fine, which must be at least 20 days from mailing of the notice of intent;

(iii) Inform the institution that the fine will not be effective on the date specified in the notice if the designated department official receives by that date, a written request for a hearing or written material indicating why the fine should not be imposed.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

(c) *Expedited hearings.* With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

§ 668.85 Suspension proceedings.

(a)(1) *Scope and consequences.* The Secretary may suspend the eligibility of an institution to participate in any or all of the Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any provision of any regulation or agreement implementing that Title.

(2) The suspension may not exceed 60 days unless—

(i) The institution and the Secretary agree to an extension if the institution has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under § 668.86.

(b) *Procedures.* A designated department official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Secretary to suspend the institution's eligibility to participate, cite the consequences of that action and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated department official receives by that date, a request for a hearing or written material indicating why the suspension should not take place.

(2) If the institution does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No suspension takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

(Authority: 20 U.S.C. 1094)

§ 668.86 Limitation or termination proceedings.

(a) *Scope and consequences.* The Secretary may terminate or limit the eligibility of an institution to participate in any or all Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title. The consequences of the Secretary limiting or terminating the eligibility of an institution to participate in any Title IV, HEA program are set forth in §§ 668.93 and 668.94, respectively.

(b) *Procedures.* (1) A designated department official begins a limitation or termination proceeding by sending an institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Secretary to limit or terminate the institution's eligibility to participate, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and, in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which must be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives by that date, a request for a hearing or written material indicating why the limitation or termination should not take place.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No limitation or termination takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

(c) *Expedited hearing.* With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

§ 668.87 Pre-hearing conference.

(a)(1) A pre-hearing conference be convened by the administrative law judge if he or she thinks that such a conference would be useful, or if requested by—

(i) The designated department official; or

(ii) The institution.

(2) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.

(b) If agreed to by the administrative law judge, the designated department official and the institution, a pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

§ 668.88 Hearing on the record.

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an administrative law judge.

(b) The hearing process may be expedited as agreed by the administrative law judge, the designated department official and the institution. Procedures to expedite may include, but are not limited to, the following—

(1) A restriction on the number or length of submissions;

(2) The conduct of the hearing by telephone conference call;

(3) A review limited to the written record; or

(4) A certification by the parties to facts and legal authorities not in dispute.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissible.

(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

(3) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.

(4) The administrative law judge accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(d) The designated department official shall make a transcribed record of the proceeding and shall make the record available to the institution upon its request and upon its payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(Authority: 20 U.S.C. 1094)

§ 668.89 Authority and responsibilities of the administrtive law judge.

(a) The administrative law judge regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b)(1) The administrative law judge is not authorized to issue subpoenas.

(2) If requested by the administrative law judge, the Secretary and the institution shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(Authority: 20 U.S.C. 1094)

§ 668.90 Initial and final decisions—Appeals.

(a)(1) The administrative law judge shall issue a written initial decision to the institution and the designated department official by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing, if the administrative law judge does not request the parties to submit briefs; or

(iii) The date on which the administrative law judge terminates the hearing in accordance with § 668.89(c)(3).

(2) The administrative law judge's decision must state whether the imposition of the fine, limitation, suspension or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution, the administrative law judge may, if appropriate, issue a decision to fine the institution or impose one or more limitations on the institution rather than terminating its eligibility to participate.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the administrative law judge finds that the owner of the institution, the institution itself or the chief executive officer of the institution was convicted of, or pled guilty to, a crime involving the unlawful acquisition, use, or expenditure of Title IV, HEA program funds, the administrative law judge must find that termination of the institution's eligibility to participate in the Title IV, HEA programs is warranted; or

(ii) If the action brought against an institution involves its failure to provide a letter of credit or performance bond in the amount specified by the Secretary under § 668.15, the administrative law judge must find that the amount of the performance bond or letter of credit established by the Secretary was appropriate unless the institution can demonstrate that the amount was unreasonable.

(4) The administrative law judge shall base findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted by written submissions, findings of fact must be agreed to by the parties.

(b)(1) In a suspension proceeding, the Secretary reviews the administrative law judge's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) A suspension takes effect upon either the date on which notice of the suspension is received by the institution or the original proposed effective date stated in the designated department official's notice of intent to suspend, whichever is later.

(3) A suspension may not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In that case, the period may be extended until the completion of that proceeding including any appeal to the Secretary.

(c)(1) In a fine, limitation or termination proceeding, the administrative law judge's initial decision automatically becomes the Secretary's final decision 20 day after it is issued and received by both parties unless, within that 20 days period, the institution or the designated department official appeals the decision to the Secretary.

(2) An appeal is made by sending a written notice of appeal to the Secretary. This notice must be received by the Secretary within twenty days of the appealing party's receipt of the administrative law judge's initial decision. (The appealing party shall send a copy of its appeal notice to the other party.)

(d)(1) Within a period specified by the Secretary, the party that appeals shall submit a brief or written materials to the Secretary explaining why the initial decision of the administrative law judge should be overturned or modified.

(2) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(i) The evidence introduced into the record at hearing;

(ii) Stipulations of the parties if the hearing consisted of written submissions; or

(iii) Matters that may be judicially noticed.

(3) The opposing party shall respond within the time period specified by the Secretary.

(4) Neither party may introduce new evidence on appeal.

(5) Each party shall provide a copy of its brief to the other party when it submits its brief to the Secretary.

(e) The initial decision of the administrative law judge imposing a fine or limiting or terminating the eligibility of the institution to participate does not take effect pending the appeal.

(f)(1) The Secretary renders a final decision.

(2) In rendering that decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted of only written submissions and matters that may be judicially noticed.

(3) The Secretary's decision may affirm, modify or reverse the administrative law judge's initial decsion and includes a statement of the reasons for the decision, except that if the administrative law judge finds that

the termination is warranted pursuant to § 668.90 (a)(3)(i), the Secretary affirms that decision.

(Authority: 20 U.S.C. 1094)

§ 668.91 Verification of mailing and receipt dates.

(a) Verification of the Department of Education's mailing dates and receipt dates referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.

(b) If an institution refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution refuses to accept the notice.

(Authority: 20 U.S.C. 1094)

§ 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, administrative law judge and Secretary shall take into account—

(1)(i) The gravity of the institution's violation or failure to carry out the relevant statute, regulation or agreement; or

(ii) The gravity of its misrepresentation; and

(2) The size of the institution.

(b) Upon the request of the institution, the Secretary may compromise the fine.

(Authority: 20 U.S.C. 1094)

§ 668.93 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds; or

(d) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

§ 668.94 Termination.

(a) A termination—

(1) Ends an institution's eligibility to participate in any or all of the Title IV, HEA programs;

(2) Prohibits an institution or the Secretary from making or increasing Title IV, HEA program awards;

(3) Prohibits an institution from making any other new obligations against Title IV, HEA program funds; and

(4) Prohibits further guarantee commitments by the Secretary under the Guaranteed Student Loan or PLUS programs for loans to students to attend that institution, and prohibits further disbursements by an institution which is a lender under the Guaranteed Student Loan or PLUS programs (whether or not guarantee commitments have been issued by the Secretary or a guarantee agency for such disbursements).

(b) If an institution is terminated during a payment period, any student at the institution who has received an award or to whom a commitment has been made before the effective date of the termination may receive a payment for that payment period.

(c) For purposes of this section, a commitment—

(1) Under the Pell Grant and Campus-based programs, is defined in § 668.25 and

(2) Under the Guaranteed Student Loan and PLUS programs, occurs when the Secretary or a guarantee agency advises the lender that the loan will be guaranteed.

(Authority: 20 U.S.C. 1094)

§ 668.95 Reimbursements, refunds and offsets.

(a) The designated department official, administrative law judge or Secretary may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, which the institution improperly received, withheld, disbursed or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Guaranteed Student Loan or PLUS programs—

(i) Ineligible interest benefits, special allowances or other claims paid by the Secretary; and

(ii) Discounts, premiums or excess interest paid in violations of Part 682 or 683 of Title 34 of the Code of Federal Regulations; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds due to students under program regulations; and

(ii) Any grants, work-study assistance or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution.

(Authority: 20 U.S.C. 1094)

§ 668.96 Reinstatement after termination.

(a)(1) An institution whose eligibility to participate in any or all of the Title IV, HEA programs has been terminated may file a request for reinstatement as a participating eligible institution.

(2) Except for an institution that has been terminated for engaging in substantial misrepresentation concerning the nature of its educational program, the nature of its financial charges or the employability of its graduates, a request for reinstatement may not be made before the expiration of 18 months after the effective date of the termination.

(3) An institution whose eligibility to participate was terminated because the institution engaged in substantial misrepresentation may not request reinstatement before the expiration of three months after the effective date of the termination.

(b)(1) The reinstatement request must be in writing and must show that the institution has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution had improperly received, withheld, disbursed or caused to be disbursed.

(2) The institution must meet all the qualifications for participation in Title IV, HEA programs, as provided in Subpart B of this part, and enter into a new participation agreement with the Secretary.

(c) The Secretary does not grant reinstatement to an institution if it—

(1) Is owned, in whole or in part, by a person who has been convicted of a crime involving the abuse of Title IV, HEA programs; or

(2) Continues to employ an individual in a capacity that involves the administration of Title IV, HEA programs or receipt of funds under Title IV, HEA programs who was shown to be an incompetent administrator during the termination proceedings or who was convicted of a crime involving the abuse of Title IV, HEA programs.

(d) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitation(s).

(Authority: 20 U.S.C. 1094)

§ 668.97 Removal of limitation.

(a) An institution whose eligibility to participate in any or all Title IV, HEA programs has been limited may not apply for removal of the limitation of its eligibility to participate before the

expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Secretary responds to the institution—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation(s).

(d) If the Secretary denies the request or establishes other limitation(s), the institution, upon request, is granted an opportunity to show cause why its eligibility to participate should be fully reinstated.

(e) The institution's request for a show cause meeting does not waive its right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation(s) pending the outcome of the meeting.

(Authority: 20 U.S.C. 1094)

[FR Doc. 86-26895 Filed 11-26-86; 10:39 am]

BILLING CODE 4000-01-M

Federal Register

Monday
December 1, 1986

Part VI

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Regulations

Institutional Quality Control Pilot Project; Final Selection Criteria for Participation; Notice

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations, 34 CFR Part 668, to exempt from selected verification requirements for the 1986–87 and 1987–88 award years, institutions selected by the Secretary to participate in the Institutional Quality Control Pilot Project (Pilot Project). The Secretary takes this action because it would be duplicative and unnecessarily burdensome to require institutions participating in the Pilot Project to meet these regulatory requirements.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred Sellers, Chief, Pell Grant Policy Section, or Deborah Cohen, Pell Grant Program Specialist, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue SW., [Regional Office Building 3, Room 4318], Washington, DC 20202. Telephone Number (202) 472–4300.

SUPPLEMENTARY INFORMATION: The Institutional Quality Control Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan programs. Using basic quality control components, an institution participating in the Pilot Project will be able to develop procedures tailored to meet the particular problems it faces in determining the appropriate amount of Title IV, HEA program assistance its students need and in disbursing those funds to them in a timely manner.

The Secretary notes that quality control is dependent on a successful quality assurance function. Quality assurance is the periodic verification, audit, and evaluation of quality control procedures conducted by an independent third party, which could be either an auditor or staff of the Department of Education, to ensure that QC procedures are adequate and effective. Successful implementation of effective quality assurance functions is considered essential to success of the Pilot Project.

The Secretary selects institutions to participate in the Pilot Project on the basis of selection criteria published in the **Federal Register.** Final selection criteria and additional information concerning the Pilot Project are being published in this issue of the **Federal Register.** The Secretary is exempting from certain verification requirements an institution selected to participate in the Pilot Project from the date of its selection through the end of the 1987–88 award year.

Notice of Proposed Rulemaking

On October 17, 1986, the Secretary published an NPRM for Subpart E of the Student Assistance General Provisions in the **Federal Register** (51 FR 37132–37133). A detailed explanation of major issues is discussed on page 37132 of the NPRM. There have been no substantive changes in the regulations since publication of the NPRM.

Summary of Comments and Responses

Comment: One commenter, while generally supportive of the Proposed regulations, objected to the requirement that an applicant selected for verification submit to it a copy of an income tax return if the income reported on that income tax return was used in determining the applicant's expected family contribution (EFC). The commenter felt that this requirement was inconsistent with the purpose of the Pilot Project, namely that an institution develop quality control (QC) procedures based on its own needs.

Response: No change has been made. The Secretary believes that to be effective, all quality control procedures must include the requirement that income reported on an income tax return be verified by the submission of that return. However, the Secretary notes that institutions participating in the Pilot Project remain subject to § 668.16(f) of the Student Assistance General Provisions and they must resolve any inconsistencies regarding the information on a student's application.

Comment: One commenter feared that the flexibility inherent in the Pilot Project would encourage some institutions to implement "easier" verification procedures, driving more students to these institutions and causing institutions with stricter verification requirements to suffer from decreased enrollments.

Response: No change has been made. The Secretary agrees that a variety of verification procedures will result from the Pilot Project; indeed, one of the stated purposes of the Pilot Project is for an institution to develop and implement its *own* verification procedures. However, the Secretary believes that all developed verification procedures will meet minimum standards and further, the Secretary does not believe that students will choose to enroll in one institution over another on the basis of an institution's verification procedures.

Comment: One commenter who supported the proposed regulations suggested that the Department investigate the possibility of providing increased incentives to participating institutions such as more regulatory relief and the use of quality assurance reports to meet specific Departmental requirements associated with audit and program reviews.

Response: The Secretary plans to evaluate the Pilot Project over the two remaining years of the Project. In the course of the evaluation, the Secretary will consider the commenter's suggestions.

Comment: Several commenters supported the Secretary's proposal to exempt institutions participating in the Institutional Quality Control Pilot Project from selected verification requirements of Subpart E of the Student Assistance General Provisions. These commenters felt that the experimental nature of the Pilot Project required a lessening of the burden of implementing the activities of both the verification regulations and the Pilot Project.

Response: The Secretary agrees with the commenters and is publishing the proposed regulations as final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. A maximum of 102 institutions will be selected on a voluntary basis to participate in the Pilot Project.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been

found to contain no information collection requirements.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Numbers: Number 84.007, Supplemental Educational Opportunity Grant Program; Number 84.032, Guaranteed Student Loan Program; Number 84.033, College Work-Study Program; Number 84.038, Perkins Loan Program; Number 84.063, Pell Grant Program.

Dated: November 25, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. In § 668.51, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 668.51 General.

* * * * *

(c) *Institutional Quality Control Pilot Project.* (1) For the 1986–87 and 1987–88 award years, the Secretary exempts institutions selected to participate in the Institutional Quality Control Pilot Project from the requirements contained in the following sections:

(i) Section 668.53(a)(1) through (4).

(ii) Section 668.54(a)(1), (2), and (4).

(iii) Section 668.56.

(iv) Section 668.57, execpt that an institution shall require an applicant that it has selected for verification to submit to it a copy of the income tax return, if filed, of the applicant, his or her spouse, and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution.

(v) Section 668.60(a).

(2) For the purpose of this section, the Institutional Quality Control Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution must evaluate its current procedures for administering the Title IV, HEA programs ("management assessment component"), identify the errors that result from its current procedures ("error measurement process component") and design corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component").

* * * * *

[FR Doc. 86–26954 Filed 11–26–86; 10:39 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Institutional Quality Control Pilot Project; Final Selection Criteria for Participation

AGENCY: Department of Education.

ACTION: Notice of the final selection criteria for participation in the Institutional Quality Control Pilot Project.

SUMMARY: The Secretary issues final selection criteria for selecting institutions to participate in the Institutional Quality Control Pilot Project (Pilot Project).

The Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan programs.

EFFECTIVE DATE: These selection criteria become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Jerry Whitlock, Division of Quality Assurance, U.S. Department of Education, 400 Maryland Avenue, SW., [Regional Office Building 3, Room 5042], Washington, DC 20202. Telephone Number (202) 732–4422.

SUPPLEMENTARY INFORMATION: Using basic quality control components, an institution participating in the Pilot Project will develop procedures tailored to meet the particular problems and errors it faces in determining the appropriate amount of Title IV, HEA program assistance its students need and in disbursing those funds to them in a timely manner.

The Secretary notes that quality control is dependent on a successful quality assurance function. Quality assurance is the periodic verification, audit, and evaluation of quality control procedures conducted by an independent third party, which could be either an auditor or staff of the Department of Education, to ensure that QC procedures are adequate and effective. Successful implementation of effective quality assurance functions is considered essential to success of the Pilot Project.

The Pilot Project will run through the end of the 1987-88 award year. An institution that is selected to participate in the Pilot Project is exempt, for the period of its participation in the Pilot Project, from selected requirements set forth in the verification regulations of Subpart E of the Student Assistance General Provisions, 34 CFR Part 688, Subpart E. Therefore, in this issue of the **Federal Register**, the Secretary is amending § 688.51 of the Student Assistance General Provisions regulations to exempt, for the 1986–87 and 1987–88 award years, institutions participating in the Pilot Project from selected verification requirements.

Notice of Proposed Selection Criteria

On October 17, 1986, the Secretary published a Notice of Proposed Selection Criteria and Deadline Date for Participation in the Institutional Quality Control Pilot Project in the **Federal Register** (51 FR 37136–37137). November 17, 1986 was the deadline date by which the Department of Education was to have received comments on the proposed criteria and by which institutions were to have submitted their requests to participate in the Pilot Project. There have been no substantive changes in the criteria since publication of the Notice.

Summary of Comments and Responses

Comment: One commenter was of the view that the Department would eliminate most community colleges from participating in the Pilot Project and that the results of the Pilot Project would be based solely on large institutional input. The commenter recommended writing the criteria to encompass large and small, private and public, four year and two year institutions.

Another commenter, while supportive of the proposed selection criteria, was concerned that the criteria might not provide a range of institutions by size. The commenter felt that it was important to test the objectives of the Pilot Project at a variety of institutions.

Response: No change has been made. The Secretary has determined that for the Pilot Project to provide a model that other institutions can follow, new participants should be limited to those institutions having experience in all the Title IV, HEA programs and in dealing with a significant number of students and Federal dollars in all the programs. The Secretary notes, however, that a number of private, small, and two-year institutions are continuing to participate and provide information to the Secretary for refining and adjusting QC activities and procedures developed for the Pilot Project.

Comment: A commenter supported the proposed criteria and the limited expansion of the project.

Response: No change has been made. The Secretary agrees with the commenter and is publishing the proposed criteria as final criteria.

Final Selection Criteria

The Secretary initiated the Pilot Project during the 1985–86 award year, and 42 institutions participated in the Pilot Project in that year. These institutions focused on the first two components of the quality control system. In order not to lose the benefits derived from these institutions' participating in the Pilot Project, the Secretary is permitting each of these institutions to continue in the Pilot Project if it so desires. To administer the Pilot Project properly, the Secretary has determined that the number of institutions participating in the Pilot Project should not exceed 102; therefore, if all 42 of the current participants choose to remain in the Pilot Project, the maximum number of institutions the Secretary selects under these selection criteria is 60.

The Secretary has determined that for the Pilot Project to provide a model that other institutions can follow, the institutions selected to participate in the Pilot Project should have experience in all the Title IV, HEA programs and in dealing with a significant number of students and Federal dollars in all the programs. Therefore, the Secretary is issuing selection criteria based on the number of programs in which an institution participates, the number of recipients at those schools, and the total number of dollars received by an institution.

The Secretary developed these criteria so that information used to evaluate an applicant will already be in the possession of ED. Therefore, an applicant which applies to participate in the Pilot Project need only submit its written request to participate and does not have to submit any information with its application.

I. In order to be selected to participate in the Pilot Project, an institution must—

1. Participate in the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study and Supplemental Educational Opportunity Grant] and GSL programs during the 1986–87 award year and have participated in all five programs during the 1984–85 and 1985–86 award years;

2. Have had, in the aggregate, at least 2000 Pell Grant and campus-based

program recipients during the 1984–85 award year;

3. Have awarded, in the aggregate, at least $2 million under the Pell Grant and campus-based programs in the 1984–85 award year; and

4. Have submitted and had approved by ED its most recent audit report in which the reported liability was less than $150,000.

II. If not more than 60 applicants meet the above criteria, the Secretary selects all the applicants who meet the criteria to participate in the Pilot Project.

III. If more than 60 applicants meet the above criteria, the Secretary selects applicants on the basis of the following additional criteria.

The Secretary believes that new Pilot Project participants should have a history of proper administration of the Title IV, HEA programs. Therefore, the Secretary is issuing criteria related to potential loss rates in the Perkins Loan (formerly National Direct Student Loan [NDSL]) Program and program review findings. In addition, the Secretary believes that an institution's participation in the procedure of electronic transmission of data under the Pell Grant or campus-based programs evidences a sophistication needed for participation in the Pilot Project. Therefore, the Secretary has included a criterion with regard to participation in the electronic data transmission projects of the Pell Grant and campus-based programs.

To be selected, an applicant must score at least 50 points out of a potential 80 points. If more than 60 applicants score at least 50 points, the Secretary selects those applicants that score the highest number of points. The proposed selection criteria and points are:

1. *Findings of the latest ED program review.* (Maximum 15 points)

An applicant receives the following number of points based upon the findings of the latest program review conducted by ED at the institution:

Findings	Points
For each award year covered by the latest program review:	
Compliance with all applicable statutes and regulations	15
Failure to comply with applicable statutory and regulatory requirements, which results in an assessed liability of an amount equal to not more than 15 percent of the amount received by the institution under the Pell and campus-based programs for that year	8
Failure to comply with applicable statutory and regulatory requirements, which results in an assessed liability of an amount equal to more than 15 percent of the amount received by the institution under the Pell and campus-based programs for that year	0

2. *The institution's full-time equivalent (FTE) enrollment for the 1984–85 award year.* (Maximum 20 points)

An applicant receives the following number of points based upon its FTE enrollment for the 1984–85 award year:

FTE Enrollment	Points
Above 10,000	20
5001–10,000	15
2000–5000	10
Fewer than 2000	0

3. *Compliance with the Pell Grant Program reporting requirements.* (Maximum 20 points)

An applicant receives 20 points if it complies with all the deadline dates for the receipt of institutional payment summary (IPS) documents for the 1985-86 award year which were set forth in Table IV of the Pell Grant Program deadline date notice published in the **Federal Register** of February 25, 1986, 51 FR 6583-6585.

4. *The applicant's potential loss rate under the Perkins Loan (formerly National Direct Student Loan [NDSL]) Program as of June 30, 1985.* (Maximum 15 points)

A potential loss rate under the Perkins Loan Program is calculated by dividing the cumulative principal amount of loans in default (including those loans that have been assigned or referred to ED for collection) by the cumulative principal amount of loans that have entered repayment. An applicant receives the following number of points based upon its potential loss rate, rounded to the nearest tenth of a percent:

Potential loss rate (percent)	Points
0–10	15
10.1–15	7
15.1–20	3
Above 20	0

5. *Participation in ED electronic data transmission projects.* (Maximum 10 points)

An applicant receives 10 points for participating in award year 1985-86 in either the "Pell Grant Program Electronic Pilot Project" or the campus-based programs' "Gateway Electronic FISAP" if: with regard to the Pell Grant Program, the institution has a direct electronic hook-up to the Pell Grant Program Central Processing Facility; and, with regard to the campus-based programs, the institution has a direct electronic hook-up to the ED-designated facility or provides the completed floppy disk to that facility. Under the Pell Grant Program, the Electronic Pilot Project is an electronic exchange system between the Secretary and an institution under which a student is able to correct or verify information contained on his or her Student Aid Report (SAR) at the institution he or she is attending and the institution is able to print out a SAR for the student which is based on the corrected or verified information. Under the campus-based programs, the Gateway Electronic FISAP is an electronic system under which an institution is able to submit a Fiscal Operations Report and Application to Participate (FISAP) to the Secretary.

[Authority: 20 U.S.C. 1094].

(Catalog of Federal Domestic Assistance Numbers: Number 84.007, Supplemental Educational Opportunity Grant Program; Number 84.032, Guaranteed Student Loan Program; Number 84.033, College Work-Study Program; Number 84.038; Perkins Loan Program; Number 84.063, Pell Grant Program)

Dated: November 25, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–26955 Filed 11–26–86; 8:45 am]

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Federal Register

Vol. 51, No. 230

Monday, December 1, 1986

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LIST OF PUBLIC LAWS

Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

Last listing: November 20, 1986.

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[4] 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.

[5] 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.

[6] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

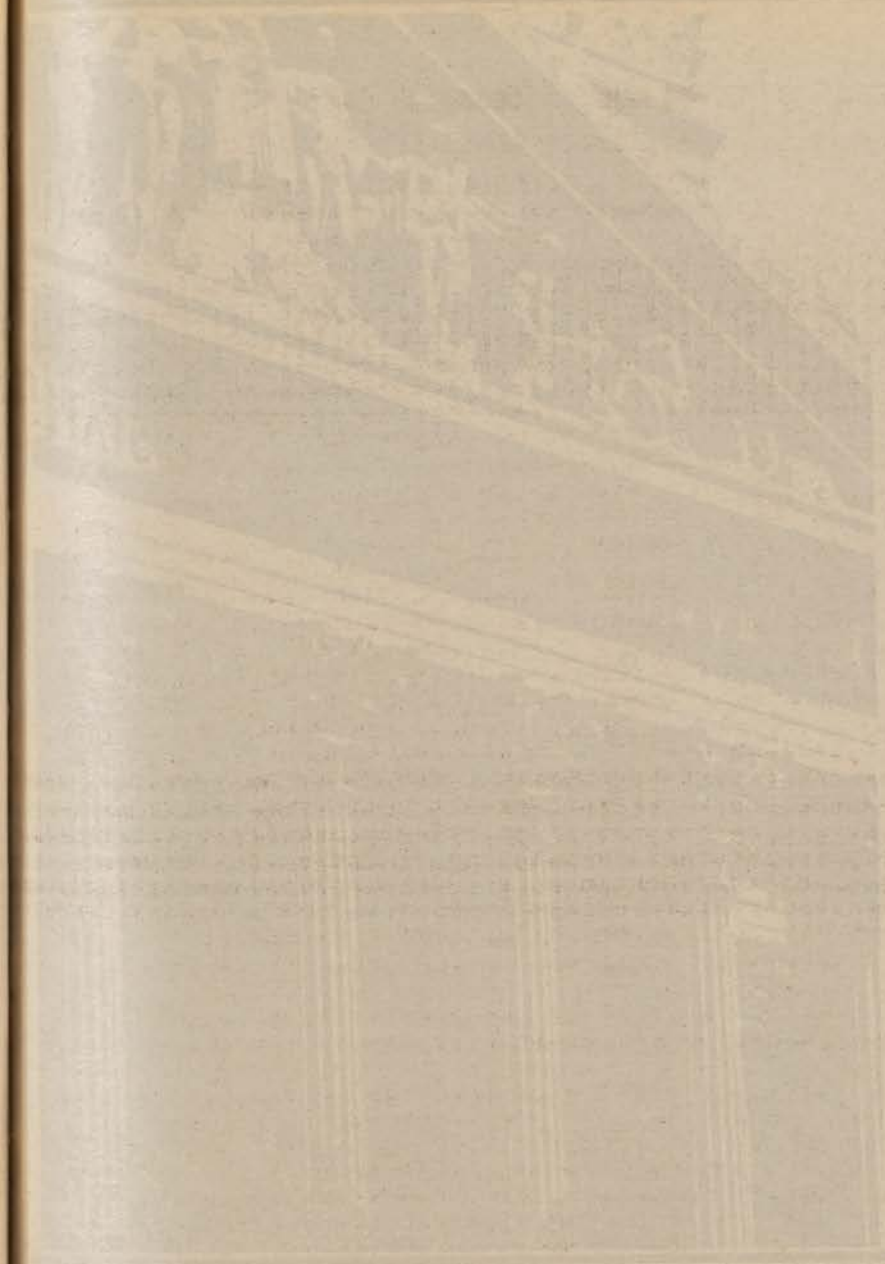
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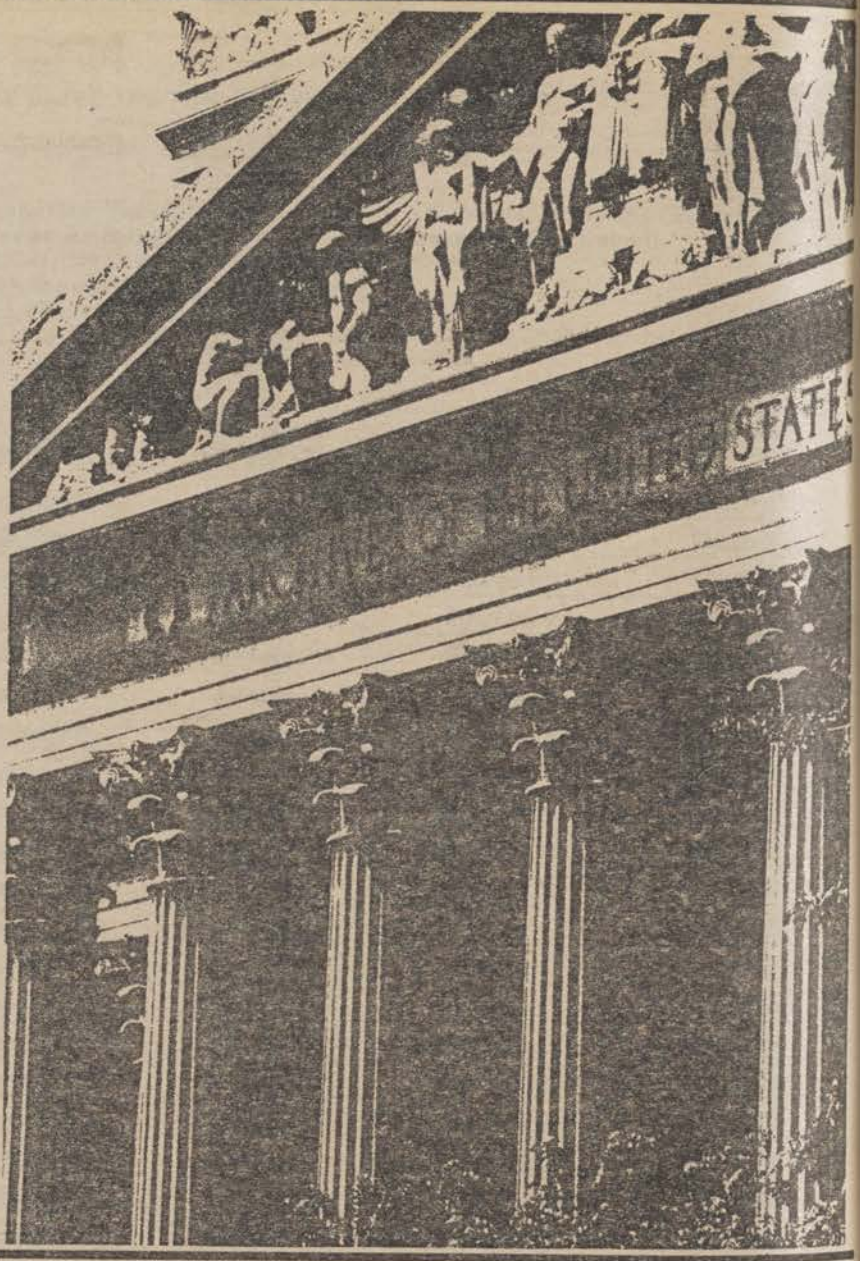
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