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Presidential Documents

Title 3—

The President

Proclamation 5643 of April 29, 1987

National Organ and Tissue Donor Awareness Week, 1987

By the President of the United States of America

A Proclamation

Spring is a season of promise and renewal, and nothing could be more fitting during this time than to reflect on God's abundant miracles of life and growth.

Organ and tissue donorship presents an opportunity to share in these miracles. Medical technology has made it possible for thousands of Americans to benefit from organ and tissue transplantation. Sometimes this means restored vision or help for severe burns; sometimes, a heart, liver, or bone marrow transplant. But whatever the case, organ and tissue donorship shows the magnificent generosity of the American people.

More and more Americans are aware of organ and tissue donorship, thanks to much education about this worthy cause. The American Council on Transplantation has promoted organ and tissue donorship diligently for the last 4 years. Others, such as the National Kidney Foundation, the Lions Club, the Children's Transplant Association, and the Boy Scouts of America, have joined in the effort.

The results are most encouraging. Millions of Americans now carry organ and tissue donor cards. Many States give people the opportunity to sign donor cards when they complete their driver's license forms. Our schools and our media have also become involved in this cause.

But it is each American family and each citizen who makes organ and tissue donorship work. The generosity of organ and tissue donation is a very private matter between individuals and God, the giver of life. So, as all of us rejoice this springtime on the hope and promise of life, let us also think about signing organ and tissue donor cards. We keep that promise alive by helping others in need.

The Congress, by Senate Joint Resolution 89, has authorized and requested the President to issue a proclamation observing the week of April 26 through May 2, 1987, as "National Organ and Tissue Donor Awareness Week".

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of April 26 through May 2, 1987, as National Organ and Tissue Donor Awareness Week. I ask health care professionals, educators, the media, public and private service organizations, and all Americans to join in supporting this humanitarian cause.

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

Ronald Reagan

[FR Doc 87-10122
Filed 4-30-87; 12:03 pm]
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 910

[Lemon Regulation 559]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 559 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,000 cartons during the period May 3–9, 1987. 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 559 (§ 910.859) is effective for the period May 3–9, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting 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 entities 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 April 28, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by an 11 to 1 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good for the larger sizes while the smaller sizes are moving slowly.

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.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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 910.859 is added to read as follows:

§ 910.859 Lemon Regulation 559.

The quantity of lemons grown in California and Arizona which may be handled during the period May 3, 1987, through May 9, 1987, is established at 330,000 cartons.

Dated: April 29, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–10058 Filed 4–30–87; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

10 CFR Part 962

Radioactive Waste; Byproduct Material

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is issuing a final interpretative rule under section 161p. of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*; hereinafter "the AEA") for the purpose of clarifying DOE's obligations under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*; hereinafter "RCRA"). The purpose of this final rule is to interpret the AEA definition of the term "byproduct material," set forth in section 11e(1) of that Act (42 U.S.C. 2014(e)(1)), as it applies to DOE owned or produced radioactive waste substances which are also "hazardous waste" within the meaning of RCRA. The effect of this rule is that all DOE radioactive waste which is hazardous under RCRA will be subject to regulation under both RCRA and the AEA. This rule does not affect materials that are defined as byproduct material under section 11e(2) of the Atomic Energy Act.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Henry K. Garson, Esq., Assistant

General Counsel for Environment, GC–11, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–6947.

Raymond P. Berube, Acting Director, Office of Environmental Guidance and Compliance, EH–23, Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, Telephone (202) 586–5680.

SUPPLEMENTARY INFORMATION:

Background

RCRA establishes a comprehensive regulatory scheme, administered by the Environmental Protection Agency (EPA) and EPA-authorized States, governing the generation, transportation, treatment, storage and disposal of hazardous waste. Federal agencies are required by section 6001 of RCRA (42 U.S.C. 6961) to comply with the requirements of that regulatory scheme in the same manner, and to the same extent, as any private person or entity. Under section 1004 of RCRA (42 U.S.C. 6903), the "hazardous waste" governed by RCRA is a subset of the statute's definition of "solid waste." The definition of "solid waste," however, expressly excludes "source, special nuclear, or byproduct material as defined by the Atomic Energy Act." Those materials, instead, continue to be regulated under the AEA either by the Nuclear Regulatory Commission (NRC) or by DOE.

The AEA's definitions of the terms "source material" and "special nuclear material" are specific in nature, and present no particular difficulty of interpretation. The AEA's definition of "byproduct material," in contrast, speaks only generally of "any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material." AEA section 11e(1), 42 U.S.C. 2014(e)(1). The lack of specificity in this definition, coupled with RCRA's exclusion of byproduct material from its hazardous waste regulatory scheme, has raised a question concerning which DOE radioactive waste streams, if any, should be considered byproduct material not subject to regulation under RCRA.

The Proposed Rule

On November 1, 1985, DOE published a notice of proposed rulemaking (50 FR 45736) in which it proposed to adopt an interpretative rule clarifying RCRA's applicability to DOE radioactive waste. Briefly summarized, that proposed rule would have established a distinction between "direct process" radioactive waste (*i.e.* waste directly yielded in, or necessary to, the process of producing and utilizing special nuclear material) and other radioactive waste less proximate to the physical process of producing or utilizing special nuclear material. Under the proposed rule, direct process waste, even if it contained hazardous material, would have been regarded as byproduct material, and thus would be regulated exclusively under the AEA. Any radioactive waste other than direct process waste, if it contained hazardous material, would have been considered "mixed waste" subject to regulation under both RCRA and the AEA.

As DOE noted the **Federal Register** preamble to the proposed rule, the legislative history of the AEA provides little guidance in interpreting the statutory definition of byproduct material, and application of the definition has not been clarified by judicial interpretation. Because the plain words of the definition are keyed to the process for producing and utilizing special nuclear material, however, it seemed that process must be regarded as a critical factor in determining whether particular radioactive materials fell within the definition. Accordingly, one significant feature of the "direct process" approach, as discussed in the preamble to the proposed rule, was its congeniality with the bare text of the statutory definition of byproduct material.

A major consequence of the "direct process" approach was the fact that it would result in the exclusive regulation of all direct process waste under the AEA. Just as the legislative history of the AEA provides little help in interpreting the statutory definition of byproduct material, the legislative history of RCRA is silent on the intended effect of RCRA's exclusion from its coverage of source, special nuclear and byproduct material. Nevertheless, DOE assumed that that exclusion was intended by the Congress to be applied to radioactive wastes in their real-world configuration. Virtually all radioactive waste substances are contained, dissolved or suspended in a nonradioactive medium from which their physical separation is impracticable. Accordingly, DOE noted in proposing the "direct process" approach that unless some radioactive waste streams were considered to be byproduct material *in their entirety*, RCRA's exclusion of byproduct material might reasonably be perceived to have little effect, because RCRA's application to a nuclear waste's nonradioactive medium would appear to entail at least the indirect regulation of the radionuclides dispersed in the medium.

Such a result, in DOE's view, presented substantial legal questions. Previous court decisions had settled the point that the AEA generally vests in DOE and the NRC exclusive regulatory authority over the radiation hazards associated with source, special nuclear and byproduct material, and generally preempts the States from regulating those materials.[1] It had also been held that when the radiation and nonradiation hazards of a waste containing byproduct material are inseparable, regulatory action under the AEA preempts the incompatible exercise of general state nuisance authority over the waste.[2] These decisions, read in conjunction with RCRA's affirmation of state regulation as an acceptable, indeed a favored, alternative to EPA regulation, were viewed by DOE as suggesting that an appropriate interpretation of byproduct material would, like the proposed "direct process" approach, exclude certain radioactive waste streams, in their entirety, from regulation under RCRA.

Development of the Final Rule

At the time of its publication of the proposed rule, DOE made available to the public reports provisionally identifying which of the waste streams generated at its facilities would be considered "direct process waste" subject only to AEA regulation under the proposed rule, and which of those waste streams would be considered "mixed waste" subject to regulation under both RCRA and the AEA. DOE sought and received public comments on those reports, and on the proposed rule itself.

During the period since the proposal was made, DOE has had the opportunity further to review the pertinent legal authorities, as well as to consider the comments received, the provisional waste stream identifications, DOE's additional operating experience, and related actions taken by other federal agencies. Based on the review, DOE is today publishing a final rule that adopts a narrower interpretation of byproduct material than the "direct process" approach that was originally proposed. For the reasons set forth below, the final rule provides that only the actual radionuclides in DOE waste streams

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[1] *See* Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971), *aff'd*, 405 U.S. 1035 (1972). *See also* Train v. Colorado Pub. Interest Research Group, 426 U.S. 1 (1976).

[2] Brown v. Kerr-McGee Chem. Corp., 767 F.2d 1234, 1240 (7th Cir. 1985).

will be considered byproduct material. The nonradioactive components of those waste streams, under the final rule, will be subject to regulation under RCRA to the extent that they contain hazardous components.

Discussion

The overriding question raised by the public comments on the proposed rule was whether RCRA's exclusion of source, special nuclear and byproduct material from regulation under that Act was intended by the Congress to exempt entire waste streams, rather than exempting only the radionuclides dispersed or suspended in a waste stream. As discussed above, the proposed rule woud have treated any "direct process" waste as byproduct material in its entirety, even if the waste contained a nonradioactive chemically hazardous component that would otherwise have been subject to regulation under RCRA. Thus, the characterization of a waste stream as "direct process" waste would have foreclosed the application of RCRA to that stream irrespective of whether the associated non-radiological environmental hazard was significant. In the opinion of many commenters, this was a significant disadvantage to the "direct process" approach. In view of this concern, some commenters suggested that DOE instead adopt an alternative interpretative approach that would permit the application of each regulatory regime to the type of hazard that it was designed to control, *i.e.* that would apply the AEA to ensure protection against the radiological hazard of this waste, and apply RCRA to ensure protection against any associated chemical hazard.

DOE's operational experience since the publication of the proposed rule lends support to the concern expressed by these commenters. In its efforts provisionally to apply the "direct process" approach, DOE found a number of instances in which otherwise identical wastes were sometimes found subject to RCRA, and other times were found subject only to the AEA, due solely to the wastes' different proximity to the physical process of producing and utilizing special nuclear material. While distinctions of this type are not entirely incompatible with the process-oriented language employed by the Congress in the AEA to define byproducts material, DOE has concluded after further analysis that the better view of the law is one that avoids such artificial distinctions and that affords the greatest scope to the RCRA regulatory scheme, consistent with the requirements of the AEA. *See Legal Envtl. Assistance Found* v. *Hodel*, 586 F. Supp. 1163 (E.D. Tenn. 1984).

As noted in the foregoing discussion and in the preamble to the proposed rule, the legislative histories of both RCRA and the AEA provide little assistance in interpreting either the meaning of the term byproduct material or the intended effect of RCRA's exclusion of byproduct material from the hazardous waste regulatory program. The House Committee on Interstate and Foreign Commerce, in reporting its version of the bill that ultimately was enacted as RCRA, alluded to a 1973 leak of radioactive waste from a DOE underground storage tank at Richland, Washington as an "actual instance [ ] of damage caused by current hazardous waste disposal practices." H.R. Rep. No. 1491, 94th Cong., 2d Sess., pt. 1, at 17–19, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6238, 6254–57. This reference is a less than certain indication that the Congress viewed such radioactive waste as "hazardous waste" subject to RCRA. Unlike RCRA as finally enacted, the bill [3] which this House Report accompanied contained no provision excluding source, special nuclear and byproduct material, thereby minimizing the probative value of the Committee's Richland reference in construing the statute that was ultimately enacted. Nevertheless, the Committee's reference should not be entirely discounted as evidence that the Congress in considering RCRA was concerned with unregulated hazards presented by radioactive waste, even though the AEA already provided sufficient regulatory control over the radiological hazards associated with such waste.

No court has addressed the specific question whether the entirety of a nuclear waste, or only its radioactive component, is byproduct material.[4] The decision in Brown v. Kerr-McGee Chem. Corp., supra note 2, clearly holds that the States cannot employ their general authority to abate nuisances to regulate even the nonradiation hazard of a waste incompatibly with regulation done under the AEA where the radiation and nonradiation hazards are inseparable. Nothing in that decision, however, is incompatible with concurrent regulation, by the States or EPA, of the nonradioactive component of a nuclear waste, subject to paramount requirements of the AEA.[5]

In this context, DOE notes that at the time the Congress was considering RCRA, the Supreme Court very recently had published its decision in Train v. Colorado Pub. Interest Research Group, 426 U.S. 1 (1976). That case decided whether the Federal Water Pollution Control Act, as amended in 1972, applied to source, special nuclear and byproduct material discharged into navigable waters by government-owned production facilities and commercial power reactors regulated by the AEA. After concluding that the Federal Water Pollution Control Act, properly construed, did not authorize EPA or the States to regulate source, special nuclear and byproduct material, the Court rejected the contention that the Water Act contemplated joint regulation of source, special nuclear or byproduct material effluents. 426 U.S. at 15. The practical effect of the Court's decision, however, was a regime of concurrent regulation, by different authorities, of effluent streams containing both radioactive and nonradioactive components. Specifically, the decision left EPA and the States free to regulate, under the Water Act, the nonradioactive component of liquid effluents from nuclear facilities, while reserving to the NRC and DOE's predecessor agency all regulatory authority over the source, special nuclear and byproduct materials contained in those same effluent streams.

The legislative history of RCRA contains no mention of the *Train* decision. However, the Congress is presumed to be aware of decisions of the Supreme Court,[6] and in fact employed in RCRA the same AEA terms, including byproduct material, that the Court had extracted from the Water Act's legislative history to emphasize in its analysis in *Train*. Thus it is at least equally logical to infer that the Congress, in selecting the AEA terms emphasized in *Train*, anticipated a similar result under RCRA as it is to posit—as did the proposed rule—that RCRA's exclusion of byproduct material must have been intended to exclude in their entirety some waste streams from regulation under RCRA.

In short, while the specific legal authorities relied upon by DOE in developing the proposed rule appeared consistent with the "direct process"

[3] H.R. 14496, 94th Cong., 2d Sess. (1976).

[4] Two decisions have upheld the authority of the NRC's predecessor agency, the Atomic Energy Commission, to license low level radioactive waste as byproduct material. Harris County v. United States, 292 F.2d 370 (5th Cir. 1961); City of New Britain v. Atomic Energy Comm'n, 306 F.2d 645 (D.C Cir. 1962). In neither case, however, did the court reach the specific question whether the entirety of the waste, or only its radioactive component, is byproduct material.

[5] *See* discussion of RCRA section 1006(a), U.S.C. 6905(a), *infra*

[6] Cary v. Curtis, 44 U.S. (3 How.) 236, 240 (1845).

approach, those authorities are equally consistent with the narrower interpretation of byproduct material that was suggested by the majority of the commenters on the proposed rule. More importantly, DOE is now persuaded after further analysis that the "direct process" approach does not reflect the better view of the law.

RCRA is a remedial statute, and as such must be liberally construed to effectuate the remedial purpose for which it was enacted.[7] The intended comprehensiveness of RCRA's regulatory scheme is evident from the Act's legislative history. The principal sponsor of the legislation in the Senate emphasized that it represented "a major commitment of federal assistance to state and local government efforts to meet [hazardous and solid waste] problems in a comprehensive and effective manner." [8] The House Committee on Interstate and Foreign Commerce regarded the legislation as closing the "last remaining loophole" [9] in a framework of national environmental laws that already included the Clear Air Amendments of 1970, the Federal Water Pollution Control Act Amendments of 1972, and the Safe Drinking Water Act.

Moreover, interpretation of RCRA's exclusion of byproduct material must not focus solely on that exclusion, read in isolation. Instead, the exclusion can be viewed properly only in the context of the whole statute, as well as its object and policy.[10] In this connection, it seems apparent that RCRA was intended to have some applicability to materials that were already regulated under the AEA. Section 1006(a) of RCRA, 42 U.S.C. 6905(a), specifies that as to "any activity or substance" subject to the AEA, RCRA regulation must yield, but only to the extent of "inconsistent" requirements stemming from the AEA. The archetypal "substances" that can fairly be described as "subject to" the AEA are substances containing source, special nuclear and byproduct material, to which the AEA expressly is directed. Thus the language of section 1006(a) seems generally to contemplate complementary regulation under both statutes of substances that under prior law might have been regulated exclusively by the AEA.

Viewed in this light, RCRA's definitional exclusion of source, special nuclear and byproduct material assumes a narrower significance than was suggested in the proposed rule. Instead of referring to any waste stream in its entirety, the exclusion appears directed only to the readioactive component of a nuclear waste. The result, however, is a more harmonious view of the statute as a whole. Read together, DOE believes that the definitional exclusion and the language of section 1006(a) are correctly understood to provide for the regulation under RCRA of all hazardous waste, including waste that is also radioactive. RCRA does not apply to the radioactive component of such a waste, however, if it is source, special nuclear or byproduct material. Instead, the AEA applies to that radioactive component. Finally, if the application of both regulatory regimes proves conflicting in specific instances, RCRA yields to the AEA.

In addition to construing the whole of RCRA in harmony, this interpretation results in according both RCRA and the AEA the greatest capacity to regulate effectively the special type of hazard that each statute was designed to control. Since the two statutes are not in irreconcilable conflict, but are capable of co-existence, they should be interpreted such that the operation and objectives of each are facilitated. *See Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 155 (1976). However, in issuing today's final rule, DOE emphasizes the importance of section 1006(a) in resolving any particular inconsistencies that may occur between the requirements of RCRA and those of the AEA. DOE is the federal agency responsible for authoritatively construing the requirements of the AEA, as that Act applies to DOE activities. While DOE does not anticipate that adoption of today's final rule will lead to frequent cases of "inconsistency," section 1006(a) provides critical assurance that the implementation of the final rule will present no impediment to the maintenance of protection from radiological hazards as well as DOE's accomplishment of its other statutory responsibilities under the AEA.

A final consideration in adopting today's final rule is the rule's consistency with the legal position adopted by EPA and the NRC in resolving questions concerning RCRA's application at NRC-licensed commercial nuclear facilities. In a recent guidance document developed jointly by EPA and the NRC,[11] the two agencies stated that for commercial low-level radioactive waste containing a hazardous component, they will regard only the actual radionuclides in the waste as being exempt from RCRA. Today's final rule adopts the same approach for all DOE radioactive and chemically hazardous waste.

Accordingly, for purposes of RCRA, DOE interprets the term byproduct material to refer only to the radioactive component of a nuclear waste. The nonradioactive chemically hazardous component of the waste will be subject to regulation under RCRA.

Procedural Matters

A. Executive Order 12291

This rule has been reviewed in accordance with Executive Order 12291. The rule is not classified as a major rule because it does not meet the criteria for major rules established by that Order.

B. National Environmental Policy Act

This rule is an interpretative rule intended only to clarify the meaning of a statutory definition. Issuance of the rule will have no environmental impact.

C. Regulatory Flexibility Act Certification

The rule will not have a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act of 1980

There are no information collection requirements in the rule.

List of Subjects in 10 CFR Part 962

Nuclear materials, Byproduct material.

Issued in Washington, DC, April 27, 1987.

J. Michael Farrell,

General Counsel.

In consideration of the foregoing, Part 962 is added to 10 CFR Chapter III, to read as follows:

PART 962—BYPRODUCT MATERIAL

Sec.

962.1 Scope.
962.2 Purpose.
962.3 Byproduct material.

Authority: The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); Nuclear Waste Policy Act (Pub. L. 97-425, 96 Stat. 2201).

§ 962.1 Scope.

This Part applies only to radioactive waste substances which are owned or produced by the Department of Energy at facilities owned or operated by or for

[7] *See, e.g.*, Westinghouse Elec. Corp. v. Pacific Gas & Elec. Co., 326 F.2d 575 (9th Cir. 1964).

[8] 122 Cong. Rec. 21401 (1976) (remarks of Sen. Randolph).

[9] H.R. Rep. No. 94-1491, 94th Cong., 2d Sess., pt. 1, at 4, *reprinted in* 1976 U.S. Code Cong. & Ad. News 6238, 6241.

[10] *See, e.g.*, Richards v. United States, 369 U.S. 1, 11 (1962).

[11] "Guidance on the Definition and Identification of Commercial Mixed Low Level Radioactive and Hazardous Waste," Jan. 5, 1987.

the Department of Energy under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq*). This Part does not apply to substances which are not owned or produced by the Department of Energy.

§ 962.2 Purpose.

The purpose of this Part is to clarify the meaning of the term "byproduct material" under section 11e(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(1)) for use only in determining the Department of Energy's obligations under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) with regard to radioactive waste substances owned or produced by the Department of Energy pursuant to the exercise of its responsibilities under the Atomic Energy Act of 1954. This Part does not affect materials defined as byproduct material under section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

§ 962.3 Byproduct material.

(a) For purposes of this Part, the term "byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) For purposes of determining the applicability of the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) to any radioactive waste substance owned or produced by the Department of Energy pursuant to the exercise of its atomic energy research, development, testing and production responsibilities under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), the words "any radioactive material," as used in subsection (a), refer only to the actual radionuclides dispersed or suspended in the waste substance. The nonradioactive hazardous component of the waste substance will be subject to regulation under the Resource Conservation and Recovery Act.

[FR Doc. 87-9885 Filed 4-30-87; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective February 10, 1987 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: May 12, 1987.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Research Assistant, Division of Banking Supervision and Regulation, (202)-452-2781. For the hearing impaired only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202)-452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks. This List supersedes the last complete List which was effective February 10, 1987. (Additions and deletions for that List were published at 52 FR 3217, February 3, 1987). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U and X (12 CFR Parts 207, 220, 221 and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

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

List of Subjects

12 CFR Part 207

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

12 CFR Part 220

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

12 CFR Part 221

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

12 CFR Part 224

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

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

American Aggregates Corporation
No par common
Bio-Medicus, Inc.
Warrants (expire 08-31-88)

Calumet Industries, Inc.
Warrants (expire 02-27-87)
Commerce Bancorp, Inc. (New Jersey)
Series A, no par cumulative convertible preferred
Computone Systems, Inc.
$.10 par common
The Congress Video Group, Inc.
$.10 par common Warrants (expire 07-15-92)
Electronic Mail Corporation of America
$.01 par common
Finalco Group, Inc.
$.01 par common
Home Intensive Care, Inc.
Warrants (expire 02-29-89)
Horizon Air Industries Inc.
$.01 par common $1.20 cumulative convertible preferred
Hosposable Products, Inc.
Warrants (expire 02-02-89)
Integrity Financial Group, Inc.
$.01 par common
International Lease Finance Corporation
Series A, no par convertible preferred
Kennington Ltd., Inc.
$.10 par common
Machine Vision International Corporation
No par common
Midway Airlines, Inc.
Series B, convertible exchangeable preferred
New Century Entertainment Corporation
Series B, par convertible preferred
QT&T, Inc.
$.10 par common
Savers, Inc.
$.01 par common
Scientific Communications, Inc.
$.10 par common
Sky Express, Inc.
$.01 par common
Spartan Motors, Inc.
Series A, warrants (expire 05-10-87)
Skyes Datatronics
$.10 par common
Top Brass Enterprises, Inc.
$.01 par common
U.S. Playing Card Corp.
Warrants (expire 06-25-90)
Unibancorp Inc.
Series A, no par cumulative convertible preferred
Westworld Community Healthcare, Inc.
$1.00 par common

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

A.T.&E. Corporation
$.01 par common
ACA Joe Eastern, Ltd.
$.01 par common
Accuray Corporation
$1.00 par common
Adams-Russell Electronics Company, Inc.
$.01 par common
American Adventure, Inc.
No par common
American Barrick Resources Corporation
No par common
American Fletcher Corporation
$5.00 par common
American Security Corporation
$1.00 par common
AMPAD Corporation
$.59⅜ par common
ARC International Corporation
No par common
ARK Restraurants Corp.
$.01 par common
Citizens Fidelity Corporation
$5.00 par common
Coastal Bancorp
Class A, $1.00 par common
Color Tile, Inc.
$1.00 par common
Computer Task Group, Inc.
$.01 par common
Continental Bancorp, Inc.
$5.00 par common
Ehrlich Bober Financial Corporation
$1.00 par common
Fair Lanes, Inc.
$1.00 par common
Fundset, Inc.
$.01 par common
Genova, Inc.
$.66⅔ par common
Hygenia Sciences, Inc.
$.01 par common
Jeffrey Martin, Inc.
$.01 par common
Liebert Corporation
No par common
Nashville City Bank and Trust Company
$2.00 par common
Nelson Research & Development Company
No par common COASTAL
On-Line Software International, Inc.
$.01 par common
Oxford Energy Company, The
$.01 par common
Paco Pharmaceuticals Services, Inc.
$.01 par common
Popular Bancshares Corporation
$1.00 par common
Sovereign Corporation
$1.00 par common
Tandem Computers, Inc.
$.025 par common
United Bank, A Savings Bank (Washington)
$5.00 par common
U.S. Medical Enterprises
$.10 par common
United Presidential Corporation
$.50 par common
Uslico Corporation
$1.00 par common
Valtek Inc.
$.20 par common
Walbaum, Inc.
Class A, $1.00 par common

Additions to the List of Marginable OTC Stocks

3CI Incorporated
$.0001 par common
Abraham Lincoln Federal Savings Bank (Pennslyvania)
$1.00 par common
Action Auto Rental, Inc.
$.01 par common
Adobe Systems Incorporated
No par common
Adtec, Inc.
$.01 par common
Airship Industries, Limited
American Depository Receipts representing 80 ordinary shares
Alcide Corporation
$.01 par common
Altai, Inc.
No par common
A.M.E., Inc.
No par common
Ameriana Savings Bank, F.S.B. (Indiana)
$1.00 par common
America First Tax Exempt Mortgage Fund 2 L. P.
Beneficial Unit Certificates representing limited partnership interest
American Federal Savings Bank of Duval County (Florida)
$1.00 par common
Amity Bancorp, Inc.
$2.50 par common
Amre, Inc.
$.01 par common
Anchor Savings Bank, F.S.B. (New York)
$1.00 par common
Antonovich, Inc.
Class A, $.01 par common
Applied Bioscience International, Inc.
$.01 par common
Asarco Incorporated
Warrants (expire 08-15-91)
Badger Paper Mills, Inc.
No par common
Bamberger Polymers, Inc.
$.01 par common
Banks of Mid-America, Inc.
$2.50 par cumulative convertible preferred
Barry Blau & Partners, Inc.
No par common
Bell Savings Bank (Pennsylvania)
$1.00 par common
Biotherapeutics, Incorporated
$.002 par common
Brandon Systems Corporation
$.10 par common
Branford Savings Bank (Connecticut)
$1.00 par common
Brinkmann Instruments, Inc.
$.01 par common
Bristol Federal Savings Bank (Connecticut)
$.01 par common
Bryn Mawr Bank Corporation (Pennsylvania)
$5.00 par common
Burnham American Properties
Units of limited partnership interest
Burnham Pacific Properties, Inc.
No par common
California Energy Company, Inc.
$.0675 par common
California Micro Devices Corporation
No par common
Camera Platforms International, Inc.
$.001 par common
Capital Associates, Inc.
$.008 par common
Carlton Communications, PLC
American Depository Receipts
CB & T Financial Corp.
$1.00 par common
CEM Corporation
$.05 par common
Centennial Savings Bank, F.S.B. (Colorado)
$1.00 par common
Central Bank for Savings, The (Connecticut)
$1.00 par common
Central Jersey Savings & Loan Association
$1.00 par common
Cerner Corporation
$.01 par common
Chemclear, Inc.
$.01 par common

Cheshire Financial Corporation
$1.00 par common
Circle Fine Art Corporation
$.10 par common
Citizens Savings Bank, F.S.B. (Maryland)
$.01 par common
Citizens Savings Bank, F.S.B. (New York)
$1.00 par common
Clabir Corporation
Class B, $.10 par common
Clinical Data, Inc.
$.01 par common
Clinical Sciences, Inc.
$.01 par common
Commercebank (California)
No par common
Continental Homes Holding Company
$.01 par common
Corrections Corporation
$1.00 par common
Cottage Savings Association (Ohio)
$1.00 par common
Country Wide Transport Services, Inc.
$.01 par common
County Savings Bank (California)
$1.00 par common
CR/PL, Inc.
$.01 par common
Crop Genetics International N.V.
$.10 par common
Daily Journal Corporation
$.01 par common
Deerfield Savings and Loan Association (Illinois)
$1.00 par common
Delta Woodside Industries, Inc.
$.01 par common
Dominguez Water Corporation
$1.00 par common
Eagle Financial Corporation
$.01 par common
Elcotel, Inc.
$.01 par common
Elexis Corporation
$.01 par common
Enviropact, Inc.
$.01 par common
Essex Communications Corporation
Class A, $.01 par common
Evergreen Bancorp, Inc.
$5.00 par common
Excelan, Inc.
$.01 par common
FBX Corporation
$.01 par common
Federated Financial Savings & Loan Association (Wisconsin)
$.10 par common
First Federal Savings & Loan Association of Harrisburg
$1.00 par common
First Federal Savings & Loan Association of LaGrange (Georgia)
$1.00 par common
First Federal Savings Bank (Alabama)
$.01 par common
First Federal Savings Bank (Puerto Rico)
$1.00 par common
First Federal Savings Bank (Tennessee)
$1.00 par common
First Financial Savings Association (Pennsylvania)
$1.00 par common
First Georgia Savings Bank, F.S.B.
$5.00 par common
First National Pennsylvania Corporation, The
$4.166 par common
Fisher Scientific Group, Inc.
$.01 par common
Flamemaster Corporation, The
$.01 par common
Flexible Computer Corporation
$.001 par common
Florida Rock and Tank Lines, Inc.
$.10 par common
F.N.B. Corporation
$2.00 par common
FNB Rochester Corp.
$1.00 par common
Fulton Federal Savings & Loan Association of Atlanta
$1.00 par common
Gateway Bancorp, Inc. (New York)
$.50 par common
General Building Products Corporation
$.05 par common
Geodyne Resources, Inc.
$.10 par common
Glamis Gold Ltd.
No par common
Greenwich Pharmaceuticals Inc.
$.10 par common
Grossman's Inc.
$.01 par common
Group I Software, Inc.
$.01 par common
Health Images, Inc.
Series A, $.01 par cumulative convertible preferred
HITK Corporation
$.001 par common
Home Savings Association of Penna.
$1.00 par common
Homestead Savings Association (Pennsylvania)
$1.00 par common
Hunter Environmental Services, Inc.
$.10 par common
ICN Biomedicals, Inc.
$.01 par common
Immunomedics, Inc.
$.01 par common
Independent Bank Corp. (Massachusetts)
$.01 par common
Indiana Federal Savings and Loan Association
$.01 par common
Informix Corporation
$.01 par common
INMAC Corp.
$.01 par common
Insituform Gulf South, Inc.
$.01 par common
Insituform Mid-America, Inc.
Class A,
$.01 par common
Intel Corporation
Warrants (expire 03–15–92)
Invention, Design, Engineering Associates, Inc.
$.01 par common
Investors Title Company
No par common
Jefferson Bank (Pennsylvania)
$3.50 par common
Kimmins Corporation
$.01 par common
Lakeland Industries, Inc.
$.01 par common
Lakeland Savings & Loan Association (New Jersey)
$1.00 par common
Lexington Savings Bank (Massachusetts)
$.30 par common
Major Video Corp.
$.001 par common
Margo Nursery Farms, Inc.
$.001 par common
Markel Corporation
No par common
Maury Federal Savings Bank (Tennessee)
$1.00 par common
MBS Textbook Exchange, Inc.
$.01 par common
MDT Corporation
$1.25 par common
Medstat Systems, Inc.
$.01 par common
Mesa Airlines, Inc.
No par common
Midconn Bank (Connecticut)
$1.00 par common
MMR Holding Corporation
$.01 par common
Montclair Savings Bank (New Jersey)
$2.00 par common
National Heritage, Inc.
$.01 par common
National Industrial Bancorp, Inc. (Connecticut)
$.001 par common
Network Equipment Technologies, Inc.
$.01 par common
New Bedford Institution for Savings (Massachusetts)
$.10 par common
Nichols Research Corporation
$.01 par common
NMR Centers, Inc.
$.03 par common
North American Biologicals, Inc.
$.10 par common
North American Ventures, Inc.
Warrants (expire 05–09–91)
Occupational-Urgent Care Health Systems, Inc.
No par common
Offshore Logistics, Inc.
No par common
Olympic International Bank & Trust Company (Massachusetts)
$1.00 par common
Oriental Federal Savings Bank (Puerto Rico)
$1.00 par common
Outlet Communications, Inc.
Class A,
$.01 par common
Pan Atlantic RE, Inc.
$.10 par common
People's Savings Bank of Brockton (Massachusetts)
$.10 par common
Phoenix RE Corporation
$.01 par common
Photronic Labs, Inc.
$.01 par common
Praxis Biologics, Inc.
$.01 par common
Pro-Med Capital, Inc.
$.01 par common
Profit Technology, Inc.
$.01 par common
Psicor, Inc.
No par common
Pulaski Savings & Loan Association (New Jersey)
$1.00 par common

Rabbit Software Corporation
$.01 par common
Reisterstown Federal Savings Bank (Maryland)
$1.00 par common
Rhone-Poulenc, S.A.
American Depository Receipts
Riverside National Bank (California)
$1.25 par common
Roosevelt Federal Savings & Loan Association (Missouri)
$.01 par common
Royalpar Industries, Inc.
$.01 par common
SBT Corporation
No par common
Scherer, R.P. Corporation
$1.00 par convertible preferred
Seacoast Savings Bank (New Hampshire)
$1.00 par common
Sonora Gold Corporation
No par common
Spear Financial Services, Inc.
$.05 par common
Staodynamics, Inc.
$.01 par common
Strober Organization, Inc., The
$.01 par common
Sunrise Federal Savings and Loan Association (Kentucky)
$1.00 par common
Systems Software Associates, Inc.
$.0033 par common
Telematics International, Inc.
$.01 par common
Thermo Process Systems, Inc.
$.10 par common
Todd-Ao Corporation, The
$.25 par common
Total Health Systems, Inc.
$.01 par common
Unico American Corporation
No par common
United Companies Financial Corporation
$2.00 par common
Universal Medical Buildings, Inc.
Depository Receipts for units of shares of beneficial interest
Village Super Market, Inc.
Class A, No par common
Vivigen, Inc.
$.01 par common
Washington Bancorporation (Washington, DC)
$2.50 par common
Waterford Glass Group, Plc.
American Depository Receipts representing 10 Units, each unit consists of ordinary shares and income shares
Webb, Del E., Corporation
Warrants (expire 02-01-90)
West Newton Savings Bank (Massachusetts)
$.10 par common
Western Auto Supply Company
$.01 par common
Weston, Roy F., Inc.
Class A, $.10 par common
WTD Industries, Inc.
No par common
Xylogics, Inc.
$.10 par common
Yorkridge-Calvert Savings and Loan Association (Maryland)
$1.00 par common
ZZZZ Best Company, Inc.
Warrants (expire 12-15-89)

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18), April 24, 1987.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 87-9725 Filed 4-30-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 86C-0301]

Listing of Color Additives Subject to Certification; [Phthalocyaninato (2-)] Copper

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of [phthalocyaninato (2-)] copper to color polymethylmethacrylate monofilament used as supporting haptics for intraocular lenses. This action responds to a petition filed by Surgidev Corp.

DATES: Effective June 2, 1987, except as to any provisions that may be stayed by the filing of proper objections: Objections by June 1, 1987.

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: Marvin D. Mack, 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:

I. Introduction

In a notice published in the Federal Register of August 19, 1986 (51 FR 29612), FDA announced that a color additive petition (CAP 6C0200) had been filed by Surgidev Corp., 5743 Thornwood Dr., Goleta, CA 93117, proposing that § 74.3045 *[Phthalocyaninato (2-)] copper* (21 CFR 74.3045) be amended to provide for the safe use of [phthalocyaninato (2-)] copper to color polymethylmethacrylate monofilament used as supporting haptics for intraocular lenses. The petition was filed under section 706 of the Federal Food , Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

Haptics are suture-like loops used to hold intraocular lenses in place within the eye. Color additives are added to sutures and to haptics to increase their visibility for the physician. Small size sutures and haptics are difficult to see. Thus, they require intense color and a high percentage of color additive.

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94-295), Congress mandated the listing of color additives for use in medical devices when the color additive comes in contact with the body for a significant period of time (21 U.S.C. 376(a)). [Phthalocyaninato(2-)] copper is used in supporting haptics for intraocular lenses in such a way that at least some of the color additive will come in contact with the eye when the lens is worn. In addition, the lens fixed with the support haptic monofilament is permanently placed in the eye by the surgeon. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

III. Analysis of Data

[Phthalocyaninato(2-)] copper is currently regulated as a color additive, subject to certification, for use in coloring contact lenses in amounts not to exceed the minimum amount reasonably required to accomplish the intended coloring effect and for use in coloring certain nonabsorbable sutures in general and ophthalmic surgery at a level not to exceed 0.5 percent by weight of the suture.

To establish that the color additive [phthalocyaninato(2-)] copper is safe for use in coloring polymethylmethacrylate monofilament used as supporting haptics for intraocular lenses, the petitioner submitted various toxicity studies on the colored monofilament or its extracts. The studies include an acute systemic toxicity study on extracts of the colored monofilament in mice, acute intracutaneous exposure of rabbits to colored monofilament extracts, a maximization test in guinea pigs using an extract of the monofilaments, a 7-day muscle implantation study in rabbits using colored monofilament strands, and cytotoxicity and acute hemolysis studies with the colored monofilament and its extracts. There were no treatment related or other adverse effects observed in any of these studies.

To estimate the potential maximum exposure to [phthalocyaninato(2-)]

copper from its use in coloring polymethylmethacrylate haptics, FDA has applied the principles for estimating exposure that it has applied in evaluating the safety of the use of color additives in suture materials (Ref. 1). Based on its review of numerous petitions, FDA considers that the maximum length of suture used in any single ophthalmic surgery is not likely to exceed 30 centimeters, and that lifetime exposure will not exceed 60 centimeters of suture. The agency also estimates that polymethylmethacrylate haptics will have approximately the same density as silk sutures (size 8-0). Moreover, the use of the color additive to color polymethylmethacrylate haptics will not exceed 0.5 percent by weight.

Based upon these approximations, FDA has calculated the total acute exposure to the color additive to be 3.5 micrograms and a lifetime chronic exposure of 0.3 nanogram per day. No cytotoxic or other effects were observed in the safety studies submitted by the petitioner, or in other studies available to FDA, at concentrations many times greater than these approximate maximum levels of exposure.

IV. Conclusion

Based on data contained in the petition and other relevant material, FDA concludes that there is reasonable certainty that no harm will result from the petitioned use of [phthalocyaninato(2-)] copper for coloring supporting haptics for intraocular lenses when used at a maximum level of 0.5 percent by weight of the haptic. The agency also concludes on the basis of that data and material that the color additive will perform its intended coloring effect in the haptic material, polymethylmethacrylate, and thus is suitable for this use. The agency, therefore, is amending the color additive regulations to provide for the use of the color additive at a maximum level of 0.5 percent in polymethylmethacrylate haptics.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the use of the color additive in coloring polymethylmethacrylate monofilament used as supporting haptics 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 § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

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).

VII. Reference

The following information has been placed on file at the Dockets Management Branch (address above) and is available for review in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum to the record dated October 10, 1985, from the Food Additive Chemistry Evaluation Branch, Re: "Exposure Estimates for Color Additives in Sutures."

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 1, 1987 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 ground 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. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. Section 74,3045 is amended by revising the introductory text of paragraph (c)(1) and paragraph (c)(1)(i) to read as follows:

§ 74.3045 [Phthalocyaninato (2-)] copper.

* * * * *

(c) *Uses and restrictions.* (1) The color additive [phthalocyaninato (2-)] copper may be safely used to color polypropylene sutures, polybutester (the generic designation for the suture fabricated from 1,4-benzenedicarboxylic acid, polymer with 1,4-butanediol and *alpha*-hydro-*omega*- hydroxypoly (oxy-1,4-butanediyl), CAS Reg. No. 37282-12-5) nonabsorbable sutures for use in general and ophthalmic surgery, and polymethylmethacrylate monofilament used as supporting haptics for intraocular lenses, subject to the following restrictions:

(i) The quantity of the color additive does not exceed 0.5 percent by weight of the suture of haptic material.

* * * * *

Dated: April 27, 1987.

John M. Taylor,

Associated Commissioner for Regulatory Affairs.

[FR Doc. 87-9912 Filed 4-30-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 33 and D&C Red No. 36; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 and D&C No. 36 for use as color additives in drugs and cosmetics. The new closing date will be July 6, 1987. FDA has decided that this brief postponement is necessary to provide time for the preparation of documents that will explain the bases for the agency's decisions concerning the conditions under which these color additives may be safely used.

EFFECTIVE DATE: Effective May 4, 1987, the new closing date for D&C Red No. 33 and D&C Red No. 36 will be July 6, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of May 4, 1987, for the provisional listing of D&C Red No. 33 and D&C Red No. 36 by regulation published in the **Federal Register** of March 3, 1987 (52 FR 6323). FDA extended the closing date for these color additives until May 4, 1987, to provide time for submission of further information, for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of these color additives, and for publication of a regulation in the **Federal Register** regarding the agency's final decision on the petitions for the permanent listing of these color additives. The regulation set forth below will postpone the May 4, 1987, closing date for the provisional listing of these color additives until July 6, 1987.

FDA has essentially completed its review and evaluation of available information relevant to the use of these color additives in drugs and cosmetics. The agency has concluded that the drug and cosmetic uses of D&C Red No. 33 and D&C Red No. 36 are safe. Thus, the agency has decided to permanently list the color additives for these uses. New certification specifications are also being developed for these color additives.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until July 6, 1987, to provide time for the preparation and publication of appropriate **Federal Register** documents. The agency intends to publish these documents as soon as possible. FDA concludes that this short extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

Because of the shortness of time until the May 4, 1987, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of May 4, 1987. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on May 4, 1987.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" in paragraph (b) to read "July 6, 1987".

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" in paragraph (d) introductory text table, to read "July 6, 1987".

Dated: April 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–9913 Filed 4–30–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD Directive 5400.7 and DoD 5400.7–R]

DoD Freedom of Information Act Program; Uniform Fee Schedules and Administrative Guidelines; Correction

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule; Correction.

SUMMARY: This notice is to correct erroneous information printed in the **Federal Register** on April 24, 1987 on page 13641.

EFFECTIVE DATE: April 24, 1987.

ADDRESS: Office of the Assistant Secretary of Defense (Public Affairs), The Pentagon, Washington, DC 2301–1400.

FOR FURTHER INFORMATION CONTACT: Colonel Charlie Talbott, telephone (202) 697–1180.

List of Subjects in 32 CFR Part 286

Freedom of information.

PART 286—[AMENDED]

Accordingly, 32 CFR Part 286 is corrected as follows:

1. The authority citation for Part 286 continues to read as follows:

Authority: Pub. L. 99–570, sections 1801–04; Pub. L. 99–661, section 2328; 5 U.S.C. 552.

2. In the **DATE**, change "Subpart F" to read § 286.33 and § 286.35 which *are* effective . . ."

3. In the **SUMMARY**, page 13642, first paragraph, last sentence, change the word "Subpart F" to read "§ 286.33 and § 286.35."

4. Remove the last paragraph of the **SUMMARY** and replace with the following:

This notice also announces § 286.37 as a final rule (Pub. L. 99–661). Section 286.37 was published as § 286.62 in the **Federal Register** on January 9, 1987. Section 286.62 is now designated as § 286.37 and was effective February 14, 1987. No comments were received; however, the fee rates were revised to reflect both direct and indirect costs as required by Pub. L. 99–661.

April 28, 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–9956 Filed 4–30–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 87-015]

Delegation of Authority to Measure Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This action delegates authority to perform certain functions concerning the measurement of U.S. vessels and the issuance of tonnage measurement certificates. Recent legislation authorizes the Coast Guard to delegate these functions to the private sector. The Coast Guard has determined that such a delegation would be in the best interest of the Federal Government and the public. At this time, the Coast Guard is delegating to the American Bureau of Shipping the authority to perform U.S. formal tonnage measurement services for commercial, recreational, and public non-combatant vessels that are required or eligible to be documented as vessels of the United States.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis A. Lamont, (202) 267-2992.

SUPPLEMENTARY INFORMATION: On October 21, 1986, the President signed into law the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) that includes H.R. 1362, a bill "to revise, consolidate, and enact certain laws related to load lines and measurement of vessels as parts C and J of subtitle II of Title 46, United States Code." In the Act, 46 U.S.C. 14103 authorizes the Secretary of the Department of Transportation (Coast Guard) to delegate to a "qualified person" the authority to measure vessels and issue appropriate certificates of measurement. At this time, the Coast Guard is delegating only a portion of its measurement function—the authority to perform U.S. formal tonnage measurement services under 46 U.S.C. 14511 through 14513 for commercial, recreational, and public non-combatant vessels that are required or eligible to be documented as vessels of the United States. This authority is being delegated to the American Bureau of Shipping (ABS), subject to oversight by the Coast Guard. The Coast Guard formal will provide measurement services only for vessels measured under the Optional Simplified Measurement Method and for certain U.S. Government-owned vessels (e.g. Navy combatant ships and Coast Guard vessels) measured under the formal tonnage measurement systems. The Coast Guard will accept all tonnage measurement applications received before the effective date of this rule and will measure those vessels.

Because this final rule is administrative in nature and concerns only matters of agency organization and procedure, it was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days after publication in the **Federal Register**. This rule merely delegates an existing function to another organization without substantively changing the function. Therefore, the Coast Guard has determined that notice and public procedure thereon are unnecessary under 5 U.S.C. 553(b)(3)(B). Because this rule has no substantive effect, good cause exists for making it effective in less than 30 days after publication, under 5 U.S.C. 553(d).

Drafting Information

The principal persons involved in drafting this rule are Mr. Dennis A. Lamont, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background

Since February 1, 1982, the Coast Guard and ABS have operated under a Memorandum of Understanding permitting acceptance by the Coast Guard of ABS-issued certificates of measurement. Because of this existing operational arrangement and because of our extensive knowledge of ABS's measurement capability and reliability, the Coast Guard has determined that ABS is presently in the best position immediately to assume the functions delegated by this rule. In the near future, the Coast Guard will initiate a separate rulemaking for the purpose of defining "qualified person" and determining whether to authorize other organizations to participate in this activity. At that time, the public will be provided an opportunity to comment on all proposals related to that rulemaking.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary.

This rule is administrative in nature and merely transfers certain measurement services from one organization to another without substantive change. Traditionally, the formal measurement functions being delegated were provided free of charge by the Coast Guard. Public Law 99-509 now authorizes the Coast Guard to charge a fee for these services based upon actual cost to the Government. Instead of handling these services itself and charging a fee, the Coast Guard has determined that it is in the best interest of the Government and the public to delegate this function to the private sector. Therefore, any fee charged by ABS would be comparable to that required to be charged by the Coast Guard had the Coast Guard not decided to delegate the function.

While the Coast Guard recognizes that organizations performing tonnage measurement services may charge fees, tonnage measurement is usually a one-time expenditure and is insignificant in terms of the overall cost of owning and operating a vessel. Further, it is noted that this rule does not affect vessels that are presently measured and documented under laws of the United States.

Regulatory Flexibility Act

This final rule delegates certain measurement functions to ABS. No new application costs, burdens, or procedures are being imposed. Because the impact of this final rule is expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking amends sections containing information collection requirements. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section numbers and the corresponding OMB approval numbers are as follows: § 69.01–15 and § 69.01–17—OMB Control Numbers 2115–0080 and 2115–0086; § 69.15–39—OMB Control Number 2115-0080. This rulemaking imposes no new paperwork burdens but merely delegates certain formal measurement functions to a private organization.

Environmental Assessment

The Coast Guard has considered the environmental impact of the final rule and concluded that, under the categorical exclusion provision in section 2–B–3.h. of Commandant Instruction M16475.1B, the preparation

of an Environmental Assessment, an Environmental Impact Statement, or a Finding of No Significant Impact for this rule is not required. This rule is an administrative and procedural regulation which clearly has no environmental impacts.

List of Subjects in 46 CFR Part 69

Vessels, Measurement standards.

For the reasons set out in the preamble, 46 CFR Part 69 is amended as follows:

PART 69—MEASUREMENT OF VESSELS

1. The authority citation to Part 69 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 14102, 14103; 49 CFR 1.46; § 69.01–21 issued under 44 U.S.C. 3507, 49 CFR 1.45.

2. Section 69.01–11 is revised to read as follows:

§ 69.01–11 Measurement sources.

(a) All U.S. commercial, recreational, and public non-combatant vessels that are measured under a formal measurement system after May 1, 1987, must be measured by the American Bureau of Shipping (ABS). Applications for measurement must be directed to the American Bureau of Shipping, 45 Eisenhower Avenue, Paramus, New Jersey, 07654, (201) 368–9100.

(b) All vessels measured under the Optional Simplified Measurement Method after May 1, 1987, and all Navy combatant ships and Coast Guard vessels measured under the formal measurement systems must be measured by the Coast Guard. Applications for measurement must be directed to Commandant (C–MVI–5/SM), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington DC 20593–0001 (202) 267–1105.

(c) The appropriate certificate of measurement is issued by the measuring organization as evidence of the vessel's measurement under this part.

3. In § 69.01–15, paragraph (a) is revised to read as follows:

§ 69.01–15 Remeasurement and adjustment of tonnage.

(a) Once measured, a vessel retains its tonnage until structural or arrangement changes are made that require a new measurement. Vessel owners shall report all changes immediately to the appropriate measurement organization listed in § 69.01–11. The organization advises the owner if remeasurement is necessary.

* * * * *

4. In § 69.01–17, paragraph (b) is revised to read as follows:

§ 69.01–17 Appeals.

* * * * *

(b) Appeals of decisions made by a measurement organization listed under § 69.01–11(a) must be submitted directly to Commandant (C–MVI) at the address in § 69.01–11(b).

* * * * *

5. Section 69.01–19 is revised to read as follows:

§ 69.01–19 Fees.

Information on fees for measurement services performed by a measurement organization listed in § 69.01–11(a) is available directly from that organization.

6. In § 69.15–39, paragraph (a) is revised to read as follows:

§ 69.15–39 Application for measurement according to the optional dual tonnage method.

(a). Applications for measurement under the Optional Dual Tonnage Method must be submitted together with supporting plans or sketches to the appropriate measurement organization listed in § 69.01–11.

* * * * *

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

April 28, 1987.

[FR Doc. 87–9949 Filed 4–30–87; 8:45 am]

BILLING CODE 4910–14–M

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–149E; Amdt. No. 173–202]

Exceptions for Specified Quantities of Radioactive Materials

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Research and Special Programs Administration (RSPA) is renewing for two years the exceptions (statutory exemptions) for specified quantities of radioactive materials found in 49 CFR 173.4, 173.421–1 and 173.421–2. These amendments are necessary to permit the transportation by passenger-carrying aircraft of certain quantities of radioactive materials under existing provisions. Renewal of these exceptions will prevent the disruption of routine and ongoing shipments which have been made safely for 12 years under the existing exceptions. These materials do not present a significant hazard to passengers or crew on an aircraft.

EFFECTIVE DATE: May 2, 1987.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, (202) 366–4488, Office of Hazardous Materials Transportation, RSPA, Washington DC 20590.

SUPPLEMENTARY INFORMATION: On March 2, 1987, RSPA published a notice in the Federal Register [Docket HM–149E, Notice No. 87–1, 52 FR 6178]. This notice requested public comment on RSPA amending the Hazardous Material Regulations (HMR) by renewing for two years the exceptions (statutory exemptions) found in 49 CFR 173.4, 173.421–1 and 173.421–2 for specified quantities of radioactive materials.

In accordance with section 107 of the Hazardous Transportation Act (HMTA, 49 U.S.C. 1806) governing exemptions, the exceptions provided in §§ 173.4, 173.421–1 and 173.421–2 are limited to two years unless reexamined and renewed. These exceptions expire on May 2, 1987. Historically, these exceptions have been issued and subsequently renewed under Docket HM–149. The legal background and regulatory history of these exceptions can be found in Docket HM–149C [46 FR 24184] published on April 30, 1981, and in preceding amendments dating back to April 17, 1975 [40 FR 17141].

Two commenters responded to Notice 87–1. Both commenters fully supported updating the exceptions contained in the proposed rule. Their support was based on their experience shipping these materials and the excellent safety record associated with the transportation of these materials.

In accordance with 49 U.S.C. 1806 and 49 CFR 106.13, RSPA has reexamined the provisions of the exceptions provided in §§ 173.4, 173.421–1 and 173.421–2. Predicated on this review and based on the very limited hazard posed by these materials, RSPA is extending the effective dates of the exceptions contained in these sections through May 2, 1989.

Administrative Notices

Executive Order 12291

The RSPA has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures [44 FR 11034] and requires neither a regulatory impact analysis, nor an environmental impact statement under the National Environmental Policy Act

[49 U.S.C. 4321 et seq.]. A regulatory evaluation is available for review in the docket.

Impact on Small Entities

Based on limited information concerning the size and nature of the entities likely to be affected, I certify this rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packing and containers.

In consideration of the foregoing, Part 173 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The Authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 1809; 49 CFR 1.53(e), 1.53, Appendix A to Part 1, 49 U.S.C. 1655, 1655(c).

§ 173.4 [Amended]

2. In paragraph (b) of § 173.4, the year "1987" is changed to read "1989".

§ 173.421-1 [Amended]

3. In paragraph (b)(2) of § 173.421-1, the year "1987" is changed to read "1989".

§ 173.421-2 [Amended]

4. In paragraph (d) of §173.421-2, the year "1987" is changed to read "1989".

Issued in Washington, DC, on April 28, 1987 under the authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87-9884 Filed 4-30-87; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC-170 (Sub- No. 1)]

Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a final rule amending 49 CFR 1312.39 to reduce the notice period for independently filed single-factor domestic motor-water property rates. Rate reductions and new rates may become effective on 1-day's notice and rate increases may become effective on 7-workdays' notice, rather than on the 30-days' notice currently required. Notice of the proposed rule change was published at 50 FR 20920 on May 21, 1985.

EFFECTIVE DATE: This rule will be effective on June 1, 1987.

FOR FURTHER INFORMATION CONTACT:

Ardith Horne, (202) 275-1764

or

Andrew L. Lyon, (202) 275-7691.

SUPPLEMENTARY INFORMATION: The revision to 49 CFR 1312.39 is set out below.

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, Washington, DC 20423, or call (202) 298-4357 (DC Metropolitan area).

The Commission certifies that the adopted rule will not have a significant economic impact on a substantial number of small entities. To the extent small entities will be affected, the effects should be positive. Regulatory lag will be reduced, and small carriers will be able to price their services more competitively, to their benefit and the benefit of their shippers.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1312

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads.

Decided: April 15, 1987.

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

Noreta R. McGee,

Secretary.

Part 1312 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1312 is revised to read as follows:

Authority: 49 U.S.C. 10762; 5 U.S.C. 553.

2. Paragraph (h)(4) of § 1312.39 is revised to read as follows:

§ 1312.39 Miscellaneous provisions which may be filed on less statutory notice.

* * * * *

(h) * * *

(4) *Joint intermodal traffic.* This subsection (h) applies to single-factor, motor-water property rates, charges, rules and other provisions, but does not apply to any other single-factor rate, charge, rule, or other provision having application over any segment of the lines of another transportation mode.

* * * * *

[FR Doc. 87-9897 Filed 4-30-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 61225-7052]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that vessels of the United States have caught the prohibited species catch (PSC) limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58° 00' N. latitude and east of 165° 00' W. longitude (Zone 1). Therefore, further directed fishing on yellowfin sole and "other flatfish" by vessels of the United States is prohibited in Zone 1 for the remainder of the year, as required by regulations governing the groundfish fishery of the Bering Sea and Aleutian Islands area.

EFFECTIVE DATES: From noon, April 27, 1987, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time (AST), December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. On March 19, 1987, the Secretary of Commerce (Secretary) published a final rule implementing Amendment 10 to the FMP (52 FR 8592).

Section 675.21(a)(1) states that if, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 1, he will publish a notice in the **Federal Register** prohibiting a directed fishery by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the year.

The 1987 Bering Sea joint venture (JVP) fishery for yellowfin sole and "other flatfish" began in early March. NMFS has continuously monitored the weekly JVP catches of prohibited species, including *C. bairdi* Tanner crab, in each subarea of the Bering Sea. On April 3, NMFS advised certain elements of the fleet which has exceeded advisory *C. bairdi* PSC guidelines provided them by NMFS that they leave Zone 1. During the week ending April 4, the cumulative catch of *C. bairdi* reached almost 51,000 crab, with a weekly catch of over 11,000 crab. During the following week, catch rates of *C. bairdi* crab in all operations remaining in Zone 1 increased dramatically, resulting in a weekly catch of over 40,000 crab and a cumulative catch by vessels of the United States of 95,000 crab. Most joint ventures operating in Zone 1 voluntarily left the zone during that week.

The Regional Director finds, therefore, that the PSC limit of 80,000 *C. bairdi* crab in Zone 1 has been taken and that further directed fishing on yellowfin sole and "other flatfish" by vessels of the United States in Zone 1 is prohibited for the remainder of the year.

In accordance with § 675.21(a)(1), the Secretary issues this closure prohibiting further directed fishing for yellowfin sole and "other flatfish" in Zone 1 by vessels of the United States from noon Alaska Daylight Time (2000 GMT), April 27, 1987 until midnight, December 31, 1987. Fishing in Zone 1 for other target species such as pollock, Pacific cod, and turbot may continue.

Classification

This action is required by 50 CFR 675.21(a)(1) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-9959 Filed 4-28-87; 4:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 84
Friday, May 1, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1011, 1046, 1093, 1094, 1096, and 1098

[Docket Nos. AO-366-A28 et al.]

Milk in the Georgia and Certain Other Marketing Areas; Decision and Order to Terminate Proceeding on Proposed Amendments to Tentative Marketing Agreements and Others

7 CFR Parts	Marketing area	Docket Nos.
1007	Georgia	AO-366-A28
1011	Tennessee Valley	AO-251-A31
1046	Louisville-Lexington-Evansville	AO-123-A57
1093	Alabama-West Florida	AO-386-A7
1094	New Orleans-Mississippi	AO-103-A49
1096	Greater Louisiana	AO-257-A36
1098	Nashville, Tennessee	AO-184-A51

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This action terminates the current rulemaking proceeding on proposals to amend seven southeastern Federal milk marketing orders. The proposals would establish payments to handlers from pool proceeds for marketing services considered to be of marketwide benefit. Payments of this type were recently authorized by Congress.

At the request of Dairymen, Inc., a public hearing was held September 8–11, October 27-November 1 and November 3, 1986, to consider the cooperative's proposals for such payments. The proposed provisions would involve the use of funds otherwise payable to producers to cover costs of handling and transporting milk supplies that are incurred in balancing available milk supplies with the needs of fluid milk handlers. Under this arrangement, the costs of such services provided by handlers in a particular market would be spread uniformly among all producers on that market.

The evidence from the hearing indicates that a substantial proportion of the milk supply balancing services in the Southeast involves a broad regional area which includes not only the seven order areas involved in this proceeding but the Florida Federal order markets and the unregulated North Carolina and South Carolina areas as well. With the extensive amount of inter-market milk movements throughout this broad area, the adoption of the proposals would result in producers in the seven markets bearing the burden of balancing milk supplies for handlers not associated with the local markets. This would impose an inequitable financial burden on the producers who supply these seven markets. It is concluded that the current market structure of the Southeast and the existing marketing practices in that region preclude the equitable operation of the marketwide service provisions proposed by Dairymen, Inc. Accordingly, the proposals are denied and the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued August 12, 1986; published August 15, 1986 (51 FR 29252).

This document terminates the proceeding on proposals that would have amended the seven orders listed above to provide payments from pool proceeds for marketing services provided by handlers. It is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The public hearing on the proposals was held in Atlanta, Georgia, on September 8–11, October 27-November 1, and November 3, 1986.

The transcript of the hearing consists of 2,951 pages. Participants at the hearing presented 122 exhibits, many of which are multi-part, to be marked for identification. Forty-two witnesses testified regarding marketing data and/or the proposals under consideration at the hearing. Interested parties were given until January 31, 1987, to submit briefs of the testimony received at the hearing. Nineteen interested parties submitted briefs. Notwithstanding this lengthy record, the record evidence does not demonstrate that the proposed marketwide service provisions would effectuate the purposes of the Agricultural Marketing Agreement Act of 1937, as amended.

Material Issues on the Record

The hearing was held at the request of Dairymen, Inc. (DI). The cooperative represents about 4,200 dairy farmers who deliver milk to handlers regulated under one or more of the seven orders involved in this proceeding. At the time of the hearing, the cooperative's representation of producers min each of the 7 orders ranged from a low of 31 percent to a high of 100 percent. The cooperative represents some 2,000 dairy farmers that supply markets other than these seven. In addition to representing dairy farmers, DI operates 13 fluid milk processing plants and 6 manufacturing plants in the southeastern part of the United States.

The proposals by DI would reimburse handlers for the following services:

1. Transporting surplus milk supplies to alternative outlets during the months when the available milk supplies are in excess of the fluid milk requirements of handlers.

Under DI's proposal, handlers who transport unavoidable seasonal surpluses to distant markets would be compensated by payment of hauling credits from the producer-settlement fund. A hauling credit of 3.3 cents per hundredweight for each 10 miles was proposed for shipments beyond designated points within each market order area. The designated points chosen were the average delivery distance from farms of DI members to pool plants in the respective markets. The hauling credits would apply during the months of March through June and December 20–31. Payment of the hauling credits from the producer-settlement fund would result in all producers in the marketwide pool sharing in the cost of handling the seasonal surplus resulting from the production pattern of those producers supplying the market.

2. Transporting supplemental milk supplies from other Federal order markets during the months of the year when fluid milk requirements of handlers exceed the local fluid milk supplies.

DI's proposals would amend the seven orders to provide a hauling credit to

qualified handlers who purchase supplemental milk from other Federal order plants for Class I use. The proposals would compensate handlers who import such milk into the local market to meet peak seasonal demands. The rate of the proposed hauling credit would be 3.3 cents per hundredweight per 10 miles distance between the shipping and receiving plants less any positive difference between the Class I differential applicable at the receiving plant and the Class I differential applicable at the shipping plant. Hauling credits would be available only during the months of August through February. In addition, hauling credits for supplemental milk would not apply unless regular supplies are inadequate to meet the Class I needs of the southeastern region. DI testified that the hauling credit is needed because the transportation differential embodied in the Federal order system is not sufficient to cover the cost of bringing in supplemental milk supplies. The cooperative contended that the hauling credits would tend to equalize the cost of raw milk between handlers who have a local supply of milk available and handlers who obtain their milk from distant markets.

3. Providing facilities to handle seasonal milk supplies that are in excess of the fluid milk requirements of handlers.

Under DI's proposal, handlers who process the seasonal reserve supplies for a market would be compensated for giving up milk for Class I needs during the months when raw milk supplies are short in the southeastern markets. Payments under the seven orders for giving up milk for Class I use would vary from 62 cents per hundredweight under the Louisville-Lexington-Evansville order to a high of 94 cents per hundredweight under the New Orleans-Mississippi and Greater Louisiana orders. Such payments would compensate those producers or handlers who operate the manufacturing plants and suffer losses due to idle manufacturing plant facilities that result from giving up milk from such plants for use as Class I milk. It was DI's view that the proposal, if adopted, would provide an added incentive to make milk available for Class I use. In addition, the proposed payments would contribute to more uniform prices to producers by covering part of the cost incurred by those producers who provide the service. The cooperative also contended its proposal would result in higher blend prices to producers by encouraging plant operators to give up milk that is normally utilized for manufacturing purposes and make such milk available for Class I use.

4. Disposing of bulk milk for Class I use to out-of-market nonpool plants.

This proposal by DI would pay a cooperative association 35 cents per hundredweight for milk transferred from a Federal order market to nonpool plants for Class I use if such milk is pooled under the local order. Such Class I sales increase the Class I utilization of producer milk under the order, resulting in a higher pool value and blend price to all producers whose milk is pooled on the market. DI pointed out that when a cooperative makes such sales it must share the value of the Class I sale with all producers in the pool. However, the member producers of the cooperative bear the handling cost associated with such Class I sale. The cooperative indicated that while the 35-cent rate per hundredweight is less than the actual cost of making such sale, producers on the market who benefit from off-market bulk Class I sales should share in the costs at least to this extent.

5. Providing market analyses, participating in Federal order hearings, and sponsoring educational programs.

Under this proposal, a qualified cooperative association would receive from the producer-settlement fund of an order 3 cents per hundredweight for its member producer milk that is pooled under such order. Such payment would be limited to cooperative associations that represent at least 25 percent of the producers whose milk is pooled on the market and who produce at least 25 percent of the milk pooled. The services which must be performed to qualify for a payment must include:

(1) Analyzing milk marketing problems and their solutions, conducting market research and maintaining current information as to all market developments, preparing and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of all such data;

(2) Determining the need for the formulation of amendments to the order and proposing such amendments or requesting other appropriate action by the Secretary or the market administrator in light of changing conditions;

(3) Participating in proceedings with respect to amendments to the order, including the preparation and presentation of evidence at public hearings, the submission of appropriate briefs and exceptions, and also participating, by voting or otherwise, in referenda relative to amendments;

(4) Participating in the meetings called by the market administrator, such as meetings with respect to rules and regulations issued under the order, including activities such as the preparation and presentation of data at such meetings and briefs for submission thereafter; and

(5) Conducting a comprehensive education program among producers and keeping them informed for participation in the activities under the regulatory order.

It was DI's view that the activities which qualify a cooperative to receive the 3-cent-per-hundredweight payment are necessary to the effective operation of a marketing order and are recognized as beneficial to all producers, both cooperative members and nonmembers, and to fluid milk processors as well. The cooperative indicated also that the interests and concerns of its members are representative of all producers. DI testified too that the efforts of the cooperative to improve marketing conditions for its members also benefit those producers who are not members.

It was DI's position that payment for marketwide services should be made only to qualified handlers. In general, payments for balancing milk supplies for a market would be made available to a handler who supplied two or more distributing plants other than its own plant with milk on 14 or more days during the month. With regard to payments from the pool for making out-of-market Class I sales, payments for such services would be limited to only cooperative associations. With respect to payments from pool proceeds for educational and marketing services and other similar activities, only cooperative associations representing in excess of 25 percent of the producers (both in numbers and volume of milk production) delivering milk to pool plants would be eligible for payments.

Another proposal by DI would permit the diversion of milk to plants regulated under other orders for Class I use. This proposed change in order provisions is a corollary proposal to the proposed marketwide service payment provisions. The cooperative advanced the following reasons for the proposed change:

1. It would permit greater efficiencies in milk deliveries.

2. It would improve administration of the base-excess plans in the five southeastern Federal orders containing such plans.

3. It would improve the Class I use of the total milk supplies of the area.

The National Milk Producers Federation (NMPF), a national organization representing dairy farmers

and the dairy cooperative marketing associations that such farmers own and operate, supported the general concept of providing payments to handlers that perform services of marketwide benefit. The Federation's representative neither supported nor opposed DI's proposals. Instead, the representative listed the following milk marketing services for which NMPF believed compensation from Federal order payment pools is warranted:

1. Balancing the seasonal requirements of distributing plants;
2. Securing supplemental milk supplies from nonpool sources when needed;
3. Disposal of excess pool milk supplies when no local manufacturing capacity is available;
4. Transportation of milk from pool sources of supply to distributing plants;
5. Providing marketwide information, education and producer representation; and
6. Balancing the daily fluctuations in distributing plant requirements.

A brief was filed on behalf of a cooperative association whose members are not producers on any of the seven orders but are producers in the Ohio markets. The cooperative contended that DI presented sufficient evidence to justify its proposals on marketwide service payments. The cooperative also held that the Secretary is obligated to act on the basis of this record and that Congress intended that the type of provisions proposed by DI be included in Federal milk orders.

National Farmers Organization (NFO), a cooperative association, is a handler under the Louisville-Lexington-Evansville order and its members deliver milk to a distributing plant pooled under the Georgia order. Nationally, NFO markets milk of some 4,000 dairy farmers. The cooperative opposed the adoption of Proposal No. 1 (DI's proposals). The cooperative took the position that over-order charges are the best vehicle for recovering the costs of providing services from those benefiting from such services. Another reason the cooperative believed the proposal to be inappropriate is that the seven markets do not reflect areas where supply balancing services are carried out on an intra-market basis. In this regard, the cooperative pointed out that even though a basis existed for assessing all producers for some of the costs incurred by DI in marketing milk in the Southeast, the present orders would not assure that the appropriate producers share in such costs. The cooperative also testified that consideration of marketwide service proposals is premature. In the cooperative's view, the impact of the new Class I differentials and location adjustment changes should be monitored for a year before any other changes are made based upon data predating the implementation of the increased Class I differentials.

Southeastern Graded Milk Producers Association of Somerset, Kentucky, opposed the adoption of Proposal No. 1. The cooperative has 250 member producers who supply Southern Belle Dairy, a pool plant under the Louisville-Lexington-Evansville order. The cooperative's representative offered two primary objections to Proposal No. 1. The representative objected to the proposal because the adoption of the proposed provisions would take money from the member's paycheck. Also, the cooperative objected to the proposal because its members would have no say in how the money that is collected would be used.

A representative of the Gulf Coast Dairymen's Association opposed DI's proposal that would limit payments to cooperatives for providing educational and informational services to cooperatives that represent at least 25 percent of the producers supplying milk to a Federal order market. The cooperative association represents 10 to 12 percent of the producers on the New Orleans-Mississippi market and a token number of producers on the Alabama-West Florida market. The cooperative expressed no position on any of the other proposals under consideration.

Farmers Union Milk Marketing Cooperative opposed the adoption of Proposal No. 1. The cooperative's representative testified that the cooperative has marketed and pooled milk on several of the seven southeastern orders as recently as the fall and winter months of 1984 and expects to market milk in these order areas again at some future date. The cooperative took the position that there is no need for the payments or credits sought by DI. The cooperative's representative testified that cooperatives that operate manufacturing plants currently recover balancing costs through over-order premiums paid by their Class I buyers.

Briefs were filed by five cooperative associations whose members are producers in the mid-west, upper mid-west and northeast Federal order markets. In general, the five cooperatives supported the concept of payment from pool proceeds for marketing services that are of marketwide benefit. However, the primary purpose of the briefs in each instance was to make it clear that the marketing services for which DI is seeking payment under the seven southeastern orders may not be representative of the marketwide service payment provisions that are needed in other Federal milk orders.

A representative of seven dairy cooperatives in North Carolina and South Carolina and the South Carolina Farm Bureau opposed the adoption of marketing service payments proposed by DI. The cooperatives have 594 members who supply milk to plants located in North Carolina, South Carolina and Georgia. The representative testified that the costs of marketing services should be borne by the persons or entities that receive and benefit from the services. The Carolina cooperatives were primarily concerned that adoption of DI's proposal would result in a net reduction in returns to non-DI producers. Another concern was that adoption of DI's proposal would enhance DI's competitive posture at both the handler and producer levels. If any marketwide service payments are adopted, the representative proposed that such payments be made available to any handler or cooperative that provides the "marketwide services."

A representative of the Alabama Farm Bureau Dairy Committee testified at the hearing. The Committee expressed neither support nor opposition to Proposal No. 1. The representative indicated that the Committee favored credits for seasonal balancing by moving surplus milk to disposal outlets and bringing in supplemental supplies for Class I needs. Most of the representative's testimony dealt with the Committee's concerns regarding DI's proposal. The representative indicated that cooperatives and other marketing agents serving multiple markets might use marketing service payments for their own benefit in ways that would be detrimental to other producers. The Committee took the position that any handler who balances for the market's benefit should receive payment if proposals on marketing service are adopted. With regard to payments for inter-market movements of Class I milk, the representative expressed concern that such payments could result in inefficient hauling. The Committee recommended that if cooperative payments are provided under Federal orders, a marketwide committee of producers administer the expenditure of funds for such program.

Fifteen dairy farmers presented testimony on behalf of 432 dairy farmers who are not members of dairy cooperatives. The dairy farmers are producers under the seven orders and opposed the adoption of Proposal No. 1.

Also, testimony in opposition to DI's proposal was offered on behalf of 210 dairy farmers who supply Malone and Hyde Dairy at Nashville, Tennessee, a pool plant under the Memphis order. The reason for the opposition by the dairy farmers who supply the Malone and Hyde plant is that such plant could become regulated at some future date under one of the seven southeastern orders. In general, the dairy farmers opposing Proposal No. 1 testified that:

1. Marketwide service payments would be bad Federal policy. Such payments would deviate from, and conflict with, established Federal policies and programs.

2. DI's proposal is replete with legal and conceptual infirmities.

3. Adoption of the proposal would open the door to a multitude of uneconomic practices.

A representative of the Milk Industry Foundation (MIF) and the International Association of Ice Cream Manufacturers (IAICM) opposed the adoption of marketwide service payments under Federal milk orders for seasonal balancing, sales of pooled milk to nonpool fluid plants for Class I use, and cooperative service payments. In addition, the two trade associations expressed concerns about adopting hauling credits for surplus and supplemental milk as permanent features of the orders.

MIF is the national trade association for processors of fluid milk products. The 225 members of MIF are located in all 50 states and in over 20 foreign countries. The member companies operate over 750 plants which process about 75 percent of the domestically-consumed fluid milk and fluid milk products.

IAICM is the trade association for manufacturers and distributors of ice cream and other frozen dessert products. The 210 members of the association operate over 1,100 plants and distribution centers nationwide and manufacture about 85 percent of the ice cream consumed in the United States.

The MIF and IAICM represent companies who operate plants regulated in each of the seven Federal milk marketing orders. A number of the member companies of MIF and IAICM testified individually at the hearing in support of testimony presented on behalf of the two trade associations.

MIF submitted for consideration at the hearing four proposals dealing with marketwide service payments as alternatives to DI's proposal. Although the trade association opposed the adoption of marketwide service payments, the association supported adoption of its proposals in the event that the Department concluded that payments for marketwide services should be incorporated in Federal milk orders. The proposals by MIF would apply for a limited period and would provide:

1. Payment of 30 cents per hundredweight to handlers for all producer milk received at, or diverted from, pool plants on Saturdays and Sundays.

2. A hauling credit of 2.6 cents per hundredweight for each 10 miles less the difference between Class I differentials applicable at the shipping and receiving plants on Class I supplemental purchases from a plant regulated under another order.

3. A hauling credit of 2.6 cents per hundredweight for each 10 miles during periods of excess production relative to fluid demand for milk transferred or diverted to a nonpool plant for Class II or Class III use.

4. Payment to the market administrator from the producer-settlement fund of 3 cents per hundredweight on nonmember producer milk so that the marketing service assessment rate on nonmember producer milk is reduced a corresponding amount.

National Independent Dairy Foods Association (NIDA), a national trade association of independent proprietary handlers, processors, manufacturers and distributors of milk and dairy products, opposed all amendments to the seven orders providing payments or credits from pool proceeds to handlers that provide marketwide services.

NIDA objected to the adoption of DI's proposals for the following reasons:

1. Proposed payments would lower producer incomes;

2. Proposals would allow handlers to manipulate milk movements to obtain payments or credits;

3. Proposed payments would enrich dominant cooperatives;

4. Adoption of the proposals could result in disorderly marketing conditions;

5. Proposed amendments would deprive producers of the right to join a cooperative association on a voluntary basis; and

6. Proposed payments would have a detrimental impact on small businesses.

The Trade Association of Proprietary Plants (TAPP), which is headquartered in Wisconsin, opposed the adoption of the proposals by DI providing for payments for marketwide services. The association believes that the adoption of DI's proposals would create, rather than avoid, disorderly marketing conditions. TAPP also took the position that adoption of DI's proposals would undermine the Act's objective of fostering the development and growth of cooperatives. Another objection to DI's proposals was that few, if any, of DI's competitors could qualify for the proposed payments.

As an alternative to the proposals submitted by D, TAPP proposed that transportation credits apply only to bulk fluid milk movements. Payment would be limited to the difference between the credit allowed under the order, if any, and 2.7 cents per hundredweight per 10 miles. In addition, payment would be conditioned upon the prior approval of the market administrator of such movement. In addition to hauling credits for bringing in supplemental supplies from an outside market and hauling excess supplies off the market, TAPP would compensate movement of milk from a supply plant to distributing plants within the marketing area. Transportation credits for bulk fluid milk movements also would be conditioned upon prior approval of the market administrator for such shipments.

The Wisconsin Cheese Makers Association (WCMA), a trade association headquartered in Wisconsin, opposed the adoption of DI's proposal for payments for marketwide services. The Wisconsin trade association indicated the proposed changes in the southeastern Federal milk orders were of concern because the dairy industry is national in scope. The WCMA took the position that there is no need for marketwide service payments because testimony did not reveal that the current level of over-order payments for services is inadequate to meet the demand for these services. Furthermore, the association alleged that DI presented no evidence that there were costs that were not being covered fully, or in part, by revenues from manufacturing operations, over-order premiums, and handling charges.

Proprietary plant operators in general opposed the payments for marketwide services proposed by DI. Without exception, the plant operators objected to the qualification standards proposed by DI for eligibility to receive payments.

Dean Foods presented no testimony at the hearing but submitted a brief on the issues under consideration. The company took the position that all handlers who provide a qualified service of market benefit should be entitled to receive payment if marketwide service payments are adopted in the seven orders. Dean Foods supported a hauling credit to bring in supplemental milk and to haul excess supplies from the market. On supplemental milk supplies, Dean

Foods would limit the credit to the quantity of milk assigned to Class I use.

Dean Foods expressed concern that "any credits from the pool for services not in the interest of all parties in the pool will create an economic advantage for the cooperative."

Borden Company opposed the adoption of marketwide service payments that were proposed by DI. In its brief the company indicated that Proposals 2, 3, 4 and 5 submitted by MIF are reasonable alternatives to DI's proposals and should be adopted. It was the view of the company's representative that proprietary handlers would have from 5 cents to 8 cents per gallon disadvantage in raw milk price in comparison to proponent cooperative if Proposal No. 1 is adopted. The handler also held that DI's proposal is designed to preclude proprietary handlers from participating in a program of marketwide service payments.

Borden excepted to DI's failure to confine its balancing payment provisions to the needed seasonal and operating reserves of milk. In addition, the company contended that the prieing proposals by DI would result in the subsidization of certain Class III manufacturing plants. As a consequence, products produced at such plants would have a competitive advantage over products manufactured in non-subsidized Class III plants.

A representative for Malone and Hyde, Nashville, Tennessee, Southeastern Dairies, Louisville, Kentucky, and Baker and Sons, Birmingham, Alabama, opposed the adoption of the marketing service payment proposals by DI. The Malone and Hyde plant is regulated by the Memphis order but could become regulated under one of the seven orders by a change in its Class I sales distribution area. The Malone and Hyde plant balances the fluid milk requirements for the Baker and Sons plant at Birmingham. Southeastern Dairies operates a distributing plant at Louisville. The plant obtains its milk supply from dairy farmers who are not members of a cooperative association and balances its own fluid milk requirements.

The representative for the three plants testified that it is probably impossible to define or identify a service that is truly marketwide and of equal benefit to all producers. The representative contended that the services for which DI is seeking payment should be compensated on the basis of marketplace factors. In the event that the negotiated charges are inadequate to compensate for the service, the plant operators suggested that the service should not be performed. The opponents of DI's proposals contended that the proposals are anti-competitive, unfair, and subject to gross abuse.

A representative of the Kroger Company testified that DI's proposal for transportation credit for surplus milk disposition has merit. Kroger Company also supported DI's proposal to allow the diversion of milk to a plant regulated under another order for Class I use.

Kroger's representative objected to the incorporation of service charges under Federal orders because a review and adjustment of the charges to reflect cost changes would not be possible on a timely basis. The company took the position, too, that cooperatives should provide only those services that handlers are willing to pay for. The representative objected to requiring a cooperative to represent as much as 25 percent or more of the producers under a Federal milk order as a condition for receiving cooperative payments for market services. The company contended that a pool payment of 35 cents per hundredweight on off-market Class I sales would give DI a competitive advantage over other Class I handlers. Kroger contended that adoption of the proposals would tend to reduce economic movements of milk.

Kinnett Dairies, Inc., opposed the adoption of any of the proposals included in the notice of hearing. The company operates a fluid milk processing plant and an ice cream plant that are located in Columbus, Georgia. Kinnett Dairies also operates a dairy farm. The company submitted two of the proposals that were included in the notice of hearing. The proposals would have provided transportation credits to handlers for bringing in supplemental milk supplies or for handling and disposing of excess milk supplies for Class II or Class III uses. At the hearing, the handler abandoned the two proposals.

Kinnett Dairies indicated that it does all of its own milk supply balancing and bears the cost of such function. The handler contends that payments for marketwide services are now being paid for by the beneficiaries of these services in the form of over-order premiums.

Kinnett Dairies expressed the view that most of the services that DI wants to receive payments for are provided primarily for DI's own plants. The handler was concerned that payments to DI for marketwide services would give the cooperative an unfair competitive advantage in marketing packaged fluid milk products.

A representative for the Southland Corporation opposed the adoption of marketwide service payments proposed by DI. The corporation operates 23 dairy processing and manufacturing plants in the United States. The representative took the position that if payments for marketwide services are provided under Federal orders, the payments should be made to any handler that performs the service. The corporation contended that the qualification requirements proposed by DI are designed to discriminate against proprietary handlers and small cooperatives. The representative expressed concern that the seasonal balancing payments could be manipulated by handlers. Another area of concern was that all dairy farmers would be required to pay for information that a cooperative decided to provide its members.

A representative of the Southern Belle Dairy Company, Inc., opposed the proposals by DI. The company indicated that it does not rely on DI to balance its needs. The dairy buys supplemental milk from NFO and Armour. During the months of flush production, the company often receives less than the Class III price for milk that it diverts to nonpool plants. The handler contended that balancing costs should be paid by the plant operator who benefits from the market service. The dairy was concerned that the proposals would reduce blend prices payable to producers in order to benefit DI. Furthermore, Southern Belle Dairy pointed out that it would not get credit under DI's proposals for providing balancing services.

A representative of Dairy Fresh Corporation opposed the adoption of DI's proposals. The company operates five distributing plants that are fully regulated by Federal milk orders and operates two nonpool plants. The milk supplies for its two Alabama distributing plants are received from producers who are not members of any cooperative. The other distributing plants obtain their supplies primarily from cooperatives. Dairy Fresh indicates that it balances the milk supply for the two Alabama plants. If supplemental supplies are needed by these two plants, Dairy Fresh seeks the nearest source of available milk supplies. In the event that payments for balancing services are adopted in the southeastern orders, Dairy Fresh contends that all handlers should be allowed to recover their balancing costs.

Dairy Fresh Corporation believes that adoption of DI's proposals would force producers who are not members of a cooperative and small cooperative associations to join a regional cooperative association. The company was concerned, too, that adoption of

DI's proposals would encourage the following inefficient milk movements:

1. Eliminate incentive to secure nearest available milk supplies;
2. Encourage south-to-north movements of milk;
3. Encourage cooperatives to haul milk to other markets just to get credits; and
4. Regional cooperatives would be encouraged to shift raw milk supplies to distort the market utilization of milk.

If transportation credits are adopted, Dairy Fresh Corporation proposed that such credits be limited to 2.6 cents per hundredweight per 10 miles to provide safeguards against uneconomic movements of milk.

A representative for Kraft, Inc., opposed the adoption of DI's Proposal No. 1. In the event, however, a transportation credit for surplus disposal is adopted, the company proposed that such credit apply to Class II use as well as Class III use. The representative also contended that DI's proposed transportation rate of 3.3 cents per 10 miles is too high.

In general, Kraft opposed the proposals by DI. The handler contended that services for which payments are sought are not a benefit to all producers. Furthermore, not all handlers who provide the services would qualify for payments under the requirements proposed by DI. The company also held that the marketwide service provisions could be abused due to the multi-market nature of the region.

Kraft pointed out that it provides balancing functions by supplying milk for fluid purposes and by using surplus milk in manufactured products. In this regard, Kraft noted that its pool supply plant at Greenville, Tennessee, in 1985 received and processed over 68 million pounds of surplus Grade A milk. Also, three nonpool manufacturing plants operated by Kraft at Lawrenceburg, Kentucky, Fayetteville, Tennessee, and Independence, Virginia, in 1985 received and processed over 103 million pounds of surplus Grade A milk. The company's representative testified that the costs incurred by Kraft as a result of the seasonality of milk production are recognized as a cost of doing business in the Southeast.

A representative for Beatrice Dairy Products opposed the proposals by DI. The company operates two plants in Alabama regulated by the Alabama-West Florida order and one plant regulated by the Greater Louisiana order. The two Alabama plants balance their own supplies while the Louisiana plant is supplied and balanced by DI. Beatrice contends that DI is compensated for its balancing service with regard to the Louisiana plant by over-order premiums paid to DI by Beatrice. The handler expressed the view that the proposals by DI would discriminate against proprietary handlers. The company was also concerned that the credits would lead to significant competitive problems in the Southeast and result in disorderly marketing conditions.

A brief was filed on behalf of Malone and Hyde, Baker and Sons, Dairy Fresh Corporation, Beatrice Dairy Products, Southern Belle Dairy, Dairy Fresh, Inc., Kraft, Inc., and Bel Cheese. These proprietary plants opposed the adoption of marketwide service payments proposed by DI. The plant operators opposed the proposed payments for the following reasons:

1. Many proprietary plants do their own balancing;
2. Balancing services being performed by DI are funded by service charges, deductions from payments to members, and over-order premiums;
3. The seven order areas are part of a seasonally deficit common milk production region in which many inter-order transactions (both within and outside the seven orders) are involved in the market balancing activities; and
4. It may not be possible to structure credits in the seven orders in a manner to prevent the abuse of such credits.

Findings and Conclusions

Payments for services of marketwide benefit are specifically authorized under the Food Security Act of 1985. That law amended section 8(c)(5) of the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, by adding the following provisions: "(J) Providing for the payment, from the total sums payable by all handlers for milk . . . to handlers that are cooperative marketing associations described in paragraph (F) and to handlers with respect to which adjustments in payments are made under paragraph (C), for services of marketwide benefit, including but not limited to—

"(i) Providing facilities to furnish additional supplies of milk needed by handlers and to handle and dispose of milk supplies in excess of quantities needed by handlers;

"(ii) Handling on specific days quantities of milk that exceed the quantities needed by handlers; and

"(iii) Transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification or for providing a market outlet for milk of any use classification."

Market balancing activities, such as disposing of surplus milk and obtaining supplemental supplies for handlers, are clearly identified in the new provisions as services of marketwide benefit. The law also provides that payments made under the order program for the purpose of reimbursing the handlers who provide those services are to be made from the total sums payable by all handlers for milk. Thus, the objective under marketwide service payment provisions is that the minimum uniform price to all producers would be evenly affected (reduced) and all would share in the cost of providing the services. In this way, some market participants would not be able to maintain an advantage gained by receiving benefits but not having to pay the costs therefor. They would cease to be "free-riders."

The record clearly shows that raw milk supply balancing activities are carried on throughout the Southeast and that DI is one of the major providers of milk supply balancing services. DI operates manufacturing plants, provides specific balancing services for some handlers, handles surplus milk not needed by handlers, and secures additional supplies when needed for fluid use. However, to the extent DI may not recover the costs of providing those services through over-order pricing, it is DI's member producers who end up paying the remainder of such costs.

The proposals submitted by DI represent the cooperative's approach to the "free-rider" problem. The problem was defined as a situation where firms that benefit from a particular service have an incentive to structure their milk procurement practices in a manner that avoids bearing the cost for that service and thus shift the cost burden to others.

A typical means of shifting the cost of seasonal balancing is for a handler to obtain a significant proportion of its milk supply by accepting the entire year-round milk output of a group of nonmember producers. Such supply would increase during the months of seasonally high production and drop off during the months of seasonally low production. This nonmember supply would be supplemented by milk from another source, usually a cooperative association. During the season of high milk production, small volumes of supplemental milk would be obtained and during the season of low milk production large volumes of supplemental milk would be obtained. In this manner, the burden of handling the market's reserve milk supplies would be shifted to the cooperative association. The nonmember producers would not

incur any burden of handling seasonal reserve milk supplies.

Such nonmember "free-rider" behavior often produces equity problems. As DI perceives it, the equity problem is demonstrated by differences in net prices received by those producers whose cooperative performs the services that benefit all and the prices received by those who perform no appreciable services. According to DI, such price differences are great enough that producers are provided an incentive to withdraw from membership in the cooperative and ship as non-member producers. Such producers are willing to share in the benefits from having certain services performed so long as the cooperative's members pay the cost.

The testimony of several dairy farmers who formerly were members of DI attests to the validity of DI's concern. Several such witnesses indicated that they had become dissatisfied with DI's operation and indicated that an offer of a higher return for their milk was the reason for terminating membership in DI.

The seasonal balancing function is an appropriate example of a marketwide service. The need for seasonal balancing is greatest when supplies are highest relative to Class I demand, i.e., during the spring and the Christmas season. In the Southeast, there often are more reserve milk supplies that must be disposed of at such times than there are local outlets with sufficient capacity to handle those supplies, and often milk must be moved a considerable distance to find an outlet.

The other side of seasonal balancing occurs in the fall months when supplies are low relative to demand for Class I use. In this case, some of the markets need additional supplies of milk to meet Class I demand.

DI is heavily involved in both disposing of excess supplies when necessary and bringing handlers additional supplies at other times. Data provided in various exhibits indicate that DI does more than its pro rata share of providing both services.

Nevertheless, serious questions are raised concerning the feasibility of providing payments from pool funds of the various orders to reimburse those who incur the costs of providing milk supply balancing or any other services. The record reveals doubts that it is possible to develop workable amendments to the orders involved and assure equity to all parties within the market structure that exists in the Southeast.

The seven order areas involved in this proceeding are highly interrelated and interdependent. They show much variability in Class I and Class III utilization of supplies, receipts of other source milk and in distribution of Class I milk products. Because the milk diversion program was in operation in 1984, market data for that year may not be typical. Therefore, we have looked primarily at 1985 data, which were stated to be more representative of normal market situations.

Most of the markets involved in this proceeding depend on substantial volumes of nonpool milk, i.e., "other source milk," to balance fluid milk requirements of handlers. The data contained in exhibits introduced by the market administrators show that in 1985 other source receipts expressed as a percent of producer milk receipts averaged 32 percent under the Nashville order, for example. In contrast, other source receipts averaged only three percent under the Louisville order. The variability was much wider in some markets than in others. The range between the highest and lowest monthly percentages was as low as four percentage points under the Louisville order and as high as 53 points in the Nashville market.

One method of determining whether the markets are essentially self-sufficient is to compare Class I route dispositions with Class I producer milk on a seasonal basis. Such an analysis shows that the Alabama-West Florida market regularly depends on other source milk since the volume of Class I route distribution exceeds the Class I producer milk volume. In 1984, the difference was larger in the fall months than in the spring months. In 1985, the spring and fall months showed less variation, but even then Class I producer milk volume equaled only about 91–92 percent of the route volume.

In contrast to Alabama, the Louisville market showed Class I supply and use about even in the spring months, but Class I producer milk exceeded Class I route sales by about 14–15 percent in the fall months of both years. Obviously, the Louisville market has a substantial portion of its Class I milk being shipped to other markets in the fall, but not in the spring. Although not evident to the same extent, the Tennessee Valley market data indicate that it serves as a source of Class I milk for other markets both in the spring and the fall.

Data provided in an exhibit for July 1985 through June 1986 show DI's bulk milk shipments to Florida markets from five locations within the seven-order area involved in this proceeding. The five locations are London, Kentucky/Bristol, Tennessee; Louisville, Kentucky; Lewisburg, Tennessee; Eatonton, Georgia; and Franklinton, Louisiana. The Florida shipments as a percentage of total bulk shipments to other markets from those individual locations varied from 0 to as high as 98 percent. For the months of July through December 1985, DI's off-order Class I sales from the five locations totaled 147.7 million pounds, of which 48.5 million (32.8 percent) were shipped to Florida. During the following six months of January through June 1986, DI's off-order Class I sales from the five locations totaled 64.7 million pounds, of which 10.6 million pounds (16 percent) were shipped to Florida. Clearly, the reserve milk supplies associated with these shipments in the fall months are associated with other markets in the spring months. Yet Florida producers would not be subject to having their pooled milk values reduced to help defray the costs of seasonal balancing under the DI proposal. Rather, under DI's proposals, producers under the seven subject orders would be paying for balancing services for the Florida markets.

Another indicator of the strong inter-market relationship in the Southeast is the route distribution data for Class I sales. In 1985, under three of the orders (Georgia, Louisville, and Tennessee Valley), more than 25 percent of total Class I sales were on routes outside the boundaries of the market. The Tennessee Valley order was highest in this regard, with more than 42 percent of the total route sales in 1985 being distributed outside the marketing area. Similarly, the percentages of total in-area sales in 1985 accounted for by nonpool handlers varied from 13 percent in Georgia to nearly 29 percent in Louisville and 25 percent in Greater Louisiana. Data for Nashville were restricted in 1985, but during January-September 1984, 48 percent of route sales inside the Nashville marketing area was from nonpool plants.

The Kroger plant in Murfreesboro, Tennessee, which is in the Nashville marketing area, is a pool plant under the Georgia order. Another Kroger plant at Winchester, Kentucky, which is in the Louisville marketing area, is not a pool plant under the Louisville order because its distribution in the Ohio Valley marketing area is "substantially greater" than its distribution in the Louisville-Lexington-Evansville marketing area. The record contains many other examples of plants or handlers that distribute products across the marketing area boundaries of the seven orders and other orders.

There is considerable overlapping of production areas for the seven markets and there are common reserve supply handling facilities serving these markets

and others. Moreover, there are other Federal order markets (Florida orders, for example) that are not included in the proposals here, but which rely on some of the same production areas for regular and supplemental supplies of milk. Handlers regulated under these other orders also utilize the same surplus-handling facilities.

There is ample evidence of the overlapping of production areas in the market administrators' exhibits. For example, in December 1985, milk produced in Georgia was pooled under four of the seven orders; Kentucky milk was pooled under five of those orders; and milk from Tennessee was pooled under six of the orders. The record also reveals that milk from Kentucky and Tennessee is pooled under the Memphis, Tennessee, order. Although there are no statistics on production areas for the Florida orders, Import Milk Reports issued by the State of Florida for July 1985 through June 1986 (weekly) were officially noticed. These reports show tankers of milk moving into Florida from Alabama, Georgia, Tennessee, Virginia and Kentucky during that period.

Further examination of production data with respect to Tennessee highlights to an even greater extent the overlapping of milk production. Specific data were available for 62 Tennessee counties in December 1985. Of the 62 counties, 34 had producers whose milk was delivered to only one order. In 13 of the counties, milk was pooled on two orders, and in 14 counties milk was pooled on three orders. One county (Monroe) had milk pooled under four different orders. And these numbers may not reveal the full procurement overlap among markets since data for the Memphis order are not included.

Monroe County is located south of Knoxville on the Tennessee-North Carolina border, and a relatively short distance from the South Carolina and Georgia borders. There were at least 65 producers in Monroe County in December 1985.

Indication of the shifting of milk supplies among order pools is revealed by the reported number of producers associated with these seven orders, particularly in the low production month of August compared to the high production month of May. For example, in 1985 the total number of producers reported to be on the seven markets was 8,361 in May, 9,416 in August and 8,656 in December. This is an indication that a large number of individual producers were supplying more than one market in the short production month of August.

Reserve milk supplies not needed for Class I use are handled in an inter-market fashion, as noted earlier. In addition to processing reserve milk from the seven markets involved herein, DI manufacturing plants (in some cases at least) process milk from other Federal order areas and from unregulated areas, such as the Carolinas. Some of the plants in the area, operated by DI and others, also process non-grade A milk.

In addition to Dairymen, Inc., other handlers also have multi-order operations where activities are carried on across marketing area boundaries. For example, Malone and Hyde Dairy operates a distributing plant located in Nashville, Tennessee, that is a pool plant under the Memphis, Tennessee, order. Malone and Hyde balances its own supplies, plus the needs of bulk fluid milk customers in Alabama, Georgia, and Florida. Malone and Hyde's procurement area is central Tennessee and south central Kentucky.

There can be no doubt that inter-market supply and distribution patterns within the seven-order area, and with Federal order markets outside that area and with unregulated markets, are common. The geographic areas covered by the respective defined marketing areas are far from being delineations of markets in the sense of encompassing areas or order pools where supply balancing activity is carried out solely within that area. Within the context of these existing marketing conditions, consideration of the proposed marketwide service payments and related proposals raises equity questions that override all other questions on this issue.

The equity issue has two parts: (1) Producer equity; and (2) Handler equity. Concerns for producer equity are manifested in the fact that under the proposals, producers under one or more orders could, in effect, pay for services that benefit primarily another market (regulated or unregulated). This situation could occur, for example, when producers in Georgia would pay (through a pool assessment) for shipments of supplemental milk from Georgia to one of the Florida orders. The principal beneficiary in this case would be the Florida handlers (or Florida consumers), but Georgia producers would pay for obtaining additional milk for the Florida market. Moreover, if supplemental supplies were brought in from outside sources for the Georgia market, the Georgia producers would also be subject to an assessment on shipments of nonpool milk. Similar inequities would result from adoption of the proposed provisions in the other six orders as well.

Other data also reinforce the conclusion that some markets are balancing supplies for other markets, although it is not possible, given the limitation of the data in the record, to say which markets are specifically balancing other specific markets. In this regard, the annual percent of producer milk assigned to Class III uses in the Louisville market averaged nearly 30 percent in 1985, but only 3.0 percent in the Nashville market. Low Class III use levels are also indicated for the Alabama (8.7 percent), Georgia (10.9 percent), and Greater Louisiana (10.9 percent) markets. The New Orleans-Mississippi and Tennessee Valley orders, respectively, had 22.8 percent and 17.8 percent Class III use of producer milk.

The equity issues just discussed are of concern with respect to each of the DI proposals. They may be specifically related as follows:

—Proposed credit for shipping milk off the market for Class I use.

1. Producers in the shipping market would bear unfairly some of the costs of balancing the needs of another market or markets.

2. At the same time, producers supplying milk to the receiving market would benefit in that some of the normal balancing costs for their market would be shifted to producers under another order or orders.

—Proposal to pay for seasonal balancing based on unused manufacturing capacities.

1. The manufacturing plants serve the needs of markets other than the seven markets included in this proceeding, but the cost of keeping those plants ready to handle surplus milk would be borne only by producers under the seven orders.

2. Moreover, the costs would not be equally borne by producers under the seven orders. For example, it is clear that the Alabama market does not carry its own necessary reserve milk supplies. Thus, the seasonal balancing costs for the Alabama market probably would be borne by the producers under another order or orders.

—Proposal to provide transportation credits on surplus milk shipped to manufacturing plants.

1. Since reserve milk supplies are unevenly distributed among the seven orders, the producers in a market that carries more than its share of the reserve supply burden would be paying for balancing one or more other markets. At the same time, the producers in a market that carries less than its share of the reserve supplies would not pay their fair share of the necessary balancing costs.

—Proposal to provide transportation credits for bringing in supplemental milk for Class I use.

1. It is probable that the adoption of this credit would result in an unfair burden on producers in certain of these seven markets. Handlers that operate distributing plants in one or more of the seven order markets and in other areas of the region, such as Florida and the Carolinas, would have the ability to shift the cost burden on imported milk to producers in these markets. For example, a handler that operates a distributing plant under the Georgia order and a distributing plant in Florida which needs additional milk would have an incentive to import other order milk for its Georgia plant, where a transportation credit could be obtained, and shift part of its Georgia-produced milk to its Florida plant.

—Proposal to pay qualified cooperatives for providing certain marketwide services.

1. The adoption of this proposal would result in an unequal impact on blend prices. DI would be the principal (if not the only) cooperative that could meet the proposed criteria for receiving such payments. Among the seven markets, DI's percentage of representation varies from 30 percent to 100 percent. At a payment rate of 3 cents per hundredweight, the blend prices of the orders could be affected from 1 to 3 cents.

If DI is the only cooperative that would qualify for the payments, then the effect on blend prices to non-DI producers would depend on the percentage of milk on the market that was controlled by DI. If DI has only a small percent of the milk, then the blend price impact on other producers would not be as great as it would if DI controlled most of the milk on the market. This would still be true, even if most of the other milk was represented by other cooperatives, but those cooperatives could not meet the proposed criteria for receiving the payments. The higher the proportion of milk that DI represents on a market, the greater the impact of the payments on other producers. Thus, the blend price impacts would vary from market to market. If there were only one order instead of seven, the impact would be uniform over the entire area.

These findings concern primarily the seven markets included in this proceeding, but they must be extended to include also the Florida and Carolina markets. The seven markets may be characterized as varying widely from one another with respect to balancing activities and utilization of milk supplies. Similarly, the overlapping of production areas adds concern because neighboring producers who supply different markets could be unevenly affected by adoption of the proposals. However, even if the seven order markets were comparable in terms of Class III utilization percentages, the equity issue would still exist because of their relationship to the Florida and Carolina markets.

On the handler side of the equity issue, it must be recognized that DI supplies perhaps as much as 30 percent of its milk to its own Flav-O-Rich distributing plants. If DI can draw money from the pools for shipping milk among markets to its own plants, equity with other non-DI plant operators at best would be uncertain. To the extent that DI could qualify for payments on movements to its own plants, DI would have monies available to it that other competing fluid handlers may not have. This could result in a competitive sales advantage for DI relative to the other fluid handlers because DI potentially would be able to use such funds to offer discounts or other sales incentives to attract customers away from other handlers. This particular concern was voiced by the dairy industry throughout the proceeding.

As proposed, it is not certain that any handler, other than DI, could qualify to receive any of the payments as providers of supply balancing or other services. Also, DI, because of the widespread scale of its operations, probably has a greater potential than any other handler to take advantage of any such payment provisions by moving milk around among the markets in order to maximize its payments or shift the supply balancing burden among the several order pools.

DI claims that the present system is inequitable because the cooperative incurs various costs to provide services that benefit many others while others contribute little or nothing to the costs of providing those services. It may be that certain inequities arise under current marketing practices. Nevertheless, little would be achieved by adopting a system of payments from the various pools that could be expected to create additional, and perhaps more far-reaching, equity considerations.

The equity issue so pervades this proceeding that it is concluded that further consideration of the proposals would serve no purpose. Under the current market structure in the Southeast, adoption of the proposals cannot be found to contribute to the maintenance of orderly marketing. Rather, such proposals would tend to detract from an equitable sharing of the costs of supply balancing among producers and handlers in the Southeast. Therefore, it is concluded that the record evidence demonstrates that none of the proposals under consideration would effectuate the purposes of the Agricultural Marketing Agreement Act of 1937, as amended.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated.

Counsel for several proprietary plants requested in the brief filed on behalf of his clients that the Secretary overturn the Administrative Law Judge's refusal to admit into evidence two exhibits identified for the record as Exhibits No. 76 and No. 109

Exhibit No. 76 consists of two letters that counsel sent to Dairymen, Inc.—an August 15, 1986, letter and an August 26, 1986, letter—requesting that the cooperative furnish certain information and documents at the September 8, 1986, Atlanta hearing and the September 2, 1986, reply to the requests from counsel for DI.

Exhibit No. 109 consists of two letters that counsel sent to Market Administrators Arnold Stallings and Dormal Newberry—an August 19, 1986, letter and an August 26, 1986, letter—requesting that certain information be compiled for use at the Atlanta hearing, a September 21, 1986, letter from Dormal Newberry and letters dated August 29, 1986, and September 2, 1986, from Arnold Stallings responding to requests from counsel.

Counsel for the proprietary plants indicated that his purpose in having Exhibit No. 76 admitted into evidence is to show that DI had not made available certain information that was requested. He also indicated that the receipt into evidence of the exhibit would facilitate the application of a rule of evidence that the failure by a party to produce reluctant party that, if presented, the evidence would be unfavorable to his position.

With respect to Exhibit No. 109, counsel wanted the exhibit admitted into evidence to indicate that certain

information was requested of the market administrators and that not all of the requested information was furnished. Counsel also noted that the Market Administrators had been requested either to seek permission from handlers for the release of confidential data or to provide counsel with the names of the affected handlers so that counsel could seek the release of such data.

With respect to the Administrative Law Judge's decision not to admit Exhibits No. 76 and 109 into evidence, such decision is affirmed. As noted by the Administrative Law Judge, the general information that counsel was seeking to be made a part of the record is in the record as a result of counsel's explanation at the hearing why the exhibits in question should be admitted. For this reason, the Judge concluded there was no need to admit the two exhibits. Furthermore, in view of the Secretary's decision to deny all of the proposals under consideration and to terminate this proceeding, the exclusion of the two exhibits becomes a moot issue. The denial in this instance does not prejudice counsel's clients because such clients were opposed to the adoption of provisions in the seven orders that would have provided payments to handlers for marketwide services.

Counsel for several proprietary handlers filed with the Hearing Clerk on February 25, 1987, a motion for an order to allow the submission of reply briefs by interested parties. Counsel asserts that the submission of reply briefs will assist the Secretary to identify "disingenuous arguments" during the short period of time provided for agency analysis of the record and review of the briefs of the parties. Also, counsel made a motion to strike from a brief filed by DI several assertions of fact that were not adduced at the hearing.

On March 20, 1987, Counsel for certain cooperative associations in North Carolina and South Carolina filed with the Hearing Clerk a statement in support of the motion to file reply briefs.

On March 6, 1987, Counsel for DI filed a memorandum with the Hearing Clerk opposing the motion for reply briefs and the motion to strike portions of a brief filed on behalf of DI.

The motion for an order to allow the submission of reply briefs is denied. The principal reason for denying the motion is alluded to by counsel in requesting the opportunity to submit reply briefs: that is the short period of time provided for agency analysis of the record and review of the briefs of the parties.

Counsel's motion to strike certain parts of a brief filed by DI is also denied. While the Rules of Practice cited by counsel provide that factual material other than that adduced at the hearing or subject to official notice shall not be alluded to in a brief, the citation goes on to say that "and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order." Thus, counsel's request that certain assertions be stricken from opponent's brief is redundant. The Department's own Rules of Practice provide that factual material other than that adduced at the hearing or subject to official notice shall not be considered in the formulation of the marketing agreement or marketing order.

Termination Order

In view of the foregoing, it is hereby determined that the proceeding with respect to proposed amendments to the seven respective orders regulating the handling of milk in the Georgia, Tennessee Valley, Louisville-Lexington-Evansville, Alabama-West Florida, New Orleans-Mississippi, Greater Louisiana, and Nashville, Tennessee, marketing areas should be and is hereby terminated.

List of Subjects in 7 CFR Parts 1007, 1011, 1046, 1093, 1094, 1096, and 1098

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1007, 1011, 1046, 1093, 1094, 1096, and 1098 continues to read as follows:

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

Signed at Washington, DC, on: April 28, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–9882 Filed 4–30–87; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 86–011P]

Requirements for Imported Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the provisions of the Food Security Act of 1985, Pub. L. 99–198, that amended the Poultry Products Inspection Act (PPIA). The proposed rule would amend the Federal poultry inspection regulations to specifically require foreign countries to implement a residue sampling and testing program at the point of slaughter for poultry and poultry products offered for importation into the United States. The proposal would also amend the regulations to make clear that all inspection, sanitation, quality, species verification, and residue standards that are applied to imported poultry products must meet the same standards as those applied to poultry and poultry products produced in the United States.

DATE: Comments must be received on or before: June 30, 1987.

ADDRESSES: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3807, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Dr. William Havlik, (202) 447–2644. (See **"Comments"** under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. William Havlik, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule 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 major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have a significant 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. The proposal would affect countries eligible to export poultry or poultry products to the United States. Currently, only Canada, France, Hong Kong, and Israel are eligible to export poultry or poultry products to the United States. Comments on a proposal (51 FR 12161–12162) to add Great Britain to the list of eligible poultry exporting countries are currently under consideration. Each of the four eligible countries implemented the requirements for residue and species programs for poultry products in 1983, when these countries implemented identical requirements for meat and meat food products as mandated by the 1981 Farm Bill. On-going review activities by the

Agency's foreign review officers, International Programs, have confirmed that these programs are in place and operating. Since the proposed requirements are already in place and operating, no economic impact will result for exporting countries, domestic producers, or importers.

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354, because the proposed requirements have already been implemented by the affected foreign and domestic entities.

Comments

Interested persons are invited to submit written comments concerning the proposal. Written comments should be sent in duplicate to the Policy Office. Please include the docket number which appears in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Dr. Havlik so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to the proposal will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

Section 17 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 466) prohibits the importation into the United States of slaughtered poultry, or parts thereof, unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient which renders them unhealthful, unwholesome, adulterated, or unfit for human food. The regulations addressing imported poultry or poultry products are contained in 9 CFR Part 381, Subpart T (9 CFR 381 *et seq.*). In these regulations the Administrator has established procedures by which foreign countries desiring to export poultry or poultry products to the United States may become eligible to do so.

Section 381.196 of the poultry products inspection regulations (9 CFR 381.196) provides that a poultry inspection system maintained by a foreign country, with respect to establishments preparing products in that country for export to the United States, must ensure compliance of such establishments and their poultry products with requirements at least equal to all of the provisions of the PPIA and the regulations that are applied to official establishments in the United States and their poultry products. In addition, these regulations provide for certain other system requirements as a means for FSIS to assure that eligible foreign countries are complying with on-going conditions of eligibility. FSIS has also implemented internal Agency programs to assure that products being offered for importation into this country meet the same standards as products produced and marketed domestically. These programs are described under the section entitled "Continuing Oversight of Eligible Countries."

Export Eligibility Requirements

The Foreign Programs Division, International Programs, of FSIS has primary responsibility for determining that countries producing poultry or poultry products for export to the United States have inspection programs that are designed to assure that all such exports are safe, wholesome, unadulterated and not misbranded and comply with all other provisions of the PPIA and regulations thereunder (9 CFR 381 *et seq.*).

To determine eligibility, FSIS conducts a complete evaluation of the country's inspection system. The evaluation consists of two major parts: A review of foreign system documents, and an on-site review of the country's inspection system operations. As part of the document review process, a country's laws are evaluated to assure among other things, that they provide for inspection and certification of the wholesomeness of products intended for export to the United States; that there are adequate controls over ineligible product to prevent its export; and that the country has adequate controls to prevent a person convicted of wrongdoing from being connected with a firm exporting product to the United States. Documents describing the country's poultry inspection program are also reviewed to ensure that it has the legal authority to impose requirements at least equal to those of the United States with respect to the following: (1) Ante-mortem inspection of poultry for slaughter; (2) post-mortem inspection of poultry carcasses and parts thereof at the time of slaughter; (3) official controls by the national government over establishment construction, facilities, and equipment; (4) direct and continuous supervision of slaughter activities and product preparation by the assignment of inspectors to establishments to assure that adulterated or misbranded poultry products are not processed for export to the United States; (5) maintenance of a single standard of inspection and sanitation throughout all certified establishments and complete separation of certified and non-certified establishments, and (6) official controls over condemned product.

If the document review is satisfactory, an on-site review is conducted using a multi-disciplinary team composed, typically, of a review team leader, veterinarian, chemist, engineer and food technologist, to evaluate all aspects of the country's program. The review is designed to fully explore areas determined to require more detailed evaluation and also to allow FSIS to observe the inspection system in its daily operation.

Continuing Oversight of Eligible Countries

Once the poultry inspection system of a foreign country has been certified by the Agency as eligible to export products to the United States, the individual establishments operating within that country desiring to export products to the United States must apply to their national inspection authorities for certification. The chief inspection official of the foreign country must in turn certify to FSIS that each establishment authorized to export products to the United States meets all the applicable standards. This certification is valid for a period of one year or less if standards are not maintained. At the beginning of each year, a responsible official of the foreign country must recertify each establishment (9 CFR 381.196(a)(3)).

The daily operation of a certified foreign establishment is similar to the operation of a U.S. domestic establishment. There is routine daily inspection conducted by inspectors authorized by the foreign inspection program. These inspectors conduct inspection of the operations at the foreign establishment including slaughter, sanitation, processing, labeling, and the disposition of inedible and condemned products.

FSIS personnel conduct periodic on-site reviews of foreign inspection systems. The reviews focus on the full spectrum of risks to the production and processing of acceptable poultry products and how the foreign inspection system controls these risks. The on-site system review provides FSIS with continued assurance that the foreign country is maintaining an inspection system that is at least equal to the inspection system of the United States.

The system review includes visits to certified processing and slaughter establishments, and the foreign

inspection system's residue and species testing laboratories. Reviewers observe the operations at each site and document findings regarding the degree of risk of product wholesomeness associated with the activities and practices observed. All poultry and poultry products being exported to the United States are certified by the country's inspection program as safe, wholesome, unadulterated, and properly labeled by a responsible official of the exporting country. The certification is an additional assurance that the products have been prepared under a system that is at least equal to the domestic system.

FSIS import inspectors reinspect shipments of poultry and poultry products on a sample basis on arrival in the United States to assure that the poultry or poultry products meet the same standards applied to domestic poultry and poultry products. Reinspection of product is directed by FSIS's computerized Automated Import Information System (AIIS) which stores daily reinspection results from all FSIS port of entry (POE) inspection locations, residue and species laboratory sampling histories for each exporting country, and product compliance histories for each exporting plant. The AIIS uses this information to determine the amount of poultry or poultry products to be examined and the specific reinspection procedures to be applied to a particular shipment. POE reinspection can include testing or examination for any combination of the following: Species verification, residue levels, mishandling of product, condition of product, appropriate labeling, and compliance with USDA standards of identity of composition.

The POE reinspection is an additional means to assure that the inspection system of a foreign country exporting poultry or poultry products to the United States is functioning properly. Any shipment of poultry or poultry products found unacceptable is refused entry and must be reexported within a prescribed time period or destroyed for human food purposes.

The Food Security Act of 1985

On December 23, 1985, Pub. L. 99–198, The Food Security Act of 1985, was enacted (hereinafter referred to as the 1985 Farm Bill). Section 1701 of Pub. L. 99–198 amended section 17 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 466) to require residue testing and species verification of imported poultry or parts or products. This legislation is comparable to an amendment to the Federal Meat Inspection Act (FMIA) provided by the Agriculture and Food Act of 1981 (Pub. L. 97–98) that mandated residue and species verification for imported meat products.

Section 1701 of the 1985 Farm Bill adds a new subparagraph (d) to section 17 of the PPIA as follows:

"(d)(1) Notwithstanding any other provision of law, all poultry, or parts or products thereof, capable of use as human food offered for importation into the United States shall:

(A) Be subject to the same inspection, sanitary, quality, species verification, and residue standards applied to products produced in the United States; and

(B) Have been processed in facilities and under conditions that are the same as those under which similar products are processed in the United States.

(2) Any such imported poultry article that does not meet such standards shall not be permitted entry into the United States.

(3) The Secretary shall enforce this subsection through:

(A) Random inspection for such species verification and for residues; and

(B) Random sampling and testing of internal organs and fat of carcasses for residues at the point of slaughter by the exporting country, in accordance with methods approved by the Secretary."

The primary purpose of the legislation was to add a provision to the PPIA that would require foreign countries currently exporting or desiring to export poultry or poultry products to the United States to develop and implement a program for the sampling and testing of residues. This new requirement would apply the requirements for residure testing that were specified in the Food and Agriculture Act of 1981 for imported meat products to imported poultry products.

As a result of the legislation, the PPIA now provides that a foreign inspection system be "the same as" the United States inspection system before product can be imported. This does not mean that all the regulations of a foreign country must be precisely, word for word, "the same as" those in the United States. If a requirement is narrow and specific (e.g., a product standard, maximum water intake level), it can be relatively easy to determine whether the foreign country's requirement is "the same as" ours. However, if our requirement is general and is applied on a case-by-case basis (e.g., facility requirements to preclude adulteration), the requirement can be met by a similarly general requirement. A general requirement permits variations within an established framework. FSIS applies "the same as" requirement by assessing whether the alternative procedures, even if they employ different inspectional techniques, produce the same end results. That is, the means of achieving products the same as ours in a foreign country will, in some respects, vary from the means employed in the United States. Interpretation of the law in this way provides the only reasonable basis for comparing inspection systems, since literal application of the term "the same as" would prohibit *all* imports of poultry products from foreign countries and would be nothing more than an artificial trade barrier. The USDA presently recognizes the poultry inspection system in four countries (Canada, France, Israel and Hong Kong) and did so at the time of passage of the Food Security Act of 1985. Again, literal application of the term "the same as" would have required the USDA to withdraw its recognition of those countries' eligibility to ship poultry and poultry products to the United States. USDA does not believe it was the intent of Congress that such action be taken.

These foreign inspection systems have envolved in widely varying cultural and political environments under various animal health, public health and food production circumstances. This has resulted in a variety of specific procedures and processes used in maintaining national inspection controls. The quality of the finished product is what is important and decisive. Nonetheless, there are certain minimum features that any system must have in order to be considered "the same as" ours. These basic requirements are currently in FSIS regulations. (9 CFR 381.196).

The Proposal

The Agency is proposing to amend § 381.196 of the Federal poultry products inspection regulations (9 CFR 381.196) to clarify that the inspection, sanitation, quality, species verification, and residue standards applied to foreign poultry or parts or products offered for importation into the United States must meet the same standards applied to domestic poultry products. Section 381.196 would be further amended to require each foreign country desiring to establish or maintain eligibility for the importation of poultry or poultry products into the United States to implement a residue program. Such program must provide for the point-of-slaughter random sampling of carcasses, including the internal organs and fat, of poultry intended to be offered for importation into the United States and the testing of such carcasses, internal organs, and fat, for the presence of residues of substances known to be in use in the production of poultry and poultry products in the particular exporting country or otherwise known to be present in the environment of such

country. Identification of such substances would be the responsibility primarily of the authorities of the exporting country. However, FSIS, as part of its obligation to assure that imported poultry and poultry products meet the same standards applied to such domestic products, may request testing for residues of additional specific substances. Residue testing would have to be conducted in accordance with methods approved by the Administrator.

FSIS currently has regulations which prohibit the importation of product that is adulterated, misbranded; or does not comply with the requirements applicable to domestically produced products (9 CFR 381.195 and 381.196). Further, as stated earlier, FSIS has established programs to assure that poultry or poultry products being offered for importation meet the same standards as such products produced and marketed domestically. These programs now include the random sampling of the imported poutry and poultry products at the point of entry to check for species and residue tolerance levels. Authority to take samples for laboratory examinations from poultry or poultry products offered for importation is provided in 9 CFR 381.199(b).

FISIS is not proposing additional regulations under the 1985 Farm Bill concerning the provisions of the Act that would: Prohibit imported poultry or poultry products not meeting U.S. standards from entering the United States; and impose mandatory random inspection for species verification on products offered for importation, because any such additional regulations would be a duplication of existing provisions.

List of Subjects in 9 CFR Part 381

Imported products, Poultry inspection.

Accordingly, FSIS is proposing to amend the poultry products inspection regulations (Part 381) as set forth below:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended (21 U.S.C. 451 et seq.), 76 Stat. 663 (7 U.S.C. 450 *et seq.*), 99 Stat. 1633, unless otherwise noted.

2. Section 381.196 would be amended by redesignating the present paragraph (a)(2)(i)(*f*) as paragraph (a)(2)(i)(*g*) and by adding a new paragraph (a)(2)(i)(*f*) to read as follows:

§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.

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

(*f*) The inspection, sanitation, quality, species verification, and residue standards applied to products produced in the United States.

* * * * *

3. Section 381.196(a)(2)(iv) would be amended, for the sake of clarity, by designating the present requirements contained in this paragraph as paragraphs (a)(2)(iv)(*a*) and (*b*) and revising them as follows; and adding a new paragraph (a)(2)(iv)(*c*) to read as follows:

§ 381.196 Eligibility of foreign countries for importation of products into the United States.

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

(iv) The foreign inspection system must maintain a program to assure that the requirements referred to in this section, at least equal to those applicable to the Federal system in the United States, are being met. The program as implemented must provide for the following:

(*a*) Periodic supervisory visits by a representative of the foreign inspection system not less frequently than one such visit per month to each establishment certified in accordance with paragraph (a)(3) of this section to assure that requirements referred to in paragraphs (a)(2)(ii) (*a*) through (*h*) of this section are being met: *Provided,* that such visits are not required with respect to any establishment during a period when the establishment is not operating or is not engaged in producing products for exportation to the United States;

(*b*) Written reports prepared by the representative of the foreign inspection system who has conducted a supervisory visit, documenting his or her findings with respect to the requirements referred to in paragraph (a)(2)(ii) (*a*) through (*h*) of this section, copies of which shall be made available to the respresentative of the Department at the time of that representative's review upon request by that respresentative to a responsible foreign inspection official; *Provided,* that such reports are not required during a period when the establishment is not operating or not engaged in producing products for exportation to the United States.

(*c*) Random sampling and testing at the point of slaughter of carcasses, including internal organs and fat, for residues identified by the exporting country's inspection authorities or by this Agency as potential contaminants, in accordance with sampling and analytical techniques approved by the Administrator; *Provided,* that such testing is required only on samples taken of carcasses from which poultry or poultry products intended for importation into the United States are produced.

* * * * *

Done at Washington, DC, on: April 28, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-9875 Filed 4-30-87; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 280

Prelease Prospecting for Marine Mining, Minerals Other Than Oil and Gas

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public hearings.

SUMMARY: The proposed rule for prelease prospecting activities for a marine mining program was published in the **Federal Register** on March 26, 1987 (52 FR 9758). This notice announces three public hearings to be held in connection with the proposed rule. The hearings will be held in Portland, Oregon; New Orleans, Louisana; and Raleigh, North Carolina.

DATES: Public hearings will be held as follows:

a. Thursday, June 4, 1987; Rooms 601 and 602; Multnomah Building; 319 Southwest Pine Street; Portland, Oregon; 9:00 a.m.

b. Tuesday, June 9, 1987; Room 115, Minerals Management Service; Gulf of Mexico OCS Regional Office; 1201 Elmwood Park Boulevard; New Orleans, Louisiana; 9:00 a.m.

c. Thursday, June 11, 1987; Ground Floor Hearing Room; Archdale Building; 512 Salisbury Street, Raleigh, North Carolina; 9:00 a.m.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the Program Director, Office of Strategic and International Minerals; or Merlin I. Carter, telephone (213) 514-6140 or (FTS) 795-6140, by May 29, 1987.

Written testimony to supplement oral testimony at the public hearings must be hand-delivered or postmarked no later

than June 24, 1987. This will allow those unable to testify at the public hearings an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

ADDRESSES: Wirtten followup testimony should be sent to the Program Director, Office of Strategic and International Minerals; Minerals Management Service; 11 Golden Shore, Suite 260; Long Beach, California 90802.

FOR FURTHER INFORMATION CONTACT: Merlin I. Carter, Office of Strategic and International Minerals, Minerals Management Service, telephone (213) 514–6140 or (FTS) 795–6140; or Andrew V. Bailey, telephone (703) 285–2220.

SUPPLEMENTARY INFORMATION: The proposed regulations are being developed under the authority of the Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.*), to regulate prelease prospecting for minerals other than oil, gas, and sulphur; to ensure protection of the environment during such prospecting; and to provide for the Minerals Management Service's (MMS) inspection of field prospecting activities and access to acquired data. These regulations, if adopted, would be the first to in a series of regulations to govern a leasing and regulatory program for such minerals within the OCS. Additional regulations will be proposed both for leasing and for postlease exploration, development, and production activities.

Each of the hearings will begin with a short presentation by MMS explaining the background and scope of the Department of the Interior's marine mining program. Oral testimony will be received following the presentation.

At the public hearings, time constraints may make it necessary to limit the oral presentations to 10 minutes.Therefore, an oral statement may summarize a written statement which may be submitted to the Panel Chairman at the hearings.

Dated: April 28, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-9940 Filed 4-30-87; 8:45 am]

BILLING CODE 4310-MZ-M

Notices

Federal Register
Vol. 52, No. 84
Friday, May 1, 1987

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.

ACTION

VISTA Region II Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; VISTA Region II Projects.

ACTION Region 2 (NJ, NY, Puerto Rico and the Virgin Islands) announces the availability of funds for fiscal year 1987 for new VISTA program grants authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). Applications not approved by ACTION for fiscal year 1987 may at the discretion of the agency be retained for consideration for fiscal year 1988. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation are available from: Region 2—Claire Wojno, ACTION, Jacob K. Javits Federal Building, 26 Federal Plaza, Suite 1611, New York, NY 10278, 212–264–5710.

A. Background and Purpose

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicated with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry our the purposes [of the program]"

(42 U.S.C. 4951)

VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communites and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries our its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community

(42 U.S.C. 4951; 4952)

B. Objectives

ACTION Region 2 will be awarding grants for the placement of VISTA Volunteers in the following emphasis areas:

1. *Unemployment*—Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

2. *Homelessness*—Development and/or expansion of short/long term shelters or housing for low-income single adults and families and runaway youth. VISTA activities might include information referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counselling programs for at risk youth; and job-training services for shelter residents.

3. *Drug and Alcohol Abuse*—Prevention and education programs directed primarily at low-income youth; and development of low-income parent support groups.

4. *Economic Development*—Appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; plan and organize self-help strategies for low-income residents of "enterprise/job zones"; and entreprenuerial development and management training for low-income individuals attempting to enter the business sector.

C. Eligible Applicants

Eligible applicants for VISTA program grants are Federal, State, or local agencies, or private nonprofit organizations.

D. Scope of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This

support is commensurate to the cost-of-living of the assignment area and covers the cost of food, housing and incidentials, and a monthly stipend paid to the VISTA Volunteer upon completion of his/her service.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria For Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of new VISTA program grants. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support (in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project efforts.

6. Be designed to generate private sector resources and encourage local, part-time volunteer service.

7. Provide for frequent and effective supervision of the volunteers.

8. Identify resources needed and make them available to volunteers to perform their tasks.

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization.

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers.

(a) Is the number of volunteers being requested appropriate for project goals and objectives as stated? Is a proposal requesting one VISTA Volunteer of such worth as to make development worthwhile?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

(d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in a number of activities, including, among others:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Region 2 will review and evaluate all eligible applications prior to submission to the Director of VISTA and Service-Learning Programs, ACTION, for the final selections. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to Claire Wojno, ACTION Region 2, Jacob K. Javits Federal Bldg., 26 Federal Plaza, Suit 1611, New York, NY 10278. The deadline for receipt of applications is EST July 1, 1987. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. Application for Federal Assistance (A–1017, Pages 1–9) and VISTA Project Application (Form A–1421) with a detailed budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation, or a letter of good standing from the Governor's Office.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. The professional affiliations of Board of Director Members should be specified.

Signed at Washington, DC, this 27 day of April, 1987.

Donna M. Alvarado,

Director.

[FR Doc. 87–9883 Filed 4–30–87; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Bloomington, IL and Plainview, TX Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Bloomington Grain Inspection Department (Bloomington) and Plainview Grain Inspection and Weighing Service, Inc. (Plainview), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: June 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 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.

The Service announced that Bloomington's and Plainview's designations terminate on May 31, 1987, and requested applications for official agency designation to provide official services within specified geographic areas in the December 1, 1986, **Federal Register** (51 FR 43224). Applications were to be postmarked by December 30, 1986. Bloomington and Plainview were the only applicants for designation in their geographic area and each applied for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant names in the February 2, 1987, **Federal Register** (52 FR 3299) and requested comments on the designation renewal of Bloomington and Plainview. Comments were to be postmarked by March 20, 1987. One favorable comment was received regarding Bloomington's designation renewal; none were received regarding Plainview's designation renewal.

The Service 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 Bloomington and Plainview are able to provide official services in the geographic area for which the Service is renewing their designation. Effective June 1, 1987, and terminating May 31, 1990, Bloomington and Plainview will provide official inspection services in their entire specified geographic area, previously described in the December 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 contracting either the Review Branch, Compliance Division, at the address listed above or the agencies at the following addresses.

Bloomington Grain Inspection Department, c/o Cargill, Inc., P.O. Box 1286, Bloomington, IL 61702

Plainview Grain Inspection and Weighing Service, Inc., 1100 North Broadway Street, P.O. Box 717, Plainview, TX 79072.

Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*)

Dated: April 17, 1987.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 87–9877 Filed 4–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Central Iowa Agency, IA, State of Maine, and State of Montana

AGENCY: Federal Grain Inspection Service (Service) 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 Central Iowa Grain Inspection Service, Inc. (Central Iowa), Maine Department of Agriculture (Maine), and Montana Department of Agriculture (Montana).

DATE: Comments to be postmarked on or before June 15, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows:

TO: Lewis Lebakken,

TLX: 7607351, ANS: FGIS UC.

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 Department Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the March 2, 1987, **Federal Register** (52 FR 6204). Applications were to be postmarked by April 1, 1987. Central Iowa, Maine, and Montana 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 renewal of the applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

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: April 17, 1987.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 87–9878 Filed 4–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Hastings Agency NE and the State of New York

AGENCY: Federal Grain Inspection Service (Service), 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 agenices 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 Hastings Grain Inspection, Inc., and New York State Department of Agriculture and Markets.

DATE: Applications to be postmarked on or before June 1, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at this 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 the Service 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.

Hastings Grain Inspection, Inc. (Hastings), 306 East Park Street, Hastings, NE 68901, and New York State Department of Agriculture and Markets (New York), State Campus Building 8, Albany, NY 12235, were each designated under the Act as an official agency to provide inspection functions on November 1, 1984.

Each official agency's designation terminates on October 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 Hastings, in the State of Nebraska, 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 Nebraska State line from the Western Sioux County line east to the eastern Knox County line;

Bounded on the East by the eastern and southern Knox County lines; the eastern Antelope County line; the northern Madison County line east to U.S. Route 81; U.S. Route 81 south to the southern Madison County line; the southern Madison County line; the eastern Boone, Nance, and Merrick County lines; the Platte River southwest; the eastern Hamilton County line; the northern and eastern Fillmore County lines; the southern Fillmore County line west to U.S. Route 81; U.S. Route 81 south to State Highway 8; State Highway 8 west to County Road 1 mile west of U.S. Route 81; County Road south to southern Nebraska State line;

Bounded on the south by the southern Nebraska State line, from County Road 1 mile west of U.S. Route 81, west to the western Dundy County line;

Bounded on the West by the western Dundy, Chase, Perkins, and Keith County lines; the southern and western Garden County lines; the southern Morrill County line west to U.S. Route 385; U.S. Route 385 north to the southern Box Butte County line; the southern and western Sioux City County lines north to the northern Nebraska State line.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Hastings and are part of this geographic area assignment: Farmers Cooperative Grain Company and Wagner Mills, Inc., both in Columbus, Platte County; and Farmers Coop and Dayton Dorn Grain Company, both in Big Springs, Deuel County.

The geographic area presently assigned to New York, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: the entire State of New York, except export port locations within the State.

Interested parties, including Hastings and New York, 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 November 1, 1987, and ending October 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: April 17, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–9879 Filed 4–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Food Safety and Inspection Service

[Docket No. 83–039N]

Barbecue Standard

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: On April 2, 1982, a notice was issued by the Food Safety and Inspection Service (FSIS) soliciting comments on the barbecue standard presently contained in the Federal meat inspection and poultry products inspection regulations. After careful consideration of the public comments, and the overall responsibilities of the inspection program, the Department has determined that there is not sufficient justification to propose a change to the barbecue standard.

FOR FURTHER INFORMATION CONTACT: Mr. Ashland L. Clemons, Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: On April 2, 1982, FSIS issued a Notice (47 FR 14168) soliciting comments on the current standard for "barbecued meat" and "barbecued poultry" and the need, if any, to amend these standards to provide greater flexibility to the industry. The notice was published in response to a petition from Smokaroma, Inc., of Boley, Oklahoma, to amend the existing barbecue standards. The petitioner contended that the existing standard was obsolete because the standard excludes many newly developed, more efficient methods of producing the usual barbecued characteristics in a finished product. In particular, the petitioner was interested

in the use of a device that cooks and smokes products under pressure which, it was asserted, results in foods having a characteristic barbecue flavor. The petitioner further stated that the existing policy for barbecued meats essentially assumes there is only one way to barbecue which excludes several traditional methods of barbecuing that have been associated with particular regional or geographic locations.

The Department received 314 written comments in response to the **Federal Register** notice concerning the barbecue standard. The majority of comments (244) consisted of six different form letters.

Some commenters felt that the existing regulations were not too restrictive. These commenters pointed out that the regulations have been in existence for a long period of time and are necessary to assure a high quality product. One commenter pointed out that the existing standard assures consumers a product consistent with their traditional expectations and comparable to other products similarly labeled.

Some commenters opposed the use of moist heat for producing barbecued meats. These commenters suggested that the basic dry-cooked process has not changed over time and many products are currently being produced using this method. They point out that if new methods have been engineered to add moisture to the process for speed and tenderizing, then the manufacturer should develop a new name for that process. Also, since barbecued meats have traditionally been dry-cooked products, barbecued meats produced without moisture loss and fat loss in the process are different and different product names are warranted.

Most of the substantive suggestions for changing the current standard focused on the nature of the finished product. A few commenters contended that meat cooked by any method and seasoned with a piquant sauce should be considered a barbecued product. Other commenters expressed strong opposition to this position. Many commenters indicated that there were a wide variety of barbecuing styles. However, there was no consensus in the comments as to what constitutes a more acceptable method of commercial barbecuing than that prescribed in the regulations.

The diversity of the comments received made it difficult to justify any particular change in the regulations. Moreover, a review of the agency's label approval record indicated that the current standards have been applied within our inspection system for many years with very little controversy prior to the publication of the **Federal Register** notice. As a result, after careful consideration of the petition, the public comments, and the overall responsibilities of the inspection program, the Department has determined that it does not have sufficient justification at this time to propose a change to the standard for barbecue products.

Done at Washington, DC, on April 28, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-9874 Filed 4-30-87; 8:45 am]

BILLING CODE 3410-DM-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission originally scheduled for May 15, 1987, at Birmingham, Alabama (FR Doc. 87-8539 on page 12443) has a new meeting date.

The meeting will be conducted on May 14, 1987. The address and time will remain the same.

Dated at Washington, DC, April 21, 1987.

Susan Prado,

Acting Staff Director.

[FR Doc. 87-9955 Filed 4-30-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1987 Census of Irrigation Water Supply Organizations.

Form No.: Agency—87-A6009A; OMB—NA.

Type of request: New collection.

Burden: 8,000 respondents; 2,400 reporting hours.

Needs and uses: This survey is needed to determine the source and disposition of water conveyed to farmers and ranchers (users) by irrigation water supply organizations, the number of users, the number of on and off stream reservoirs maintained by the supply organizations, the type of organization, and for the first time in 1987, the acre-feet of water released from reservoirs for purposes other than irrigation, such as hydro-electricity generation, flooding control, and recreation.

Affected public: State or local governments, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions.

Frequency: Every 10 years.

Respondent's obligation: Mandatory.

OMB desk officer: Don Arbuckle, 395-7340.

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation (SIPP) 1985 Panel Respondent Debriefing.

Form No.: Agency—SIPP-5863(D); OMB—0607-0425.

Type of request: Revision of a currently approved collection.

Burden: 1,600 respondents; 189,680 reporting hours.

Needs and uses: This purpose of this study is to obtain from a sample of the SIPP respondents their preception of the SIPP. Census will use this information to identify problems with the current SIPP in order to make it more efficient.

Affected public: Individuals or households.

Frequency: One time.

Respondent's obligation: Voluntary.

OMB desk officer: Don Arbuckle, 395-7340.

Agency: Bureau of the Census.

Title: 1988 Dress Rehearsal—Special Place Prelist.

Form No.: Agency—DX-351, DX-351 (CQ), DX-352 (HU); OMB—NA.

Type of request: New collection.

Burden: 1,642 respondents; 1,232 reporting hours.

Needs and uses: This survey is needed to obtain a complete and correct list of special place (SP) names and addresses. With a person at the SP, we verify or improve our address listing, obtain the name of a contact person and a phone number, identify group quarters and housing units (HUs) associated with the SP. Any HUs identified during SP Prelist are matched against the Census address file and added for Census mailing if they aren't there. This Prelist is a coverage improvement procedure for special places.

Affected public: Individuals or households.

Frequency: One time.

Respondent's oblication: Mandatory.

OMB desk officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance

Officer, Edward Michals, (202) 377-3271, Departmental Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: April 28, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-9946 Filed 4-30-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-588-019]

Cyanuric Acid and Its Chlorinated Derivatives From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On December 30, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The review covers two manufacturers of this merchandise and the period April 1, 1984 through March 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 47036) the preliminary results of its administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan (49 FR 18148, April 27, 1984). We began this review under our old regulations. After the promulgation of our new regulations, the respondents, Nissan Chemical Industries, Ltd. ("Nissan") and Shikoku Chemicals Corporation ("Shikoku"), 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 cyanuric acid (also known as isocyanuric acid) and its chlorinated derivatives (dichloroisocyanurates, i.e., sodium dicholoro isocyanurate, potassium dichloro isocyanurate, and sodium dichloro isocyanurate dihydrate, and trichloro isocyanuric acid), used in the swimming pool trade.

We have categorized this merchandise as cyanuric acid, dichloro isocyanurates, and trichloro isocyanuric acid, which we determine are separate classes or kinds of merchandise. These products are sold in three basic consistencies: powder, granular, and tablet. The merchandise is currently classifiable under item 425.1050 of the Tariff Schedules of the United States Annotated.

The review covers two manufacturers of Japanese cyanuric acid and its chlorinated derivates and the period April 1, 1984 through March 31, 1985.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, Monsanto, and rebuttal comments from both respondents, which we address below. We also received a comment concerning a programming error and we have corrected that error.

Comment: 1 Monsanto argues that the Department should investigate whether home market sales were made below the full cost of production.

Department's Position: Based on the petitioner's allegations in the original fair value investigation and the first section 751 administrative review, the Department investigated whether home market sales were made below the cost of production. In both instances we found sufficient sales above cost to use home market prices as the basis for foreign market values.

We began this review while a cost investigation was in progress for the first administrative review. In anticipation of a below-cost allegation for this review, we requested cost-of-production data. However, in the context of this review Monsanto presented no new information supporting the allegation.

Without such new supporting information Monsanto's assertion that both prior cost investigations were inadequate does not warrant a cost investigation in this review. The Department investigated alleged sales below cost in the two preceeding reviews and both times found insufficient sales below cost to warrant disregarding such sales; therefore, we have not undertaken another cost investigation in this review.

Comment 2: Monsanto argues that the Department is required to verify all data used in this review. Entries prior to October 30, 1984, are covered by the Tariff Act, as amended by the Trade Agreements Act of 1979 ("the 1979 Act"), which required verification in all administrative reviews. Moreover, the Department must also verify data for entries after October 30, 1984, because Monsanto has complied with the requirements of section 618 of the Trade and Tariff Act of 1984 ("the 1984 Act"). Monsanto argues that, since the Department did not verify any of the sales and cost data, the Department must use the best information otherwise available.

Department's Position: We disagree. Section 618 of the 1984 Act, the verification provision, applies to all investigations and section 751 administrative reviews initiated after October 30, 1984. Thus, since this review was initiated on January 21, 1986, we applied this provision of the 1984 Act. Although Monsanto requested verification did not show the required good cause and we received the request too late in the review to consider it (only three weeks before we published the preliminary results of review).

Comment 3: Monsanto argues that the Department should limit foreign market values to home market sales of cyanuric acid and its derivatives sold to and used by the swimming pool trade.

Department's Position: In accordance with section 771(16) of the Tariff Act, foreign market values were based on sales of such merchandise in the home market, regardless of the industry to which sold. As we noted in both the original fair value investigation and in the first section 751 administrative review (*see Cyanuric Acid and its Chlorinated Derivatives from Japan* (49 FR 7426, February 29, 1984 and 51 FR 45495, December 19, 1986)) ultimate use of the merchandise is irrelevant when we use home market sales of identical merchandise as the basis for foreign market value.

Comment 4: To the extent that respondents did not sell granular form cyanuric acid, dichloro isocyanurates, or trichloro isocyanuric acid to the swimming pool trade in the home market, Monsanto argues that foreign market value should be based on sales to the swimming pool trade of similar merchandise, i.e., tablet-form cyanuric acid, dichloro isocyanurates, and trichloro isocyanuric acid, adjusted for differences in the merchandise.

Department's Position: As discussed in our position on Comment 3 above, the Department has not limited home market sales comparisons only to merchandise sold specifically for use in the swimming pool trade. The Department used foreign market values based on home market sales of physically identical merchandise, in accordance with section 771(16) of the Tariff Act.

Comment 5: Alternatively, Monsanto claims that the Department should adjust foreign market values for differences in circumstances of sale to account for differences in end uses.

Department's Position: As we determined in the original fair value investigation and the first administrative review, we disagree that a circumstance-of-sale adjustment is warranted based on the ultimate use of the product (*see Cyanuric Acid and its Chlorinated Derivatives from Japan* (49 FR 7426, February 29, 1984 and 51 FR 4595, December 19, 1986)). To qualify as a circumstance-of-sale adjustment the seller must convey to the purchaser something of value in addition to the physical merchandise, such as credit, warranties, or technical assistance, A circumstance-of-sale adjustment is warranted if the seller incurs different costs in selling the merchandise or the market value of the merchandise is thereby affected. In this case, clearly the ultimate use of the products has neither effect.

Comment 6: Monsanto claims that since the public versions of the questionnaire responses were not in conformity with the Department's regulations, the domestic companies were denied precedural fairness and the responses should therefore be rejected.

Department's Position: We determined that the public versions of the questionnaire responses comply with our regulations because they permit a reasonable understanding of the proprietary information. In accordance with section 777 of the Tariff Act and § 353.28 of the Commerce Regulations, the respondents submitted ranged figures for all sales information. Since we did not investigate allegations of home market sales below cost (*see* our position on Comment 1), the adequacy of those portions of the public responses is moot.

Commentt 7: The petitioner claims Shikoku's foreign market values should not be adjusted to account for free merchandise which was not shown to be related to the home market sales in question.

Department's Position: As we determined in the first section 751 administrative review (*see Cyanuric Acid and its Chlorinated Derivatives from Japan* (51 FR 45495, December 19, 1986)), we consider samples of free merchandise to be a selling expense directly related to home market sales of the products under review and, therefore, they are an allowable circumstance-of-sale adjustment to foreign market value.

Comment 8: Monsanto argues that only Shikoku's home market sales of granular cyanuric acid should be compared to U.S. sales of granular cyanuric acid.

Department's Position: We agree and have used Shikoku's home market sales of granular cyanuric acid to compare with U.S. sales of granular cyanuric acid.

Comment 9: Monsanto asserts that Shikoku has not established that home market advertising or promotional expenses are permissible adjustments for differences in circumstances of sale. Shikoku failed to establish that these expenses were directly related to resale of the merchandise by Shikoku's customers, or that they were directly related to the specific sales being reviewed. Also, there should be a deduction from U.S. price or an upward adjustment to foreigh market value for advertising expenses incurred for selling the merchandise in the United States.

Department's Position: We disagree and have allowed this adjustment to foreign market value. As in the original fair value investigation and the first section 751 administratie review, the type of advertising and promotional expenses claimed by Shikoku are allowable circumstance-of-sale adjustments under § 353.15(b) of the Commerce Regulations. Also, the alleged U.S. "advertising" consisted of technical literature and product specification. This expense was only indirectly related to U.S. sales; since these were purchase price transaction, we made no adjustment for this expense.

Comment 10: Monsanto argues that, absent evidence supporting Nissan's claim for a deduction from the cost of raw materials for ammonia produced as a by-product, this claim should be disallowed.

Department's Position: Since we noted in our position on Comment 1 that a below-cost investigation in this review was not warranted, this point is moot.

Comment 11: Monsanto claims that Nissan's general, adminstrative, and financial expenses should be reallocated on the basis of cost of manufacture, rather than sales value; also, interest income not directly related to Nissan's production of cyanuric acid should not be used as an offset to interest expense for purposes of calculating selling, general, and administrative expenses. Fianally, Nissan's general and administrative expenses accumulated at each division directly involved in the production of the subject merchandise must be separately identified and an allocable share included in the production cost calculation.

Department's Position: See our positions on Comments 1 and 10 above.

Final Results of the Review

Based on our analysis of the comments received, we have revised our preliminary results for Shikoku and we determine that the following margins exist for the period April 1, 1984 through March 31, 1985:

Manfacturer	Margin (percent)
Shikoku:	
Cyanuric Acid	0.18
Dichloro Isocyanurates	0
Trichloro Isocyanuric Acid	0
Nissan:	
Dichloro Isocyanurates	0
Trichloro Isocyanuric Acid	0

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above.

Further, as provided for by section 751(a) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required. Since the margin for Shikoku's cyanuric acid is less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for this firm.

These deposit requirements and waiver are effective for all shipments of Japanese cyanuric acid and its chlorinated derivatives 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 Regulation (19 CFR 353.53a).

Dated: April 25, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-9948 Filed 4-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-091]

Certain Electric Motors From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 12, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain electric motors from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period April 1, 1982 through November 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. Based on the comments we received, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 1216) the preliminary results of its administrative review of the antidumping duty order on certain electric motors from Japan (45 FR 84994, December 24, 1980). The Department has now completed its review.

Scope of the Review

Imports covered by the review are shipments of alternating current, polyphase electric motors of not less than 150 horsepower but not greater than 500 horsepower, not including submersible well pump motors. Such motors are currently classifiable under items 682.4545, 682.4600, 682.5010, and 682.5030 of the Tariff Schedules of the United States Annotated. The review covers one manufacturer/exporter, Toshiba Corporation ("Toshiba"), of certain electric motors and the period April 1, 1982 through November 30, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Toshiba and the petitioner.

Comment 1: Toshiba indicated that we had neglected to make certain deductions from the foreign market values in third country comparison calculations. There were also four data input errors. In addition, Toshiba disagreed with our choice of a particular third country sale for use as a comparison sale and stated that we had not chosen a contemporaneous sale.

Department's position: We have made the appropriate deductions. We also discovered that we had not made minor adjustments to the United States price and have made the correction. We have corrected the four data input errors after review of the record. We maintain that the third country sale we originally chose was in fact most suitable to use for comparison since its sale date was closest to that of the United States sale. We have therefore not changed the basis of comparison for that sale.

Comment 2: The petitioner, the National Electrical Manufacturers Association ("NEMA"), agreed with our analysis in the preliminary results. NEMA requested that we publish the rates from the previous review of the firms which were not included in this review.

Department's position: The administrative responsibility of the Department is to publish the results of reviewed firms. The previously reviewed firms and cash deposit rates which continue to be applicable to those firms are available in the notice of final results of administrative review for the period April 1, 1981 through March 31, 1982 (49 FR 32627, August 15, 1984).

Final Results of the Review

As a result of the clerical corrections, we determine that the following margins exist for the periods under review:

Manufacturer/exporter	Time period	Margin (percent)
Toshiba Corp	4/82-11/82	6.3
Do	12/82-11/83	9.3
Do	12/83-11/84	9.3

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on Toshiba directly to the Customs Service. Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 9.3 percent shall be required on shipments of certain Japanese electric motors by Toshiba.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1984 and who is unrelated to Toshiba or any other previously reviewed firm, a cash deposit of 6.3 percent shall be required on shipments of certain electric motors. This is in accordance with our practice of not using the most recently reviewed rate as a basis for a cash deposit for new shippers when we have based the most recent rate on best information available. These deposit requirements are effective for all shipments of certain Japanese electric motors entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 23, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-9947 Filed 4-30-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Fisheries Advisory Committee; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Ap. (1982), and General Services Administration (GSA) Interim Rule on Federal Advisory Committee Management, 41 CFR Part 101-6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the

Marine Fisheries Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee advises the Secretary of Commerce on all living marine resource matters which are the responsibility of the Department of Commerce. It serves to ensure that the Nation's living marine resource policies and programs meet the needs of commercial and recreational fishermen, environmental, state, consumer, academia, and other national interests. The Department continues to rely on the expertise of this Committee in the discussion and development of national fisheries policy and program initiatives. This advice is essential to meet the needs of the fisheries and of those concerned with the fisheries.

The Committee will continue with a balanced representation of twenty-one members, chaired by the Under Secretary of Commerce for Oceans and Atmosphere, and will operate in compliance with the provisions of the Federal Advisory Committee Act. The Committee's expertise and diversity is not available in any other Department of Commerce component, nor in any other Federal advisory committee.

Copies of the Committee's charter will be filed with appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Ann Smith, Constituent Affairs Staff (Fisheries), Office of Legislative Affairs, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235, telephone: (202) 673–5429, or the Department's Committee Management Analyst, telephone (202) 377–4217.

James E. Douglas,

Acting Deputy Assistant Administrator, NMFS.

April 27, 1987.

[FR Doc. 87–9857 Filed 4–30–87; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Arrangement for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey; Correction

April 27, 1987.

In the letter to the Commissioner of Customs published in the **Federal Register** on March 5, 1987 (52 FR 6860), correct footnote 5 to delete from Category 348 TSUSA numbers 384.0611, 384.0622, and 384.0624.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–9865 Filed 4–30–87; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Addition and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletions from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1987 services to be provided by workshops for the other severely handicapped.

EFFECTIVE DATE: June 1, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Alrington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 11, 1987, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (52 FR 7468) of addition to and deletions from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

Service

Janitorial/Custodial, U.S. Post Office and Courthouse, Sixth and Rogers Avenue, Fort Smith, Arkansas

Deletions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48C, 85 Stat. 77 and 41 CFR 51–2.6.

Services

Commissary Shelf Stocking and Custodial Service, Myrtle Beach Air Force Base, South Carolina.

Janitorial/Custodial

All Family Housing Units and Buildings 672, 1001, 2004, 2033, 2034, 2042, 2044, 2048, 2076, 2077, 2082, 2085, 2100, 2121, 3041, 3074, 3094, 3100, 3104, 3169, 3228, 3250, 3252, 3255, 3301, 3307, 3400, 4320, 24003, 24164 and 24165

U.S. Marine Corps, MCDEC, Quantico, Virginia

Janitorial-Mechanical, Federal Office Building, 591 Park Avenue, Idaho Falls, Idaho.

C.W. Fletcher,

Executive Director.

[FR Doc. 87–9915 Filed 4–30–87; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1987; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1987 commodities to be produced by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: June 1, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Cover, Mattress
7210–01–245–4392
7210–01–245–4393
Mattress, Neoprene, Foam
7210–01–244–9735
7210–01–244–9736
Bag, Plastic, Interlocking Seal Closure
8105–00–837–7753
8105–00–837–7754
8105–00–837–7755
8105–00–837–7756
8105–00–837–7757
Cover, Map
8460–00–287–2137
8460–00–287–2140

Deletion

It is proposed to delete the following commodities from Procurement List 1987, November 3, 1986 (51 FR 39946):

Commodities

Pallet, Material Handling
3990–00–222–1051
Kit Bag, Flyer's
8460–00–883–8673

C.W. Fletcher,

Executive Director.

[FR Doc. 87–9916 Filed 4–30–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Follow on Forces Attack; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack will meet in closed session on June 8–9, 1987 in 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 continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

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.

Linda M. Lawson,

OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1987.

[FR Doc. 87–9957 Filed 4–30–87; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 5, 1987; Tuesday, May 12, 1987; Tuesday May 19, 1987; and Tuesday, May 26, 1987; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1987.

[FR Doc. 87–9958 Filed 4–30–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Performance of Commercial Activities; Announcement of Program Cost Studies

The Department of the Navy intends to conduct OMB Circular A–76 (48 FR 37110, August 16, 1983) cost studies of various functions at the listed activities. The cost study process is a time-consuming procedure and, depending upon the size of the functions involved, can take several months to several years to complete. Upon completion of the cost study process, solicitations will be synopsized in the *Commerce Business Daily* with instructions for potential contractors prior to bid opening. Consolidated bidders' list are not maintained since the solicitations will be processed by various contracting offices throughout the United States.

Naval Air Rework Facility, Alameda, CA

Special Studies and Analyses
Industrial Plant Equipment
Other Installation Services
Engineering and Technical Services
Audiovisual and Visual Information Services
Administrative Support Services
Internal Mail and Messenger Services
Financial and Payroll Services
Base Supply Operations
Other Storage and Warehousing
Other Manufacturing Operations
Care, Rewarehousing, and Support of Materiel

Naval Air Rework Facility, North Island, CA

Base Supply Operations
Special Studies and Analyses
Industrial Plant Equipment

Other Installation Services
Engineering and Technical Services
Audiovisual and Visual Information Services
Mobile Facilities Support
Administrative Support Services
Internal Mail and Messenger Services
Financial and Payroll Services Materiel Movements
Other Storage and Warehousing
Other Nonmanufacturing Operations
Storage and Warehousing (Receipt)

Naval Shipyard, Long Beach, CA

Storage and Warehousing

Naval Shipyard, Mare Island, CA

Storage and Warehousing

Naval Weapons Station, Seal Beach, Ca

Care, Rewarehousing, and Support Materiel

Submarine Base, New London, CT

Base Supply Operations

Navy Military Personnel Command, Washington, DC

Word Processing Center

Naval Medical Command, Washington, DC

Telecommunications Centers

Fleet Aviation Specialized Operational Training, Atlantic Detachment, Cecil Field, FL

Base VI Support

Fleet Aviation Specialized Operational Training Atlantic Detachment, Mayport, FL

Base VI Support

Fleet Aviation Specialized Operational Training Atlantic Detachment, Jacksonville, FL

Base VI Support

Naval Air Facility, Mayport, FL

Base Supply Operations
ADP Magnetic Media Library

Naval Air Station, Jacksonville, FL

Pest Management

Naval Air Rework Facility, Jacksonville, FL

Administrative Support Services
Internal Mail and Messenger Services
Financial and Payroll Services
Materiel Movements
Base Supply Operations
Other Storage and Warehousing
Other Nonmanufacturing Operations
Storage and Warehousing (Receipt)
Care, Rewarehousing, and Support of Materiel
Data Processing Services
Special Studies and Analyses
Statistical Analyses
Industrial Plant Equipment
Other Installation Services
Engineering and Technical Services
Audiovisual and Visual Information Services

Naval Air Rework Facility, Pensacola, FL

Administrative and Support Services
Internal Mail and Messenger Services
Financial and Payroll Services
Materiel Movements
Other Manufacturing Operations
Base Supply Operations
Data Processing Services
Word Processing Center
Statistical Analyses
Special Studies and Analyses
Industrial Plant Equipment
Other Installation Services
Engineering and Technical Services
Audiovisual and Visual Information Services

Naval Shipyard, Pearl Harbor, HI

Storage and Warehousing

Naval Air Station, Brunswick, ME

Base Supply Operations
Pest Management
Motor Vehicle Operations
Motor Vehicle Maintenance
Heating Plants and Systems
Buildings and Structures (Family Housing and Other Than Family Housing)
Grounds and Surfaced Areas

Fleet Aviation Specialized Operational Training, Atlantic Detachment, Brunswick, ME

Base VI Support

Naval Ordnance Station, Indian Head, MD

Storage and Warehousing

Naval Air Station, Meridian, MS

Aircraft Maintenance

Naval Construction Battalion Center, Gulfport, MS

Grounds Maintenance

Naval Shipyard, Portsmouth, NH

Storage and Warehousing

Naval Weapons Station, Earle, NJ

Storage and Warehousing

Naval Air Rework Facility, Cherry Point, NC

Administrative Support Services
Internal Mail and Messenger Services
Base Supply Operations
Other Manufacturing Operations
Data Processing Services
Statistical Analyses
Industrial Plant Equipment
Special Studies and Analyses
Audiovisual and Visual Information Services

Naval Hospital, Cherry Point, NC

Buildings and Structures (Other than Family Housing)

Navy Finance Center, Cleveland, OH

Financial and Payroll Services
Data Processing Services

Naval Shipyard, Philadelphia, PA

Storage and Warehousing

Naval Hospital, Roosevelt Roads, PR

Custodial Services
Nutritional Care

Naval Shipyard, Charleston, SC

Storage and Warehousing

Naval Weapons Station, Charleston, SC

Storage and Warehousing

Naval Air Technical Training Center, Millington, TN

Administrative Support Services
Storage and Warehousing (Receipt)
Printing and Reproduction

Naval Air Station, Memphis, TN

Telecommunication Centers

Naval Amphibious Base, Little Creek, VA

Transportation Operations and Maintenance
Refuse Collection
Motor Vehicle Operation
Crane Operations
Construction Equipment Operations
Motor Vehicle Maintenance
Tire Maintenance and Repair
Crane Operations

Fleet Aviation Specialized Operational Training Group Atlantic, Norfolk, VA

Base VI Support

Naval Shipyard, Norfolk, VA

Storage and Warehousing

Naval Air Rework Facility, Norfolk, VA

Administrative Support Services
Internal Mail and Messenger Services
Financial and Payroll Services
Materiel Movements
Base Supply Operations
Other Nonmanufacturing Operations
Data Processing Services
Special Studies and Analyses

Naval Air Rework Facility, Norfolk, VA

Statistical Analyses
Industrial Plant Equipment
Other Installation Services
Engineering and Technical Services
Custodial Services

Audiovisual and Visual Information Services

Fleet Aviation Specialized Operational Training Group Detachment Atlantic, Oceana, VA

Base VI Support

Naval Air Station, Oceana, VA

Motor Vehicle Operations
Motor Vehicle Maintenance
Refuse Collection and Disposal Service

Naval Shipyard, Puget Sound, WA

Storage and Warehousing

Naval Undersea Warfare Engineering Station, Keyport, WA

Storage and Warehousing

Dated: April 23, 1987.

T.H. Upton,

Head, Commercial/Retail Activities Branch.

[FR Doc. 87-9793 Filed 4-30-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the destructive post irradiation testing of four fuel pins at the PNC facility in Japan. This subsequent arrangement will record the joint determination by the Government of the United States of America and the Government of Japan pursuant to Article VIII C of their Agreement that safeguards may be effectively applied to the post irradiation testing at the PNC facility in Japan of the said fuel pins, 4 type PNC 10.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: April 27, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-9886 Filed 4-30-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E-87-24; OFP Case No. 64015-9338-20-24]

Powerplant and Industrial Fuel Use; Exemption; Lowell Cogeneration Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting exemption.

SUMMARY: On December 17, 1986, Lowell Cogeneration Company (Lowell or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a combined cycle gas turbine generating unit to be located in Lowell, Massachusetts

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

Pursuant to section 212(g) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on June 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington DC 20585, Telephone (202) 586-8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington DC 20585, Telephone (202) 586-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in new powerplants unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facility located in Lowell, Massachusetts.

NEPA Compliance

After a review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environment Policy Act (NEPA).

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on March 9, 1987 (51 FR 7193), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

Copies of the petition were provided to the Environmental Protection Agency and the Federal Energy Regulatory Commission as required by sections 213(c)(2) and 701(f) of the Act, respectively. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on April 23, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32,

and pursuant to section 212(g) of FUA, ERA hereby grants the petitioner's permanent exemption for the unit to be installed at its facility in Lowell, Massachusetts permitting the use of natural gas or oil as a primary energy source in each unit identified in this order.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on April 24, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-9864 Filed 4-30-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E-87-31; OFP Case No. 61069-9359-20-24]

Acceptance of Petition for Exemption and Availability of Certification by Badger Creek Cogen, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance.

SUMMARY: On March 10, 1987, Badger Creek Cogen, Inc. (Badger Creek or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a proposed cogeneration facility to be located in Kern County, California.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on cogeneration. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before June 15, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA C&E-87-31 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-4523

Steven E. Ferguson Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

SUPPLEMENTARY INFORMATION: The proposed cogeneration facility will utilize a gas turbine fired by natural gas to produce 44.8 MW of electricity and a waste heat boiler to produce 158,800 pounds per hour of steam. The electricity will be sold to Pacific Gas and Electric Company and the steam generated will be sold to Cities Services Oil and Gas Corporation and also be used for environmental purposes at the cogeneration facility.

Section 212(c) of the Act and 10 CFR 503.37 provides for a permanent cogeneration exemption from the prohibitions of title II of FUA. In accordance with the requirements of 503.37(a)(1), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a permanent cogeneration exemption from FUA is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioner has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental check-list submitted by the petitioner pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled ot the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on April 22, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-9889 Filed 4-30-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E-87-43; OFP Case No. 63032-9362-20-24]

Acceptance of Petition for Exemption and Availability of Certification by Granite Road Cogen, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance.

SUMMARY: On March 18, 1987, Granite Road Cogen, Inc. (Granite Road or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a proposed cogeneration facility to be located in Kern County, California.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on cogeneration. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before June 15, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Ave, SW., Washington, DC 20585.

Docket No. ERA C&E-87-43 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington DC 20585, Telephone (202) 586-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Idependence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

SUPPLEMENTARY INFORMATION: The proposed cogeneration facility will utilize a gas turbine fired by natural gas to produce 44.8 MW of electricity and a waste heat boiler to produce 158,800 pounds per hour of steam. The electricity will be sold to Pacific Gas and Electric Company and the steam generated will be sold to Cities Service Oil and Gas Corporation and also be used for environmental purposes at the cogeneration facility.

Section 212(c) of the Act and 10 CFR 503.37 provides for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of §503.37(a)(1), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a permanent cogeneration exemption from FUA is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioner has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by the petitioner pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on April 22, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-9892 Filed 4-30-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E-87-42; OFP Case No. 61070-9360-20-24]

Acceptance of Petition for Exemption and Availability of Certification by Bear Mountain Cogen, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance.

SUMMARY: On March 12, 1987, Bear Mountain Cogen, Inc. (Bear Mountain or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a proposed cogeneration facility to be located in Kern County, California.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on cogeneration. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to the 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public heaing.

The public file containing a copy of this Notice of Acceptance and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Firday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before [June 15, 1987]. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Ave SW., Washington, DC 20585.

Docket No. ERA C&E–87–42 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–093, Washington DC 20585. Telephone (202) 586–4523

Steven E. Ferguson, Esq, Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586–6947.

SUPPLEMENTARY INFORMATION: The proposed cogeneration facility will utilize a gas turbine fired by natural gas to produce 44.8 MW of electricity and a waste heat boiler to produce 158,000 pounds per hour of steam. The electricity will be sold to Pacific Gas and Electric Company and the steam generated will be sold to Cities Services Oil and Gas Corporation and also be used for environmental purposes at the cogeneration facility.

Section 212(c) of the Act and 10 CFR 503.37 provides for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of 1503.37(a)(i), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less that that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a permanent cogeneration exemption from FUA is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Evironmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioner has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by the petitioner pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on April 22, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–9890 Filed 4–30–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA C&E–87–06; OFP Case No. 61064–9332–20–21–22–24]

Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Cogen Technologies NJ Venture

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting exemption.

SUMMARY: On November 3, 1987, Cogen Technologies NJ Venture (Cogen Tech or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for three combined cycle powerplants to be located in Bayonne, New Jersey.

Title II of the Act prohibits the use of petroleum or natural gas as a primary

energy source in a new powerplant, and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

Pursuant to section 212(g) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplants at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on June 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585. Telephone (202) 586-9624

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new MFBIs unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facility located in Bayonne, New Jersey.

NEPA Compliance

After a review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on December 22, 1986 (51 FR 455800), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

Copies of the petition were provided to the Environmental Protection Agency and the Federal Energy Regulatory Commission as required by sections 213(c)(2) and 701(f) of the Act, respectively. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on February 5, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(g) of FUA, ERA hereby grants the petitioner's permanent exemption for the unit to be installed at its facility in Bayonne, New Jersey permitting the use of natural gas or oil as a primary energy source in each unit identified in this order.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on April 22, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-9891 Filed 4-30-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-21-NG]

Unocal Canada Limited; Application to Import Natural Gas from Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 1, 1987, of an application filed by Unocal Canada Limited (Unocal) for blanket authorization to import Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 100 MMcf per day and a maximum of 73 Bcf for a two-year term beginning on the date of the first delivery. Unocal, a Canadian corporation, is a wholly owned subsidiary of Unocal Corporation (doing business as Union Oil Company of California Limited, (Union Oil)). Unocal proposes to purchase natural gas from various Canadian suppliers for itself, or as agent for others, on a short-term basis for resale to pipelines, distribution companies, and end users in the United States. Unocal intends to use existing pipeline facilities for the transportation of the proposed imports. Unocal also states that it will advise the ERA of the date of first delivery of the import and submit quarterly reports giving details of individual transactions in the month following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than June 1, 1987.

FOR FURTHER INFORMATION:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Unocal requests, in light of recent similar authorizations, that its application be considered on an expedited basis. An ERA decision on Unocal's request, particularly with respect to whether additional comments or other procedures will be necessary in this case, will not be made until responses to this notice have been received.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR

6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., June 1, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comment, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Unocal's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC April 22, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-9888 Filed 4-30-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 87-5: Epidemiologic Research

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research of the Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants that will support epidemiologic research on health effects related to energy generation and use or due to nuclear medicine procedures. Research must be directed toward understanding the mechanisms of biological damage and the quantification of the risk to humans. Biological endpoints of interest may include disease-specific mortality and morbidity, but preferably or additionally, should comprise biochemical or molecular changes in affected populations.

Specific areas of interest include: ionizing radiation, magnetic resonance imaging, alternative energy sources, and energy conservation. Additionally, studies of exposures related to energy or to nuclear medicine, and utilizing biochemical or molecular epidemiologic study designs will be strongly considered.

DATES: To permit timely consideration for award in Fiscal Year 1988, applications submitted in response to this Notice should be received by the Division of Acquisition and Assistance Management by September 15, 1987.

ADDRESS: Applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, Room G-236, Washington, DC 20545, Attn: Program Notice 87-5.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Goldsmith, Office of Health and Environmental Resarch, ER-73, Washington, DC 20545, (301) 353-5355.

SUPPLEMENTARY INFORMATION: It is anticipated that $1M will be available for grant awards during FY 1988. Additionally, multiple year funding of awards is expected, subject to the availability of future funds. Information about development and submissions of application, eligibility, limitations, evaluation and selection processes, and other eligibility, limitations, evaluation and slection processes, and other policies and procedures may be found at 10 CFR Part 605. Application kits and copies of 10 CFR Part 605 ar available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above for address). Telephone requests may be made by calling (301) 353-5544. Instructions for preparation of an application are included in the kit. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on April 23, 1987.

Ira M. Adler,

Deputy Director for Managment, Office of Energy Research.

[FR Doc. 87-9887 Filed 4-30-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP68-187-000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

[Docket No. CP68-187-000]

April 22, 1987.

Take notice that on April 14, 1987, Trunkline Gas Company, (Trunkline), having offices at P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP68-187-000 an application pursuant to section 7 of the Natural Gas Act for an order permitting and approving amendment of its certificate authorization granted in Docket No. CP68-187 to allow Trunkline to increase the natural gas volumes it sells to Entex, Inc. (Entex), and to construct and

operate certain facilities required thereby, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline seeks to increase its contract demand for Entex from 1,900 Mcf of gas per day to 4,900 Mcf of gas per day, pursuant to a Service Agreement executed September 18, 1986. Entex is a resale customer currently receiving service under Trunkline's Rate Schedule SG–1, it is stated. Trunkline advises that Entex needs the additional gas volumes to serve the communities of Cumberland and White Oak Creek near New Caney in Montgomery County, Texas. Trunkline would provide the increased service via a new gas measuring and regulating station to be located in Montgomery County, Texas, and accordingly, requests authorization to construct such facilities. The cost of the facilities is estimated to be $23,000. Finally, Trunkline states that it anticipates an inconsequential impact on its existing customers from the additional volumes requested herein.

Comment date: May 13, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Consolidated Gas Transmission Corp.

[Docket No. CP87–285–000]

April 24, 1987.

Take notice that on April 13, 1987, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87–285–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to sell natural gas for resale in interstate commerce to the Cincinnati Gas and Electric Company (CG&E) and the Union Light, Heat & Power Company (Union Light), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to render long-term, firm sales services to CG&E and Union Light under its Rate Schedule CD of its FERC Gas Tariff. Such service, it is stated, would commence November 1, 1987, and would continue for a primary term ending October 31, 2007. Applicant states that it proposes to sell CG&E up to 41,000 dekatherm equivalent of natural gas per day and up to 14,964,000 dekatherm equivalent of natural gas annually. Applicant states that it proposes to sell to Union Light up to 9,000 dekatherm equivalent of natural gas per day and up to 3,286,000 dekatherm equivalent of natural gas annually. The gas to be sold would come from Applicant's general system supply, it is stated. Applicant states that deliveries to CG&E and Union Light would be made by displacement by Texas Gas Transmission Corporation through existing facilities. CG&E, it is stated, would then transport and redeliver to Union Light its purchase quantities pursuant to CG&E's blanket certificate issued in Docket No. CP85–191–000, 31 FERC ¶ 62,384 (1985).

Comment date: May 15, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Colorado Interstate Gas Co.

[Docket No. CP85–824–004]

April 24, 1987.

Take notice that on April 2, 1987, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–824–004, an amendment to the petition to amend the order issued October 11, 1985, in Docket No. CP85–824,000 pursuant to section 7(c) of the Natural Gas Act so as to authorize a change in the amendment, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Accordingly, by this amendment, CIG requests that the Commission issue an order continuing the authorized transportation of natural gas to the City of Colorado Springs (CCS) for a period no later than January 19, 1988, and month to month thereafter until termination by either CIG or CCS upon 30 day advanced notice. It is stated that conditioned upon the approval of the extended term, CIG requests pregranted abandonment, when applicable, of the transportation service of the extended term.

Comment date: May 15, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP86–135–009]

April 23, 1987.

Take notice that on April 9, 1987, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP86–135–009 a petition to further amend the order issued May 1, 1986, as amended in Docket No. CP86–135–000 pursuant to section 7 of the Natural Gas Act, so as to extend the term of its transportation service for LTV Steel Company, Inc. (LTV) and to increase the maximum daily contract volume of natural gas being transported, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that currently, Natural is authorized to transport up to a maximum of 40,000 MMBtu per day of natural gas for LTV for ultimate delivery to its Indiana Harbor Works, South Chicago Works and Hennepin Plant until April 30, 1987. Natural now requests to further amend the order issued May 1, 1986, as amended, to transport up to 70,000 MMBtu per day of natural gas for LTV until April 30, 1988.

Comment date: May 14, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northwest Pipeline Corp.;

[Docket No. CP86–117–007]

April 24, 1987.

Take notice that on April 13, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86–177–007 a petition to further amend the Commission's order issued in Docket No. CP86–117–001 on June 20, 1986, pursuant to section 7(c) of the Natural Gas Act to authorize additional transportation volumes and a transportation delivery point to Chevron Chemical Company (Chevron) which were authorized therein for a limited-term expiring June 20, 1987, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that Northwest presently has a permanent authorization to transport up to 10,000 MMBtu of natural gas per day for Chevron's St. Helen's Plant and has a request pending to add Chevron's Kennewick Plant as a delivery point under that authorization. It is further stated that the additional limited-term increasing the transportation volume to 25,000 MMBtu of natural gas per day and adding Chevron's Finley Plant as a delivery point presently expires June 20, 1987.

Northwest requests the Commission to amend its June 20, 1986, and September 11, 1986, orders in Docket No. CP86–117–001 to grant permanent authorization for the increased transportation volume and Finley Plant deliveries which were authorized only for the limited term expiring June 20, 1987.

Other than the requested extension of

term for the described additional volumes and delivery point, no change is proposed in the previously certificated transportation service to Chevron. Northwest states that it would continue to charge Chevron its approved interruptible on-system incremental and replacement transportation rates, as applicable, which are set forth on Sheet No. 2.2 of Volume No. 2 of Northwest's FERC Gas Tariff.

Comment date: May 15, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP87-260-000]

April 24, 1987.

Take notice that on March 23, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-260-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authority to abandon transportation and delivery of natural gas for certain firm direct industrial sales and to replace them with new firm and interruptible sales services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United seeks authority to provide continued service to various direct sales customers as listed in the attached Appendix.

United states that it would use existing facilities to serve those listed above. Further, on April 15, 1987, United filed certain pricing information for the direct sales herein. United has requested that this inforation be treated as a confidential basis by staff.

Comment date: May 15, 1987, in accordance with Standard Paragraph F at the end of this notice.

Customer	Location	Prior certificate authority	New CDQ (Mcf)	Old CDQ (firm) (Mcf)
Firm Contracts:				
Acme Brick Co	Garrison Co., TX	CP62-12	100	2,000
Candies, Jr., Otto	LaFourche Par., LA	CP71-89	100	100
First Chemical Corp	Jackson Co., MS	CP67-161	1,000	2,500
Sterling Sugars, Inc	Centerville, LA	CP71-89	120	120
Interruptible Contracts:				
Cavenham Forest Industries, Inc. (formerly Crown Zellerbach, Treated Wood Products).	Gulfport, MS	G-13,142	600	600
Champion International Corp. (formerly St. Regis Corp.)	Lufkin, TX	G-232	25,000	37,000
Filter-Media Co. of Louisiana, Inc	St. John Bap. Par., LA	CP71-89	200	100
Gas Rock Corp	Marion Co., MS	Not available	40	40
Green Giant Co. (formerly Joan of Arc Co.)	Avoyelles Par., LA	CP71-89	1,000	1,000
Henderson Brick, a Div. of Boral Bricks, Inc. (formerly Henderson Clay Products, Inc.).	Rusk Co., TX	CP66-426	2,000	2,000
Henderson Brick, a Div. of Boral Bricks, Inc. (formerly Henderson Clay Products, Inc.).	Smith Co., TX	G-232	1,800	1,800
International Paper Co	Mobile Co., AL	G-6,060	14,300	(1)
International Paper Co	Mose Point, MS	G-232	22,000	(1)
International Paper Co	Warren Co., MS	CP66-210	27,700	(1)
International Paper Co	Springhill, LA	G-232	2,000	(1)
Mobile Oil Exploration & Producing Southeast, Inc	St. Mary Par., LA	CP71-89	420	420
Stauffer Chemical Co	Bartrop LA,	G-232	800	800
Texaco Pipeline Inc. (formerly Texas Pipe Line Co., The)	Calcasieu Par., LA	CP71-89	600	600
VGS Corp. d/b/a/ Southland Oil Co	Lamar Co., MS	CP67-114	1,325	3,000
VGS Corp. d/b/a/ Southland Oil Co	Jones Co., MS	CP68-277	3,100	0

[1] International Paper's prior CDQ for all locations was 64,500 Mcfd.

7. Williston Basin Interstate Pipeline Company

[Docket No. CP87-286-000]

April 24, 1987.

Take notice that on April 14, 1987, Williston Basin Interstate Pipeline Company (Williston), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-286-000 an application pusuant to section 7(b) of the Natural Gas Act for an order authorizing the abandonment of two gas compression units used and associated with the purchase and gathering of natural gas at Williston's Rapelje Compressor Plant, all as more fully set forth in the application which is on file with the Commission and open to public insepction.

Williston states that the use of the Rapelje Compressor facilities is no longer economical and that there is no practical need for the facilities in the foreseeable future. Williston also states that there will be no effect on service to any of its customers.

Comment date: May 15, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-9920 Filed 4-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-114]

Ohio River Basin, Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia, and West Virginia; Intent To Prepare Environmental Impact Statement and To Hold Scoping Sessions and Public Hearings

April 29, 1987.

The staff of the Federal Energy Regulatory Commission has determined that issuance of licenses for the development of 24 proposed hydroelectric projects [1] in the Ohio River Basin would constitute a major federal action significantly affecting the quality of the human environment. This determination is based on conclusions contained in the staff's environmental assessment for the Ohio River Basin, dated March 11, 1987. In accordance with the National Environmental Policy Act, the staff therefore intends to prepare an environmental impact statement (EIS) on the 24 proposed projects. Site-specific and cumulative environmental impacts will be evaluated in the EIS and possible alternatives to the proposed actions will be addressed.

Interested persons and agencies are invited to provide comments and recommendations, including any supporting data, on the scope of the planned EIS. The target resources [2] will be evaluated in the EIS, along with other relevant resources and issues. Substantive evidence is requested that would support a conclusion that any one of the 24 projects would not contribute to cumulative impacts to the target resources and therefore should be excluded from further consideration of cumulative impacts within the Ohio River Basin. Substantive evidence should include but should not be limited to results of studies, resource management policies, and reports from federal, state, and local agencies.

The EIS scoping process will entail an evaluation by the staff of all the environmental issues of primary concern, based on the comments received and on the staff's independent analysis. An EIS scoping document will be prepared and distributed to the interested parties before the EIS scoping sessions. Interested officials and members of the public also will be invited to express their views about the projects in public hearings. The times and locations of the EIS scoping sessions and public hearings will be announced in a subsequent public notice.

Comments and recomendations, which should be filed with the Commission on or before June 30, 1987, must be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should clearly show the following caption on the first page: Ohio River Basin, Docket No. EL85-19-114.

For further information, please contact project manager George Taylor, at (202) 376-9288, project manager Brian Romanek, at (202) 376-1730, or attorney William O. Blome, at (202) 357-8131.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-10016 Filed 4-30-87; 8:45 am]

BILLING CODE 6717-01-M

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[1] FERC Project Nos. 2971, 3218, 3490, 4017, 4474, 4675, 6901, 6902, 6939, 6998, 7041, 7307, 7399, 7568, 7660, 7909, 7914, 8654, 8908, 8990, 9027, 9042, 9999, 10098.

[2] A target resource is an important resource that could be adversely affected by two or more proposed hydropower projects. The staff has identified dissolved oxygen, recreational fishing, and river navigation as target resources in the Ohio River Basin.

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3194-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 13, 1987 through April 17, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. DR-AFS-J82003-MT, Rating EC1, Beaverhead Nat'l Forest, Noxious Weed Control Plan, MT. Summary: EPA asked that additional discussion on pesticide storage, handling, and accidental spills be included in the final EIS, and that post-treatment surveys be done to determine application impacts and effectiveness.

ERP No. D-FHW-L40157-AK, Rating EC2, Eagle River Loop Road Connection to Hiland Drive/Glenn Highway Interchange, 404 Permit, AK. Summary: EPA has concerns about the potentially severe noise effects, potential solid waste site effects, and adverse effects from induced growth.

ERP No. DS-NOA-A64045-00, Rating LO, Green, Loggerhead, and the Pacific Ridley Sea Turtles, Listing and Protection Under the 1973 Endangered Species Act, Incidental Capture and Mortality Reduction, Use of Excluder Devices by Shrimp Fisherman. Summary: EPA has no objection to the draft supplement to the final EIS and commends NOAA/NMFS for bringing together representatives of environmental groups and the shrimp industry to reach a consensus in these proposed regulations.

Final EISs

ERP No. F-BLM-G08011-00, Arizona Interconnection Project, El Paso 345 kV Transmission Line, Construction, Right-of-Way Grants and Permits, Approval, Plan Amendment, AZ and NM. Summary: EPA has objections with the action as proposed.

ERP No. F-FHW-J40114-CO, Stevens Gulch Road Extension; Duke, Hubbard, and Elk Creeks Timber Sales; Offering/Forest Mgmt. Activity; Gunnison, Uncompahgre, and Grand Mesa Nat'l Forests; CO. (Adoption of AFS final EIS, filed 9-16-86) Summary: EPA is in accord with the commitment of emergency FHWA relief funding to restore vehicular access on US Forest Service land.

Dated: April 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-9961 Filed 4-30-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3194-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed April 20, 1987 Through April 24, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870133; Revised, AFS, AK, Quartz Hill Molybdenum Project Mine Development, Construction Operation and Post Mining Abandonment, Approval and Permits, Due: June 15, 1987, Contact: Edward Johnson (907) 225-3101

EIS No. 870134, Final, COE, TT, Garapan Flood Control Study, Saipan, Commonwealth of the Northern Marina Islands, Due: June 1, 1987, Contact: James Maragos (808) 438-2263

EIS No. 870135, Legislative Final, FWS, AK, Arctic National Wildlife Refuge Coastal Plain Resource Management, Oil and Gas Exploration, Development and Production, Leasing and Wilderness Designation, Due: June 1, 1987, Contact: Noreen Clough (202) 343-4313

EIS No. 870136, Draft, COE, LA, Lake Pontchartrain and Lake Maurepas Clam Shell Dredging Operation, Livingston, St. Charles and Jefferson Parishes, Due: June 15, 1987, Contact: Dennis Chew (504) 862-2523

EIS No. 870137, Final, FHW, NY, Taconic State Parkway Reconstruction, Hawthorne Interchange to Campfire Road, Westchester County, Due: June 1, 1987, Contact: Victor Taylor (518) 472-3616

EIS No. 870138, Final, AFS, NC, 1986-2000 Nantahala and Pisgah National Forests, Land and Resource Management Plan, Due: June 1, 1987, Contact: John Alcock (404) 881-4177

EIS No. 870139, DSuppl, COE, OK, Clayton (Sardis) Lake, Jackfork Creek, Dam and Lake Construction, Daisy to Sardis Lake Access Road Construction, Due: June 15, 1987, Contact: Paul Mace (918) 581-7857

EIS No. 870140, Final, AFS, MT, 1987 Beaverhead National Forest, Noxious Weed and Poisonous Plant Control Program, Due: June 1, 1987, Contact: Dan Pence (406) 683-3900

EIS No. 870141, DSuppl, USA, IN, AL, AR, LA, Binary Chemical Munitions Programs, QL and DC Production Facilities, Site Selection, Construction and Operation, Due: June 15, 1987, Contact: Marilyn Tischbin (301) 671-3629

EIS No. 870142, Draft, COE, UT, Upper Jordan River Flood Control Plan, Jordan Narrows to 2100 South Street, Salt Lake County, Due: June 15, 1987, Contact: Ray Williams (916) 551-2905

EIS No. 870143, Draft, COE, LA, Atchafalaya, East Cote Blanche and Four League Bays, Oyster Shell Dredging Operation, Due: June 15, 1987, Contact: Gary Goeke (504) 862-2526

EIS No. 870144, Draft, FHW, CA, CA-52 East Construction, Santo Road to CA-67, San Diego County, Due: June 15, 1987, Contact: Michael Cook (916) 551-1307

Amended Notice:

EIS No. 870130, FSuppl. COE, AL, Black Warror and Tombigbee Rivers Maintenance and Operation, New Information, Due: June 1, 1987, Published FR 4-24-87—Review period extended

Dated: April 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-9960 Filed 4-30-87; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[ER-FRL-3184-3]

Intent to Prepare an Environmental Impact Statement; Folcroft Landfill Development, Tinicum National Environmental Center, Philadelphia, PA

AGENCIES: U.S. Environmental Protection Agency (EPA) and U.S. Department of the Interior, Fish and Wildlife Service (DOI/FWS).

ACTION: Preparation of a draft Environmental Impact Statement (EIS) on the effect of the Folcroft Landfill with recommendation for remediation alternatives.

PURPOSE: In accordance with section 102(2)(c) of the National Environmental Policy Act, EPA and the DOI/FWS have identified a need to prepare an EIS and therefore issue this Notice of Intent pursuant to 40 CFR 1507.7.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey M. Alper, Environmental Impact and Marine Policy Branch, U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, Telephone: (Commercial), (215) 597-9302 or (FTS) 597-9302.

SUMMARY:

Description of Proposed Action

Need for Action: The Environmental Protection Agency and the Fish and Wildlife Service will jointly prepare an EIS to assess the effects of the Folcroft Landfill on the Tinicum National Environmental Center and to recommend remediation alternatives. This action is in accordance with requirements of the National Environmental Policy Act, Pub. L. 96-315, and related EPA regulations. Public law 96-315 directs ". . . EPA in consultation and cooperation with FWS . . . to investigate potential environmental health hazards from the Folcroft Landfill . . . and to develop alternative recommendations as to how such hazards, if any, might best be addressed in order to protect the refuge and general public." Accordingly, EPA and FWS will act as joing-lead agencies in the development of this EIS.

The EIS will consider the effects of the Folcroft Landfill on the environmental center and evaluate alternatives for remediation of the landfill. The major issues to be evaluated include impacts of the landfill on the fish and Wildlife habitat, recreational and educational uses of the environmental center, water quality impacts and feasibility or remedial measures.

Scoping: A separate notice announcing a public scoping meeting will be published at a later date by the EPA Region III office.

Public and Private Involvement and Participation: Full public participation by interested Federal, state and local agencies as well as other concerned organizations and private citizens is invited. All interested persons are encouraged to submit their names and addresses to the person listed above for inclusion on the mailing list for newsletters, the draft EIS and related public information.

Timing: It is anticipated that the draft EIS will be available by September 1988.

Dated: April 14, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

Date: April 24, 1987.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 87-9962 Filed 4-30-87; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3194-1]

Proposed Settlement Under Cercla 122(i), Keefe Environmental Services, Inc., Epping, NH

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement under CERCLA 122(i).

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability act of 1980, (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that on March 20, 1987 a proposed settlement was reached between the United States Navy, the United States Air Force, the United States Environmental Protection Agency, the State of New Hampshire, Rockingham County, and the Town of Epping. The proposed settlement concerns the recovery of costs incurred by the United States, the State of New Hampshire, Rockingham County and the Town of Epping in taking response actions, and to be incurred by the United states in undertaking remedial action under CERCLA, as amended, at a site along Route 101 in Epping, New Hampshire. The site was previously owned and operated by Keefe Environmental Services, Inc., and affiliated companies. Various waste products, including waste solvents and waste oil, were shipped to the site. The proposed settlement, reflected in a Memorandum of Agreement between the parties, requiring the Navy and the Air Force to reimburse the United States, the State of New Hampshire, the County of Rockingham and the Town of Epping for current response costs incurred by each entity, and the final remedial costs incurred by the United States. The terms of this Agreement are essentially identical to those contained in the consent decree in *United States* v. *Data General Corp., et al.,* Civil Action No. 85–634–L, lodged with the United States District Court for the District of New Hampshire on October 28, 1985. See "Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Data General Corp." at 50 FR 47289 (1985). That consent decree settled claims against numerous private generators and transporters of hazardous waste that used the Keefe site for disposal.

DATES: The United States Environmental Protection Agency will receive comments relating to the proposed settlement for a period fo thirty (30) days from the date of this publication.

ADDRESSES: Comments should be addressed to Daniel J. Coughlin, Chief, New Hampshire Superfund Section, U.S. Environmental Protection agency, Region I, HSN–1903, John F. Kennedy Federal Office Building, Boston, MA, 02203, and should refer to *Keefe Environmental Services, Inc.*

The Memorandum of Agreement may be examined at the Office of Enforcement and Compliance Monitoring, Hazardous Waste Enforcement Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 and at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, New Hampshire Superfund Section, Boston, MA, 02203. A copy of the Memorandum of Agreement may be obtained in person or by mail from Daniel J. Coughlin, Chief, New Hampshire Superfund Section, U.S. Environmental Protection Agency, Region I, HSN–1903, John F. Kennedy Federal Building, Boston, MA, 02203.

Dated: April 24, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–9910 Filed 4–30–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 79–184]

Inquiry on Policies and Guidelines for Authorization of Common Carrier Facilities on North Atlantic Route During the 1991–2000 Period

March 19, 1987.

The Commission has initiated a fourth inquiry to develop policies and guidelines for the construction and use of cable and satellite transmission facilities to meet demands for common carrier services on the North Atlantic route during the 1991–2000 period.

Specifically, the FCC will consider guidelines applicable to the introduction of INTELSAT V/VI follow-on satellites and the proposed TAT–9 fiber optic submarine cable system.

In this second phase of the FCC's North Atlantic facilities planning proceeding, the Commission has requested essentially the same types of planning information as in past facilities planning proceedings. The planning data requested includes: traffic forecasts, available technological facilities options, cost information, service reliability information and alternative facilities plans. The alternative facilities plans will be analyzed in terms of demand flexibility, cost, service reliability, foreign correspondents' acceptance, furtherance of the FCC's pro-competitive policies, technological risk and other relevant factors.

Additionally, the FCC proposed extending the ending year in the North Atlantic facilities planning proceeding period from 1995 to the year 2000. It noted that consideration of traffic forecasts, technological options and other planning information for only the 5-year (1991–1995) period was too limited to allow proper evaluation of alternative facilities plans. Also, since the TAT–9 fiber optic cable is expected to have a 25 year design life and INTELSAT satellites may have design lives in excess of 14 years, restricting consideration to only the first 5 years of traffic growth would be inadequate to assess whether additional facilities would be required to satisfy demand for service.

The Commission recommended using the timetable submitted by the United States representative to the North Atlantic Consultative Working Group meeting held in May 1986. The Conference Europeene des Administration des Postes et des Telecommunications (an organization of postal and telecommunications entities of 26 European nations) and Teleglobe/Canada agreed that the timetable was consistent with the dates at which decisions will have to be made on procurement of new facilities.

The decision timetable includes:

(a) Adopt a Notice of Inquiry in the first quarter of 1987;

(b) Adopt a Notice of Proposed Rulemaking in the third quarter of 1987;

(c) Adopt a Report & Order in the first quarter of 1988; and

(d) If the facilities guidelines adopted contemplate a TAT–9 cable as early as 1991, consider a Section 214 application in the third quarter of 1988.

The Commission invited public participation by parties as well as all interested non-parties to file written comments on any and all issues revised in this Notice of Inquiry.

Action by the Commission March 19, 1987, by Fourth Notice of Inquiry (FCC 87–95). Commissioners Fowler (Chairman), Quello, Dawson, Patrick and Dennis.

News Media contact: Audrey Spivack at (202) 632–5050. Common Carrier Bureau contact: Anna Lim at (202) 632–7265.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–9950 Filed 4–30–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Advisory Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: May 19, 1987.

Time: 9:00 a.m. to 4:00 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW., Washington, DC 20472.

Purpose: FEMA executives will provide reports on the Agency's budget and personnel. The status of a review of civil defense programs will be provided and discussed. Program development concepts for the protection of national infrastructure assets will be discussed. A session on the future work agenda for the Board and the Board Panels will be conducted. Discussions will include classified information. The Director has determined that the Board meeting should be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. 11, (1982)), because discussions will involve information that is specifically authorized to be kept "Secret" in the interest of national defense and is properly classified pursuant to the Executive Order.

Robert H. Morris,

Deputy Director.

[FR Doc. 87–9863 Filed 4–30–87; 8:45 am]

BILLING CODE 6716–02–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–596]

Security Savings and Loan Association, Vineland, NJ; Final Action, Approval of Conversion Application

Dated: April 23, 1987.

Notice is hereby given that on April 17, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Security Savings and Loan Association, Vineland, New Jersey for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC. 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–9929 Filed 4–30–87; 8:45 am]

BILLING CODE 6720–01–M

Centennial Savings and Loan Association, Guerneville, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Centennial Savings and Loan Association, a Federal Savings and Loan Association, Guerneville, California, on April 24, 1987.

Dated: April 27, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–9930 Filed 4–30–87; 8:45am]

BILLING CODE 6720–01–M

[No. 87–472]

Approval of Application for Unlisted Trading Privileges, Philadelphia Stock Exchange

Dated: April 23, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Philadelphia Stock Exchange, has filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f–1 (17 CFR 240.12f–1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange: Columbia Savings and Loan Association, Beverly Hills, California (FHLBB No. 6325), Common Stock, $1.00 Par Value.

Notice of the Application and opportunity for hearing was published in the **Federal Register** on March 27, 1987, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 87–304, dated March 18, 1987 (52 FR 9939, March 27, 1987). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in these securities on April 15, 1987.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Philadelphia Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act (17 CFR 240.11Aa3–1). The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Philadelphia Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on April 15, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–9928 Filed 4–30–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 17, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202–245–2100 for copies of Package)

Food and Drug Administration

Subject: (Petition for) Administrative Reconsideration of Action—Revision—(0190–0192)
Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Subject: Reclassification Petitions for Medical Device—Extension—(0910–0138)
Respondents: Businesses or other for-profit; Small businesses or organizations

Office of the Assistant Secretary for Health

Subject: NHANES I Epidemiologic Follow-up Study; Continued Follow-up—Extension—(0937–0134)
Respondents: Individuals or households; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Shannah Koss

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

Subject: Claimant's Recent Medical Treatment—Extension—(0960–0292)
Respondents: Individuals or households
Subject: Work Activity Report (Self-Employed Report, Work Activity Report-Employee—Extension—(0960–0059)
Respondents: Individuals or households
OMB Desk Officer: Judy Egan
Subject:

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of package)

Subject: Quarterly Performance Report—Extension—(0970–0036)
Respondents: State or local governments
OMB Desk Officer: Judy Egan

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–8650 for copies of package)

Subject: HMO/CMP Disenrollment Form—NEW
Respondents: Individuals or households; Businesses or other for-profit
OMB Desk Officer: Allison Herron

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS/FDA: 202–245–2100
SSA: 301–594–5706
FSA: 202–245–0652
HCFA: 301–594–8650

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer).

Dated: April 24, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87–9763 Filed 4–30–87; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Ophthalmic Devices Panel; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Ophthalmic Devices Panel Advisory Committee to reflect a change in the open committee discussion agenda. Notice of the meeting was published in the **Federal Register** of April 14, 1987 (52 FR 12078). The open committee discussion is revised to read as follows:

Ophthalmic Devices Panel

Open committee discussion. On May 28, the committee will discuss as part of the implementation of Phase I of the adjunct plan, the proposed modifications to the existing "tier" system of introducing new intraocular lens (IOL) models into investigations and possible modifications in premarket approval application (PMA) data requirements, and the general issues relating to approvals of PMA's for Nd: YAG lasers and intraocular lenses (IOL's). The committee may discuss specific PMA's for these devices. If discussion of all pertinent Nd: YAG laser or IOL issues is not completed, discussion will be continued the following day. On May 29, as part of a followup to the committee's request for data following a presentation made at the February 27 meeting by the Contact Lens Institute, and comments made by the Contact Lens Manufacturers Association, the committee will discuss PMA supplement requirements for approved contact lenses that are to be made into new lens designs (i.e., toric, bifocal).

Dated: April 24, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–9861 Filed 4–30–87; 8:45 am]

BILLING CODE 4160–01–M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming small business exchange meeting to be chaired by Arthur J. Beebe, Jr., Regional Director, FDA Region I.

DATE: The meeting will be held 1 p.m., Thursday, May 28, 1987.

ADDRESS: The meeting will be held at the Connecticut Agricultural Experiment Station, Jones Auditorium, 123 Huntington St., New Haven, CT.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Representative, Food and Drug Administration, 830, Third Ave., Brooklyn, NY 11232, 718–965–5411.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage a dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: April 24, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-9860 Filed 4-30-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[IOA-009-N]

Task Force on Long-Term Health Care Policies; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces a meeting of the Task Force on Long-Term Health Care Policies.

DATE: The meeting will be held on May 18, 1987, from 8:00 a.m. to 5:00 p.m., and on May 19, 1987, from 8:00 a.m. to 5:00 p.m., E.D.T. The meeting will be open to the public.

ADDRESS: The meeting will be held at the Saddlebrook Conference and Resort Center, 100 Saddlebrook Way, Wesley Chapel, Florida.

FOR FURTHER INFORMATION CONTACT: Dennis L. DeWitt, Executive Director, Task Force on Long-Term Health Care Policies, Room 4406 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 245-0063.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Long-Term Health Care Policies, established under section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985, will evaluate current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care policies and to help foster consumer confidence in them, the Task Force will develop guidelines that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "long-term health care policy" means an insurance, or similar health benefits plan, that is designed for or marketed as providing (or making payment) for health care or related services (which may include home and community-based services), or both, over an extended period of time.

The Task Force on Long-Term Health Care Policies will advise the Secretary of Health and Human Services and the Administrator of the Health Care Financing Administration concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force will develop recommendations for long-term health care policies, including recommendations designed to: (1) Limit marketing and agent abuse for those policies; (2) assure the dissemination of information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage; (3) assure that benefits provided under the policies are reasonable in relationship to premiums charged; and (4) promote the development and availability of long-term health care policies that meet these recommendations.

Agenda

Agenda items for the meeting will include Task Force discussion of consumer protection/regulation, long-term care data, and premium benefit ratios.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92-463, as amended (5 U.S.C. App. I, Sec. 1-15) and Sec. 9601 of Pub. L. 99-272 (42 U.S.C. 1395b note); 45 CFR Part II))

Dated: April 29, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-10050 Filed 4-30-87; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1987:

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: June 16, 1987 1:00 p.m.-4:00 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(Meeting by Conference Call).

Due to the limited nature of the meeting, a conference call will be substituted for a regular scheduled meeting.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will concern the outlook for supply, appropriate federal policies and suggestions for voluntary action by hospitals, medical and osteopathic schools and accrediting bodies regarding physician supply, and shortages and excesses.

Agenda: A review of a state-of-the-art paper on physician specialty manpower requirements, capabilities, experiences and information.

Anyone requiring information regarding the subject Subcommittee should contact Jerald Katzoff, Associate Director for Data Analysis, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 30857 Telephone (301) 443-6364.

Agenda Items are subject to change as priorities dictate.

Dated: April 28, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87-9917 Filed 4-30-87; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health Consensus Development Conference on Management of Localized Prostate Cancer

Notice is hereby given of the NIH Consensus Development Conference on "Management of Localized Prostate Cancer," sponsored by the National Cancer Institute and the NIH Office of Medical Applications of Research. The conference will be held June 15-17, 1987, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Prostate cancers is the second most common form of malignant disease in American men. More than 26,000 men die from prostate carcinoma each year. It is one of the most common cancers in men over the age of 50 and the incidence rises each decade after the age of 50. With the increasing age of the United States population, it is anticipated that this problem will become a greater public health issue in the future.

Various forms of management have led to a five-year survival for approximately 70 to 80 percent of those who have prostate cancer in a localized state. However, considerable controversy exists about the appropriate diagnostic and therapeutic procedures in the management of the cancer.

The purpose of this conference is to discuss the proper use of diagnostic techniques, including those of imaging and pathologic assessment, the proper role and results of survery and radiation therapy in their various forms, and the possible use of adjuvant treatment in high-risk patients.

The conference will bring together: Biomedical investigators, clinicians, other health professionals and members of the public. Following a day and a half of presentations by medical experts and discussion by the audience, a consensus panel will weight the scientific evidence and write a draft statement in response to the following key questions:

- Whan is the value of pathologic assessment and imaging techniques in staging of prostate cancer? When is pelvic node dissection necessary?
- Who is the optimal candidate for radical prostatectomy, what is the morbidity of the procedure and how can it be minimized with preservation of curative potential?
- Who are the candidates and what methods are optimal for definitive radiation therapy and what are the long-term results in terms of local control and survival? What is the morbidity of the procedures and how can it be minimized with preservation of curative potential?
- Should definitive radiation therapy, hormone and/or chemotherapy be employed as adjuvant treatment in high-risk patients?
- What future directions should be pursued?
- On the final day of the meeting, the Consensus Panel Chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Nancy Cowan, Prospect Associates, 1801 Rockville Pike, Suite 500 Rockville, Maryland 20852, (301) 468–6555.

Dated: April 22, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87–9844 Filed 4–30–87; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grant Study Sections; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for May through July 1987, and the individuals from whom summaries of meeting and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is sugggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	May-July 1987 Meetings	Time	Location
Allergy & Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301–496–7380	June 18–20	8:30	Hyatt Regency Hotel, Bethesda, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Rm. 304, Tel. 301–496–7340	June 10–12	8:30	Holiday Inn, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Rm. 306, Tel. 301–496–7681	June 3–5	8:30	Marbury House, Georgetown, DC.
Behavioral Medicine, Dr. Joan Rittenhouse, Rm. 438, Tel. 301–496–7109	June 16–18	2:00 p.m.	Sebasco Estates, Portland, ME.
Biochemical Endocrinology, Dr. Janos Varga, Rm. 226, Tel. 301–496–7430	June 3–5	8:00	Room 10, Bldg. 31C, Bethesda, MD.
Biochemistry-1, Dr. Adolphus P. Toliver, Rm. 318B, Tel. 301–496–7516	June 17–20	8:30	Crowne Plaza, Rockville, MD.
Biochemistry-2, Dr. Alex Liacouras, Rm. 318A, Tel. 301–496–7517	June 11–13	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Bio-Organic & Natural Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301–496–7107.	June 25–27	9:00	Room 10, Bldg. 31C, Bethesda, MD.
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301–496–7070	June 11–13	8:30	Holiday Inn, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301–496–7058	June 1–3	9:00	Ramada Inn, Bethesda, MD.
Cardiovascular & Pulmonary, Dr. Anthon C. Chung, Rm. 2A–04, Tel. 301–496–7316	June 17–19	8:30	Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301–496–7901	June 22–24	8:30	Holiday Inn, Georgetown, DC.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301–496–7396.	June 3–5	8:30	Room E, Landow Bldg., Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Frank Collins, Rm. 306, Tel. 301–496–7681	June 15–17	8:30	Room 4, Bldg. 31A, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301–496–7078	June 23–25	8:00	Hyatt Regency Hotel, Bethesda, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 219B, Tel. 301–496–7650	June 17–19	8:30	Linden Hill Hotel, Bethesda, MD.
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301–496–7348	June 23–25	8:30	Marbury House, Georgetown, DC.
Epidemiology and Disease Control-1, Dr. Phyllis B. Eveleth, Rm. 203C, Tel. 301–496–7246.	June 9–11	8:30	Linden Hill Hotel, Bethesda, MD.
Epidemiology and Disease Control-2, Dr. Nathan Watzman, Rm. 340, Tel. 301–496–7248.	June 9–11	8:30	Liden Hill Hotel, Bethesda, MD.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301–496–7940.	June 16–18	8:00	Linden Hill Hotel, Bethesda, MD.
Experimental Immunology, Dr. David Lavrin, Rm. 222B, Tel. 301–496–7238	June 10–12	9:00	Holiday Inn, Georgetown, DC.
Experimental Therapeutics-1, Dr. Morris Kelsey, Rm. 221, Tel. 301–496–7839	June 10–12	8:30	Room 3, Bldg. 31A, Bethesda, MD.
Experimental Therapeutics-2, Dr. Marcia Litwack, Rm. 2A03, Tel. 301–496–8848	July 1–2	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301–496–7474	June 24–26	8:30	Keystone Lodge, Keystone, CO.
General Medicine A–1, Dr. Harold Davidson, Rm. 354A, Tel. 301–496–7797	June 15–17	8:30	Wellington Hotel, Washington, DC.
General Medicine A–2, Dr. Donna J. Dean, Rm. 354B, Tel. 301–496–7140	June 17–19	8:30	Room 6, Bldg. 31C, Bethesda, MD.
General Medicine B, Dr. Daniel McDonald, Rm. 322, Tel. 301–496–7730	June 17–19	8:00	Marbury House, Georgetown, DC.
Genetics, Dr. David Remondini, Rm. 349 Tel. 301–496–7271	June 11–13	8:30	Hilton & Tower Hotel, San Francisco, CA.
Hearing Research, Dr. Joseph Kimm, Rm. 225, Tel. 301–496–7494	June 17–19	8:30	Omni Shoreham Hotel, Washington, DC.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301–496–7508	June 11–13	8:00	Hyatt Regency Hotel, Bethesda, MD
Hematology-2, Dr. Joel Solomon, Rm. 355B, Tel. 301–496–7508	June 17–20	8:30	Holiday Inn, Georgetown, DC.
Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301–496–7025	June 10–12	9:00	Omni Georgetown Hotel, Washington, DC.
Human Development & Aging-2, Dr. Louis Quatrano, Rm. 305, Tel. 301–496–7640	June 24–26	8:30	Omni Georgetown Hotel, Washington, DC.
Human Development & Aging-3, Dr. Samuel Rawlings, Rm. 340, Tel. 301–496–7248	June 11–12	8:30	American Inn, Bethesda, MD.
Human Embryology and Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301–496–7597.	June 23–26	8:30	Holiday Inn, Georgetown, DC.
Immunobiology, Dr. William Stylos, Rm. 222A, Tel. 301–496–7780	June 3–5	8:30	Atlantic Oaks Hotel, Bar Harbor, ME.

Study section	May-July 1987 Meetings	Time	Location
Immunological Sciences, Dr. Hugh Stamper, Rm. 233A, Tel. 301-496-7179	June 16-19	8:30	Ramada Inn, Bethesda, MD.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271	June 11-13	8:30	Hyatt Regency Hotel, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301-496-7107	June 15-17	9:00	Hyatt Regency Hotel, Bethesda, MD.
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091	June 18-20	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Metallobiochemistry, Dr. Edward Zapolski, Rm. 310, Tel. 301-496-7733	June 18-20	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology and Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	June 15-17	8:30	Crowne Plaza, Rockville, MD.
Microbial Physiology and Genetics-2, Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130.	June 10-12	8:30	Hyatt Regency Hotel, Bethesda, MD.
Molecular and Cellular Biophysics, Dr. Patricia Jost, Rm. 236A, Tel. 301-496-7060	June 18-20	8:30	One Washington, Circle, Washington, DC.
Molecular Biology, Dr. Zain Abedin, Rm. 328, Tel. 301-496-7830	June 4-6	8:30	Holiday Inn, Georgetown, DC.
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	June 4-6	8:30	Crowne Plaza, Rockville, MD.
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 437B, Tel. 301-496-7280	June 17-19	8:00	St. James Hotel, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 1A05, Tel. 301-496-8808	June 9-11	8:30	Holiday Inn, Bethesda, MD.
Neurology A, Dr. Catherine Woodbury, Rm. 326 Tel. 301-496-7095	June 10-12	8:30	Governor's House, Washington, DC.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846	June 16-19	8:30	Omni Shoreham Hotel, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152 Tel. 301-496-7422	June 16-19	8:30	Lindel Hill Hotel, Bethesda, MD.
Neurology C, Dr. Kenneth Newrock, Rm. 232, Tel. 301-496-5591	June 24-26	8:30	Omni Georgetown Hotel, Washington, DC.
Nutrition, Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178	June 24-26	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Oral Biology and Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	June 8-11	8:30	Key Bridge Marriott, Arlington, VA.
Oral Biology and Mediciane-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	June 22-25	8:30	Holiday Inn, Bethesda, MD.
Orthopedics and Musculoskeletal, Ms. Ileen Stewart, Rm. 350 Tel. 301-496-7581	June 3-5	7:00 p.m.	Hyatt Regency Hotel, Bethesda, MD.
Pathobiochemistry, Dr. John Mathis, Rm. A26, Tel. 301-496-7820	June 17-19	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Pathology A, Dr. John L. Meyer, Rm. 337, Tel. 301-496-7305	June 17-19	8:00	American Inn, Bethesda, MD.
Pathology B, Dr. Martin Padarathsingh, Rm. 352, Tel. 301-496-7244	June 24-26	8:30	Keystone Resort, Keystone, CO.
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	June 23-25	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120	June 22-24	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837	June 12-14	8:00	Holiday Inn, Bethesda, MD.
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	June 9-12	8:30	Marbury House, Georgetown, DC.
Radiation, Dr. John Zimbrick, Rm. 219A, Tel. 301-496-7073	June 15-17	8:30	Holiday Inn, Bethesda, MD.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	June 3-6	8:30	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Bela Gulyas, Rm. 325B, Tel. 301-496-8857	June 1-3	8:30	Holiday Inn, Bethesda, MD.
Respiratory and Applied Physiology, Dr. Anita Weinblatt, Rm. 218A, Tel. 301-496-7320.	June 15-17	8:30	Hyatt Regency Hotel, Bethesda, MD.
Safety and Occupational Health, Dr. Richard Rhoden, Rm. 154, Tel. 301-496-6723	June 10-12	8:30	Ramada Inn, Bethesda, MD.
Sensory Disorders and Language, Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550.	June 17-19	8:30	Capitol Holiday Inn, Washington, DC.
Social Sciences and Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906	June 4-6	9:00	Canterbury Hotel, Washington, DC.
Surgery and Bioengineering, Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506	June 1-2	8:00	Crowne Plaza, Rockville, MD.
Surgery, Anesthesiology and Trauma, Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771.	June 15-16	8:30	Ramada Inn, Bethesda, MD.
Toxicology, Dr. Faye J. Calhoun, Rm. 205, Tel. 301-496-7570	June 17-19	8:00	Holiday Inn, Georgetown, DC.
Tropical Medicine and Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190	June 11-16	8:00	Holiday Inn, Bethesda, MD.
Virology, Dr. Bruce Maurer, Rm. 309, Tel. 301-496-7605	June 24-26	8:30	Mountain View Plaza, Keystone, CO.
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000	May 27-29	9:00	Linden Hill Motel, Bethesda, MD.
Visual Sciences A-2, Dr. Jane Hu, Rm. 439A, Tel. 301-496-7795	July 8-10	8:30	Holiday Inn, Georgetown, DC.
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	June 10-13	8:30	Linden Hill Hotel, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: April 17, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-9848 Filed 4-30-87; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), June 4–5, 1987, 9:00 a.m., Wilson Hall, James A. Shannon Building, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 4 from 9:00 a.m. until recess and from 9:00 a.m. until approximately 10:45 a.m. on June 5 during which time there will be discussions on administrative matters such as previous meeting minutes; the Report of the Director, DRR; and review of budget and legislative updates. Dr. Mary Clutter, Senior Science Advisor, Office of the Director, National Science Foundation will deliver a presentation covering "Minority Programs of Mutual Interest at the National Science Foundation." In addition, a video tape entitled "DRR News Highlights" featuring a collection of news stories from past special events and press briefings will be shown. Following these presentations, Dr. Robert Langridge, Director, Computer Graphics Laboratory, at the University of California, San Francisco, will deliver the DRR Silver Anniversary Lecture entitled "Computer-Assisted Analysis of Protein Structure and Design: the Macromolecular Workbench."

Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552(c)(4) and 522b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 5 from approximately 10:45 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support, Research Centers in Minority Institutions; 13.389, National Institutes of Health.)

Dated: April 17, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-9849 Filed 4-30-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, May 26-27, 1987, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of the meeting will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred J. Lumsden, Committee Management Officer, Division of Extramural Activities, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301/496-5708), will provide a summary of the minutes and rosters of the Board members upon request.

Name of Committee: Subcommittee on Environmental Carcinogenesis
Executive Secretary: Dr. Richard Adamson, Building 31, Room 11A03, Bethesda, MD 20892 (301/496-6618)
Date of Meeting: May 25
Place of Meeting: NIH, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20814
Open: 7 p.m. to adjournment
Agenda: Overview of NCI occupational cancer studies.

Name of Comittee: Subcommittee on Construction
Executive Secretary: Dr. Donald Fox, Blair Building, Room 1A04, Bethesda, MD 20892 (301/427-8804)
Date of Meeting: May 25
Place of Meeting: NIH, 9000 Rockville Pike, Building 31, Conference Room 8, Bethesda, MD 20892
Open: 6 p.m. to adjournment
Agenda: To discuss construction grant applications.

Name of Committee: National Cancer Advisory Board
Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496-5147)
Date of Meeting: May 26-27
Place of Meeting: Building 31C, Conference Room 6
Open: May 26, 8:30 a.m. to recess; May 27, 8:00 a.m. to 10:30 a.m.
Agenda: Reports on activities of the President's Cancer Panal and the Director's Report on the National Cancer Institute; Subcommittee Reports and New Business.

Name of Comittee: Subcommittee on Special Actions for Grants
Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496-5147)
Date of Meeting: May 27
Place of Meeting: Building 31C, Conference Room 6
Open: 10:30 a.m. to adjournment.

(Catalog of Federal Domestic Assistant Program Nos.: 13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower and 13.399; Project grants and contracts in cancer control.)

Dated: April 17, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-9845 Filed 4-30-87; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 21-23, 1987, at the Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on June 21, from 7 p.m. to approximately 11 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 22 from approximately 8 a.m. until adjournment on June 23, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terrry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Robert M. Chasson, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, phone, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: April 17, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-9846 Filed 4-30-87; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Diabetes and Digestive and Kidney Diseases; National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Diabetes Advisory Board on May 18, 1987, from 8:30 a.m. to approximately 5 p.m., at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: April 17, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-9847 Filed 4-30-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending June 30, 1987

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending June 30, 1987, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 9¼ percent. Using the regulatory formula (45 CFR 126.13(a)(2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracing 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (5.69 percent), and rounding the result (9.19 percent) upward to the nearest ⅛ percent (9¼ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending June 30, 1987, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9⅞ percent for the quarter ending September 30, 1986; 9¼ percent for the quarter ending December 31, 1986; and 9⅛ percent for the quarter ending March 31, 1987.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 9¼ percent. Using the regulatory formula (42 CFR 60.13(a)(3)) in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.69 percent); adding 3.50 percent (9.19 percent); and rounding that figure to the next higher one-eighth of 1 percent (9¼ percent).

3. For fixed rate loans executed during the period of April 1, 1987 through June 30, 1987, and for variable rate loans executed on or after October 22, 1985, the interest rate is 8¾ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99-129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2) and (3)) and the statutory change of 3 percent (42 CFR 60.13(a)(1)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equaivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.69 percent); adding 3.0 percent (8.69 percent) and rounding that figure to the next higher one-eighth of 1 percent (8¾ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: April 27, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87-9914 Filed 4-30-87; 8:45 am]

BILLING CODE 4160-15-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis, Studies of Oxytetracycline Hydrochloride

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of oxytetracycline hydrochloride, a broad-spectrum antibiotic.

Toxicology and carcinogenesis studies of oxytetracycline hydrochloride were conducted by administering diets containing 0, 25,000 or 50,000 ppm oxytetracycline hydrochloride to groups of 50 male and 50 female rats and diets containing 0, 6,300 or 12,500 ppm oxytetracycline hydrochloride to groups of 50 male and 50 female mice for 103 weeks.

Under the conditions of these 2-year feed studies of oxytetracycline hydrochloride, there was equivocal evidence of carcinogenicity[1] for male F344/N rats, as indicated by increased incidences of pheochromocytomas of the adrenal gland. There was equivocal evidence of carcinogenicity for female F344/N rats fed diets containing oxytetracycline hydrochloride, as indicated by increased incidences of adenomas of the pituitary gland. There was no evidence of carcinogenicity for male or female $B6C3F_1$ mice fed diets containing 6,300 or 12,500 ppm oxytetracycline hydrochloride for 2 years.

Copies of *Toxicology and Carcinogenesis Studies of Oxytetracycline Hydrochloride in F344/N Rats and $B6C3F_1$ Mice (Feed Studies)* (TR 315) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991. FTS: 629-3991.

Dated: April 27, 1987.

David P. Rall,

Director.

[FR Doc. 87-9850 Filed 4-30-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48760-BG has been received covering the following lands:

Copper River Meridian, Alaska

T. 5 S., R. 1 E.,
Sec. 22, NE¼SW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from August 1,

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48760–BG as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective August 1, 1986, subject to the terms and conditions cited above.

Dated: April 22, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–9924 Filed 4–30–87; 8:45 am]

BILLING CODE 4310–JA–M

[Alaska AA–48096–W]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48096–W has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 7 S., R. 23 W.,
Sec. 9, NW¼.
(160 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from September 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48096–W as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective September 1, 1986, subject to the terms and conditions cited above.

Dated: April 22, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–9925 Filed 4–30–87; 8:45 am]

BILLING CODE 4310–JA–M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48906–N has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 18 S., R. 11 E.,
Sec. 9, S½SE¼.
(80 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from December 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48906–N as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the terms and conditions cited above.

Dated: April 22, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–9926 Filed 4–30–87; 8:45 am]

BILLING CODE 4310–JA–M

[OR 41744]

Proposed Recreation and Public Purposes Lease; Oregon

April 24, 1987.

AGENCY: Bureau of Land Management, Interior (OR–080–07–4212–11: GP7–173).

ACTION: Notice of Realty Action.

The following described public land has been determined to be suitable and will be classified for lease under the Recreation and Public Purposes act, as amended (43 U.S.C. 869 et seq.):

Willamette Meridian, Oregon

T. 1 S., R. 5 E.,
Sec. 3, a portion of the SW¼SE¼ described by metes and bounds.
Containing 3.2 acres, more or less.

The subject land will be leased to Corbett Water District for a water treatment plant site. The land is presently managed for multiple use, including timber production and educational use. Because of the small area of land involved and the insignificant conflict with present uses, the proposed action is considered consistent with the Eastside Salem District Management Framework Plan.

The lease will have a term of 25 years, the maximum allowable by law. Only standard stipulations will be added to the lease. A nominal rental will be charged, as leases for public health purposes are made with substantial discounts.

Detailed information concerning the lease, including the environmental assessment, is available for review at the Salem District Office.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease or classification of the land to the Salem District Manager, 1717 Fabry Rd. SE, Salem, Oregon 97306. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Upon the effective date of classification, the land will be open to the filing of an application under the Recreation and Public Purposes Act by any interested, qualified applicant. If, after 18 months following the effective date of classification, an application has not been filed, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the Authorized Officer.

Richard A. Whitley,

Clackamas Area Manager.

[FR Doc. 87–9927 Filed 4–30–87; 8:45 am]

BILLING CODE 4310–33–M

[UT–050–4410–08; U–00152]

Warm Springs Resource Area Resource Management Plan; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Record of Decision (ROD)/Rangeland Management Program Summary (RPS) for the Warm Springs Resource Area (WSRA) Resource Management Plan (RMP) which includes designation of two, and proposes to designate four other, areas of critical environmental concern (ACECs).

SUMMARY: This RMP ROD/RPS presents the decisions for management of resources on the 2.2 million acres of public lands in the WSRA in Millard County, Utah. The RMP approved is virtually identical to the Proposed RMP presented in the Final Environmental

Impact Statement (EIS) which was published and distributed for public review in September 1986.

The RMP was approved by the Utah State Director following the 30 day public comment and protest period and the Governor's 60 day consistency review of the Proposed RMP/Final EIS. No protests were filed and the Governor's consistency review did not identify any conflicts of the RMP with State or local plans, programs or policies.

The ROD presents the decisions on forage allocations, and multiple use management of all resources and designations of recreation management areas, off-road vehicle (ORV) use, fluid mineral leasing categories, and proposed mineral withdrawals.

The RMP also presents the decision to designate six special management areas, including two ACECs (Pavant Butte and Tabernacle Hill). It also presents the proposal to make ACEC designations of the other four special management areas. The only other changes from the proposed RMP presented in the Final EIS are those resulting from minor corrections, additions for clarification, and incorporation of 1986 rangeland monitoring study data.

The four areas are proposed for ACEC designation in response to new planning guidance issued by the BLM Washington Office in November 1986. In response to that guidance, if no protest are filed during the 60 day public comment and protest period following the publication of this notice, the following two areas will be designated ACECs:

Wah Wah Mountains Research Natural Area (RNA): This mountainous area (5,970 acres) bordering the south boundary of the resource area contains pristine biotic communities, bristlecone pine stands and exceptional scenic, geologic recreational and scientific values. The RNA will be designated an ACEC. If not designated as wilderness by Congress it will remain in Category 3 for fluid mineral leasing, a right-of-way avoidance area and be recommended for withdrawal from mineral entry. It will remain closed to ORVs and the harvest of forest products. A contiguous State section will be acquired if possible and a management plan will be developed in coordination with The Nature Conservancy.

Fossil Mountain Historic Site (HS). This area (1,920 acres) contains exceptional deposits of prehistoric life form fossils. The HS will be designated an ACEC. The area will remain in Category 3 for fluid mineral leasing and a right-of-way avoidance area.

If not designated as wilderness by Congress, the following two areas will also be designated ACECs.

Notch Peak National Natural Landmark (NNL). If not designated wilderness 9,000 acres would be nominated to the National Park Service for designation as a NNL and designated an ACEC. To protect the area's outstanding ecologic and geologic features and other natural values, it will remain in Category 3 for fluid mineral leasing, closed to ORVs, a right-of-way avoidance area, closed to the harvest of forest products, and recommended for withdrawal from mineral entry.

Crystal Peak Outstanding Natural Area (ONA). If not designated wilderness 640 acres will be designated an ACEC. The Peak is the thickest and most prominent example of Tunnel Spring Tuff in western Utah. It is a unique, exceptionally scenic, geoglogic landmark. The area will remain in Category 3 for fluid mineral leasing, closed to ORVs, a right-of-way avoidance area, closed to the harvest of forest products and recommended for withdrawal from mineral entry. A management plan, interpretational materials, and, if necessary, facilities developed to insure preservation of the area's outstanding scenic splendor and to enhance its recreational values.

Any person who may be adversely affected by the ACEC designation of any of the four areas listed above may file a written protest with the Director at the following address: Director, Bureau of Land Management, 18th and C Street, NW., Washington, D.C. 20240. The other designation of the areas (NNL, ONA, RNA, and Historic Site) and the management prescriptions stated above are part of the approved RMP and are not subject to protest. Only the designation as ACEC may be protested.

Supplementary Information: Copies of the RMP ROD/RPS may be obtained at the following BLM Offices: Richfield District Office, 150 East 900 North, Richfield, UT 84701; or Utah State Office, 324 South State Street, Suite 301, Salt Lake City, UT 84111-2303.

Any person adversely affected by a specific action proposed for implementation by some portion of the RMP may appeal such action in accordance with 43 CFR 4.400 at the time the action is proposed for implementation.

Donald L. Pendleton,

District Manager.

April 22, 1987.

[FR Doc. 87-9923 Filed 4-30-87; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

[DES 87-13]

Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings Regarding Proposed Central, Western, and Eastern Gulf of Mexico Lease Sales 113, 115, and 116

The Minerals Management Service (MMS) has prepared a draft environmental impact statement (EIS) relating to proposed 1988 Outer Continental Shelf (OCS) oil and gas lease sales in the Central, Western, and Eastern Gulf of Mexico. Proposed Central Gulf of Mexico Sale 113, Western Gulf of Mexico Sale 115, and Eastern Gulf of Mexico Sale 116 will offer for lease approximately 34.5 million acres, 29.0 million acres, and 71.8 million acres, respectively. Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Copies of the draft EIS are available for review at the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenburg Library, 2310 Sealy Street, Galveston, Texas; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library, 760 Riverside, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress Street, Lafayette, Louisiana; Calcasieu Parish Library, Downtown Branch, 411 Pujo Street, Lake Charles, Louisiana; Nicholls State Library, Nicholls State University, Thibodaux, Louisiana; Harrison County Library, 14th and 21st Avenue, Gulfport, Mississippi; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional

Library System, 2280 NW Aaron Street, Port Charlotte, Florida; and Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

In accordance with 30 CFR 256.26, public hearings pertaining to the draft EIS for Sales 113, 115, and 116 will be held at the following locations during the week of May 18–22, 1987:

New Orleans—Tuesday, May 19, 1987, 1 p.m. until all testimony has been heard, Minerals Management Service Offices, Room 115, 1201 Elmwood Park Boulevard, New Orleans, Louisiana.

Long Beach, Mississippi—Wednesday, May 20, 1987, 1 p.m. until all testimony has been heard, University of Southern Mississippi, Gulf Park Regional Campus, Hardy Hall, Room 101, Long Beach, Mississippi.

Mobile, Alabama—Tursday, May 21, 1987, 1 p.m. until all testimony has been heard, International Trade Center, Killian Room, 250 North Water Street, Mobile, Alabama.

Corpus Christi, Texas—Tuesday, May 19, 1987, 1 p.m.–5 p.m., and 7 p.m. until all testimony has been heard, Hershey Corpus Christi Hotel, Copano Room, 3rd Floor Level, 900 North Shoreline Boulevard, Corpus Christi, Texas.

Austin, Texas—Thursday, May 21, 1987, 1 p.m. until all testimony has been heard, Stephen F. Austin Building, Room 831, Congress and 18th Streets, Austin, Texas.

Tallahassee, Florida—Monday, May 18, 1987, 2 p.m.–5 p.m., and 7 p.m. until all testimony has been heard, Florida Department of Transportation Building, Haydon-Burns Auditorium, 605 Suwannee Street, Tallahassee, Florida.

Tampa, Florida—Tuesday, May 19, 1987, 7 p.m. until all testimony has been heard, University of Tampa, Plant Hall, Fletcher Lounge, 401 West Kennedy, Tampa, Florida.

Ft. Myers, Florida—Wednesday, May 20, 1987, 7 p.m. until all testimony has been heard, Holiday Inn Riverfront, 2066 West 1st Street, Ft. Myers, Florida.

Marathon, Florida—Thursday, May 21, 1987, 3 p.m.–5 p.m., and 7 p.m. until all testimony has been heard, Key Colony Beach City Hall, 600 West Ocean Drive, Mile Marker 53–½, Marathon Key, Florida.

The purpose of the public hearings is to provide the Department of the Interior and the Minerals Management Service with information from individuals, public and private groups, and Government Agencies to further evaluate the potential effects of the proposed lease sales. Pertinent testimony and comments will be addressed in the final EIS for Sales 113, 115, and 116. Persons who wish to testify at these hearings are requested to sign in with the receptionist at the hearing.

Testimony will be determined on a first-come-first-served basis, with all participants given a chance to submit testimony. Oral testimony may be supplemented by a written statement which, if submitted at a hearing, will be considered as part of the hearing record. Those unable to attend the hearing may submit written statements until the close of the comment period, June 16, 1987. Written statements will receive the same degree of consideration in the final EIS as oral testimony presented at the hearing. Comments concerning the draft EIS will be accepted until June 16, 1987, and should be addressed to the Regional Director, Minerals, Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

William D. Bettenberg,

Director, Minerals Management Service.

Approved: April 27, 1987.

Cecil S. Hoffmann,

Acting Director, Office of Environmental Project Review.

[FR Doc. 87–9856 Filed 4–30–87; 8:45 am]

BILLING CODE 4320–MR–M

National Park Service

Cape Cod National Seashore; Parkwide Bicycle Trail Study/Traffic Assessment Study/Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Parkwide Bicycle Trail Study/Traffic Assessment Study/Environmental Assessment.

SUMMARY: The National Park Service has prepared a Parkwide Bicycle Trail Study/Traffic Assessment Study/Environmental Assessment (EA). The EA includes a detailed analysis of the needs and conditions and presents a preferred corridor location for a bicycle trail network on the lower Cape; it also presents two alternative corridor locations.

With this Notice of Availability, the National Park Service is seeking comments on the EA. These comments will assist the National Park Service in selecting an alternative for a bicycle trail network.

DATES: Written comments will be accepted until June 15, 1987.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Copies of the EA are available at the Cape Cod National Seashore Headquarters office in South Wellfleet, Mass. 02663.

Dated: April 9, 1987.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

[FR Doc. 87–9905 Filed 4–30–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agency Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Revision
Bureau/Office: Bureau of Accounts
Title of Form: Motor Carrier Quarterly Report Form
OMB Form No.: 3120–0002
Agency Form No.: QFR
Frequency: Quarterly
Respondents: Certain Class I Motor Carriers of Property & Class I Household Goods Carriers
No. of Respondents: 953
Total Burden Hrs.: 7,624
Brief Description of the need and proposed use: Data is used to assess industry growth, sudden changes in carriers financial stability and to identify changes and trends that may affect the National Transportation System

Type of Clearance: New Collection
Bureau/Office: Office of Transportation Analysis
Title of Form: Boxcar Exemption Monitoring Study
OMB Form No.: None
Agency Form No.: None
Frequency: Non-recurring
Respondents: Firms shipping or receiving freight by rail box car
No. of Respondents: 40
Total Burden Hrs.: 53
Brief Description of the need and proposed use: This information is needed to monitor the exemption of boxcar traffic and to provide information to the congressional oversight committees on the results of the Staggers Rail Act.

Noreta R. McGee,

Secretary.

[FR Doc. 87–9898 Filed 4–30–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket Nos. AB-52 (Sub-No. 48X), AB-52 (Sub-No. 50X), AB-52 (Sub-No. 51X) [1]]

The Atchison, Topeka and Santa Fe Railway Co.; Exemption, Abandonment in Fresno and Alameda Counties, CA, and Discontinuance of Service in Matagorda County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Supplemental notice of exemption.

SUMMARY: The Commission reopens, supplements and corrects the decision and the notice served January 30, 1987, and published at 52 FR 3066 (January 30, 1987), respectively, in order to exempt The Atchison, Topeka and Santa Fe Railway Company's discontinuance of service over, instead of its abandonment of, its line of railroad between milepost 83.50 near Wadsworth and milepost 90.71 at Matagorda, in Matagorda County, TX, in Docket No. AB-52 (Sub-No. 51X). In all other respects the prior decision remains unchanged.

DATE: This action is effective on May 1, 1987.

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).

Decided: April 24, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-9904 Filed 4-30-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31003]

Delaware and Hudson Railway Co. and Boston and Maine Corp.; Lease and Trackage Rights Exemption; Springfield Terminal Railway Co.

Delaware and Hudson Railway Company (D&H), Boston and Maine Corporation (B&W), and Springfield Terminal Railway Company (ST) filed a notice of exemption for D&H and B&M to lease to ST several lines of railroad in the vicinity of Albany, NY.

D&H will lease: (1) The Second Subdivision between CPF-26 (milepost A-26.3) and Albany (milepost 0.00); (2) the Third Subdivision between Albany (milepost 0.00) and Mechanicville (milepost A-19.13), including the Waterford Branch, the Breaker Island Branch, and the Water Street Branch, but excluding the Colonie Shops and certain tracks in the shop area; (3) all main and auxiliary tracks owned by D&H in the territory between milepost A-19.13 and milepost M-19.35; and (4) the Green Island Branch between CPO-6 (milepost A-6) and End of Track, a distance of approximately 3.06 miles.

B&M will lease: (1) The Freight Main Line between Crescent (milepost 197.61 or B&M Timetable Mileage 196-51) and Rotterdam Junction (milepost 210.37 or B&M Timetable Mileage 209.16); and (2) all main and auxiliary tracks owned by B&M in the territory between XO (milepost 188.02 or B&M Timetable Mileage 186.81) and Crescent (milepost 197.61 or B&M Timetable Mileage 196.51), but excluding the Mechanicville Car Repair Facility and certain tracks adjacent to that facility.

To facilitate ST's operations, D&H will grant ST overhead trackage rights on the following lines: (1) The Second Subdivision between milepost A-32 (South of CPF-31) and milepost M-10.35 (CPF-10); and (2) the Third Subdivision between CPF-13 (milepost S-4.7) and CPF-11 (milepost M-10.98) on the south end and milepost A-34.00 on the north end. Also, D&H will assign to ST all its rights and obligations with respect to the Troy Branch of Consolidated Rail Corporation (Conrail) under an agreement between D&H and a predecessor of Conrail.[1] B&M will grant ST overhead trackage rights on the B&M Freight Main Line and the track known as the "105 Running Track" between XO (milepost 188.02 or B&M Timetable Mileage 186.81) and milepost 187 (B&M Timetable Mileage 185.79) east of Noonans.

Traffic will be interchanged at mutually agreeable locations. The purpose of these transactions is to enable ST to carry on operations now performed by D&H and B&M. D&H, B&M, and ST are wholly owned subsidiaries of Guilford Transportation Industries, Inc. (GTI); GTI also owns the Main Central Railroad Company (MEC). As a result of the proposed transactions, it is anticipated that ST will provide rail customers of D&H and B&M with more responsive and efficient service. D&H and B&M will improve their financial viability by eliminating costly operations relative to the revenues earned. With its lower cost structure, ST should be able to perform these operations on a more profitable basis.

Since D&H, B&M, and ST are members of the same corporate family, both the leases and the assignments of trackage rights fall within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.[2]

Normally, any employees affected by the lease transactions would be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980). Any employees affected by the trackage rights transactions would be protected by the conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino, supra*, 360 I.C.C. 653 (1980). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for the respective transactions.

In several other notice of exemption proceedings involving B&M, D&H, MEC, and ST (Finance Docket Nos. 30965, 30967, 30972, 30981, 30993, and 31002), the Railway Labor Executives' Association (RLEA) and/or the Brotherhood of Locomotive Engineers have petitioned for the imposition of the labor protective conditions developed by the Commission in *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979), in lieu of the *Mendocino* conditions. In this proceeding, RLEA has filed an "emergency motion to stay exemption or in the alternative for an order to compel applicants to cease and desist from impacting employees until the employee protection issue is resolved by the Commission" in which it renews its request for imposition of the *New York Dock* conditions. Inasmuch as the exemption was effective on April 3, 1987, seven days after it was filed with the Commission, RLEA's request to stay the exemption is moot. RLEA's arguments and request for *New York Dock* will be addressed further in a subsequent decision.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transactions.

[1] The caption in this proceeding is corrected by deleting the word "Abandonment" and inserting in its place the words "Discontinuance of Service."

[1] This agreement was approved by the Commission in Finance Docket No. 22282, *Delaware & Hudson R. Co.—Track. Rts.—New York Central R. Co.* (not printed), served June 6, 1963.

[2] Assignments of trackage rights also fall within another category of exempt transactions. *See* 49 CFR 1180.2(d)(7).

Decided: April 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-9901 Filed 4-30-87; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operationas as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Monsanto Company, 800 N. Lindbergh Boulevard, St. Louis, MO 63166.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

a. AstroTurf Industries, Inc., 809 Kenner Street, Dalton, Georgia 30720: State of incorporation–Delaware

b. Fisher Controls Company, 205 South Center St., Marshalltown, IA, 50158. A Delaware Corporation.

c. Fovil Manufacturing Company, Inc., P.O. Drawer 729, 518 Bay St., Foley, AL, 36535. A Delaware Corporation.

d. NutraSweet Company, 4709 Golf Road Skokie, Illinois 60076: State of incorporation–Delaware

e. Leonard Construction Company, Corporate Square Office Park, Box 14547, St. Louis, MO, 63178. A Delaware Corporation.

f. G. D. Searle and Company, 4709 Golf Road, Skokie, Illinois 60076: State of incorporation–Delaware

g. Monsanto Canada, Inc., 2000 Argentia Rd., Mississauga, Ontario, L5N IV8. Incorporated in the Country of Canada.

h. Monsanto Enviro-Chem Systems, Inc., Corporate Square Office Park, Box 14547, St. Louis, MO, 63178. A Delaware Corporation.

i. Olympia Industries, P.O. Box 5397, Spartanburg, SC, 29301. A Delaware Corporation.

j. Plax, Inc,. 800 North Lindbergh Blvd., St. Louis MO 63166. A Delaware Corporation.

k. The Hale Manufacturing Company, 58 Pomfret, Putnam, CT, 06260. A Delaware Corporation.

B. 1. Parent corporation and address of principal office: Texas United Corporation, 2000 West Loop South, Suite 900, Houston, TX 77027.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

a. Sonar & Well Testing Services, Inc.—Texas
b. Alpha Automation—Texas
c. Solar Petroleum Corporation—Texas
d. Texas United Plastics Corporation—Texas
e. Texas United Supply Company—Texas
f. United Brine Pipeline Corporation—Texas
g. United Salt Corporation—Texas
h. Texas United Chemical Corporation—Texas
i. Texas Brine Corporation—Texas

Noreta R. McGee,

Secretary.

[FR Doc. 87-9899 Filed 4-30-87; 8:45am]

BILLING CODE 7035-01-M

[Finance Docket No. 31025]

The Shore Fast Line, Inc.; Trackage Rights Exemption; New Jersey Transit Corp.

On April 13, 1987, The Shore Fast Line, Inc. (Shore Line) filed a notice of exemption for the acquisition of local trackage rights over certain lines of railroad of New Jersey Transit Corporation (NJ Transit).

NJ Transit has agreed to grant local trackage rights to Shore Line over the following lines:

(1) From the point of switch from No. 2 Track of NJ Transit's Atlantic City Branch southeasterly 280 feet on the Cape May Branch.

(2) From the point of switch from No. 2 Track of the Atlantic City Branch southwesterly 315 feet on the Clementon Secondary.

(3) From the point of switch on the Atlantic City Branch Main Track at milepost 45.4 southerly 187 feet to and including the derail.

(4) From the point of switch from the Atlantic City Branch Passing Siding at milepost 55.9 to and including the derail at the right of way line/property line of Shore Line.

(5) From the end of the rights in (1) above, southeasterly to Bairdmore Avenue on the Cape May Branch, a distance of approximately 5,726 feet.

(6) From the end of the rights in (2) above, southwesterly on the Clementon Secondary to the connection with the Beasley Point Secondary, a distance of approximately 570 feet.

(7) From the connection with the May's Wye line, southeasterly to the connection with the Cape May Branch, a distance of approximately 1,557 feet.

(8) Between milepost 103.66 (Sta. 419+74) on the Southern Divison where the rail properties of NJ Transit abut those of NJDOT and milepost 103.47 (Sta. 410+00) as shown on Central Railroad Company of New Jersey Valuation Map It/51 dated June 30, 1918, a distance of approximately 1,003 feet.

The trackage rights are effective on or after April 20, 1987.

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rigths—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).[1]

The notice is filed under 49 CFR 1180.2(d)(7). 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.

Decided: April 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-9902 Filed 4-30-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31026]

Southeast Kansas Railroad Co.; Acquisition and Operation Exemption; Branch Line and Yard Tracks of Missouri Pacific Railroad Co.

Southeast Kansas Railroad Company, a noncarrier, has filed a notice of exemption to acquire and operate certain properties of Missouri Pacific Railroad Company. The properties consist of (a) the "Pittsburg Branch" line of railroad between Coffeyville, KS (milepost 423.35) and Nassau Junction, MO (milepost 319.48), a distance of about 104 miles; and (b) yard tracks 57, 63, and 64 in Coffeyville. Any comments must be filed with the Commission and served on A. J. Wachter, Wilbert and Towner, 506 North Pine, P.O. Drawer V, Pittsburg, KS 66762.[1]

[1] The Railway Labor Executives' Association (RLEA) filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, whereby the imposition of labor protective conditions is mandatory, labor protective conditions have been imposed above.

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied, because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 (1985).

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. 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 automatically stay the transaction.

Decided: April 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-9903 Filed 4-30-87; 8:45 am]

BILLING CODE 7035-01-M

Rail Carriers; Release of Waybill Data for Use

The Commission has received a request from the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1983, 1984, and 1985 and, when available, 1986 waybill sample for analysis to determine if the accident rate for short hauls of hazardous materials differs from long hauls and to help reevaluate the geographic location of the AAR's 15 hazardous materials inspectors. The statistics HMS wishes to produce are accident rates for the various DOT hazard classes moving in tank cars based on aggregated short haul and long haul information. No numbers pertaining to individual railroads or car ownerships would be released outside the AAR.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (49 **Federal Register** 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864

Noreta R. McGee,

Secretary.

[FR Doc. 87-9900 Filed 4-30-87; 8:45 am]

BILLING CODE 9035-01,-M

[Docket No. AB-19 (Sub-No. 135X)]

The Baltimore and Ohio Railroad Co.; Abandonment Exemption; Athens and Washington Counties, OH

The Baltimore and Ohio Railroad Company (Applicant) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 30-mile line of railroad between milepost 159.6, v.s. 8420 + 56, at or near Athens, OH, and milepost 189.6, v.s. 10006 + 00, at or near Belpre, HO.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that the line does not handle overhead traffic, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective June 1, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by May 11, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 21, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Peter J. Shudtz, Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201

Charles M. Rosenberger, Patricia Vail, 500 Water Street, Jacksonville, FL 32202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 23, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-9907 Filed 4-20-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Agency Information Collection(s) Under OMB Review

April 28, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form/supporting documents is available); (2) the office of the agency issuing the form; (3) the title of the form; (4) the agency form number, if applicable; (5) how often the form must be filled out; (6) who will be required or asked to report; an estimate of the number of responses; (7) an estimate of the total number of respondents; (8) an estimate of the total number of hours needed to fill out the form; (9) an indication of whether Section 3504(h) of Pub. L. 96-511 applies; and, (10) the name and the telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you

should advise the reviewer *AND* the Agency Clearance Officer of your intent as early as possible.

Department of Justice, Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

New Collection(s)

(1) Larry E. Miesse, 202/633–4312.
(2) Bureau of Justice Statistics, Department of Justice.
(3) National Judicial Reporting Program Felony Sentence Report.
(4) NJRP–1.
(5) Annually.
(6) State or local governments. Collection is for a feasibility study for an annual program to ennumerate and describe sentences of adult felons in general jurisidiction courts.
(7) 131,000 respondents.
(8) 1,230 burden hours.
(9) Not applicable under 3504(h).
(10) Jeff Hill—395–7340.

(1) Larry E. Miesse, 202/633–4312.
(2) National Institute of Justice, Department of Justice.
(3) New Technology Survey.
(4) No form number.
(5) One time.
(6) Individuals or households, businesses or other for-profit, small businesses or organizations, State or local governments, Federal agencies or employees, non-profit institutions. This survey will provide information from criminal justice practitioners to assist in hardware and software selection, definition of content, extent of user interest and formulation of fee structure of the National Institute of Justice's dissemination of information using new technologies.
(7) 3,375 respondents.
(8) 338 burden hours.
(9) Not applicable under 3504(h).
(10) Jeff Hill—395–7340.

(1) Larry E. Miesse, 202/633–4312.
(2) Bureau of Justice Statistics, Department of Justice.
(3) 1987 Survey of Law Enforcement Agencies.
(4) CJ–44 (large agencies), CJ–44A (small agencies).
(5) Other (every three years).
(6) State or local governments. The purpose of this collection is to collect administrative and management statistics from a nationally representative sample of law enforcement agencies in the United States in order to provide basic information on workload and resources.
(7) 2,000 respondents.
(8) 1,000 burden hours.
(9) Not applicable under 3504(h).
(10) Jeff Hill—395–7340.

Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633–4312.
(2) Drug Enforcement Administration, Department of Justice.
(3) Application for Registration and Application for Registration Renewal.
(4) DEA–224 (registration), DEA–224a (renewal).
(5) Other (phase-in of three year registrations).
(6) Individuals or households, small businesses or organizations. All firms and individuals who distribute or dispense controlled substances must register with the Drug Enforcement Administration under the Controlled Substances Act to control measures over legal handlers of controlled substances and monitor their activities.
(7) 275,000 respondents.
(8) 55,000 burden hours.
(9) Not applicable under 3504(h).
(10) Jeff Hill—395–7340.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633–4312.
(2) Immigration and Naturalization Service, Department of Justice.
(3) Request for Asylum in the United States
(4) I–589.
(5) On occasion.
(6) Individuals or households. This information will be used to determine if an alien applying for asylum in the United States is classifiable as a refugee and is eligible to remain in the United States. This data will minimize the need to re-interview applicants for asylum.
(7) 30,000 respondents.
(8) 30,000 burden hours.
(9) Not applicable under 3504(h).
(10) Jeff Hill—395–7340.

Larry E. Miesse,

Clearance Officer, Department of Justice.

[FR Doc. 87–9881 Filed 4–30–87; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by

contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Oklahoma:
OK87-18 ..... pp. 912g-912j.
OK87-19 ..... pp. 912k-912l.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT87-1 (Jan. 2, 1987) ..... pp. 70,74.
Florida:
FL87-17 (Jan. 2, 1987) ..... pp. 154-155.
New York:
NY87-6 (Jan. 2, 1987) ..... pp. 729-731.
NY87-7 (Jan. 2, 1987) ..... p. 739.
NY87-9 (Jan. 2, 1987) ..... p. 768.
Rhode Island:
RI87-1 (Jan. 2, 1987) ..... p. 1024.

Volume II

Indiana:
IN87-2 (Jan. 2, 1987) ..... p. 251.
IN87-3 (Jan. 2, 1987) ..... p. 268.
IN87-4 (Jan. 2, 1987) ..... p. 281.
IN87-6 (Jan. 2, 1987) ..... p. 302.
Kansas:
KS87-7 (Jan. 2, 1987) ..... p. 354.
KS87-9 (Jan. 2, 1987) ..... p. 364.
Michigan:
MI87-2 (Jan. 2, 1987) ..... pp. 425-426.
MI87-17 (Jan. 2, 1987) ..... p. 520.
Missouri:
MO87-1 (Jan. 2, 1987) ..... pp. 580-583.
MO87-2 (Jan. 2, 1987) ..... pp. 600-603.
MO87-3 (Jan. 2, 1987) ..... p. 610.
MO87-4 (Jan. 2, 1987) ..... p. 618.
MO87-5 (Jan. 2, 1987) ..... p. 622.
MO87-6 (Jan. 2, 1987) ..... pp. 626-627.
MO87-7 (Jan. 2, 1987) ..... p. 634.
MO87-8 (Jan. 2, 1987) ..... p. 640.
MO87-9 (Jan. 2, 1987) ..... pp. 644-646.
MO87-10 (Jan. 2, 1987) ..... pp. 652-653.
MO87-11 (Jan. 2, 1987) ..... pp. 658-659.
Oklahoma:
OK87-13 (Jan. 2, 1987) ..... pp. 891-900.
OK87-14 (Jan. 2, 1987) ..... pp. 901-903 pp. 905-910.
Texas:
TX87-6 (Jan. 2, 1987) ..... p. 931.
TX87-18 (Jan. 2, 1987) ..... p. 966.
Wisconsin:
WI87-9 (Jan. 2, 1987 ..... p. 1124.
WI87-10 (Jan. 2, 1987) ..... p. 1128.
LISTING BY LOCATION (index). pp. xlvi-xlvii.
LISTING BY DECISION (index). p. lxi-lxii.

Volume III

Washington:
WA87-2 (Jan. 2, 1987) ..... p. 354.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of April 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-9697 Filed 4-30-87; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-19,215]

Amerada Hess Corp.; Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 24, 1987 in response to a worker petition which was filed on February 23, 1987 on behalf of workers at Amerada Hess Corporation, Houston, Texas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-19,187). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 20th day of April 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-9965 Filed 4-30-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,903, TA-W-17,903A,TA-W-17,903B]

Conquest Exploration; Denver, CO, Mindland, and Houston, TX; Revised Determination

On March 12, 1987, the Department issued a Notice to Reopen the Investigation on petition TA-W-17,903 for workers at Conquest Exploration, Denver, Colorado; Midland,Texas and Houston, Texas. The notice to reopen the investigation was published in the Federal Register on March 24, 1987 (52 FR 9360).

On the basis of additional information, the Office of Trade Adjustment Assistance reviewed its negative determination. Additional findings show that Conquest Exploration was a producer of crude oil with exploration and service facilities in Denver, Colorado and Midland, Texas. Conquest Exploration, Houston, Texas experienced worker separations and declining production of crude oil, in barrels, in 1986 compared to 1985, Conquest's major customers reported an increase of foreign crude oil purchases in 1986 compared to 1985.

Workers at the Denver, Colorado and Midland, Texas facilities incurred a reduced demand for their services as a result of reduced production and sales in 1986 at Conquest Exploration, Houston, Texas. The Denver, Colorado

and Midland, Texas facilities closed in February, 1986.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil produced at Conquest Exploration, Houston, Texas, contributed importantly to worker separations and to declines in sales at Conquest Exploration's facilities in Denver, Colorado; Midland, Texas and Houston, Texas. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Conquest Exploration in Houston, Texas, Midland, Texas and Denver Colorado who became totally or partially separated from employment on or after January 1, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 24th day of April 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-9966 Filed 4-30-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,661]

Freeman Shoe Co., Inc.; Division of U.S. Shoe Corp.; Hanover, PA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 1987 applicable to all workers of Freeman Shoe Company, Inc., Hanover, Pennsylvania. The certification notice was published in the **Federal Register** on February 19, 1987 (52 FR 5214).

On the basis of additional information, the Office of Trade Adjustment Assistance reviewed the certification. The additional information from the company revealed that a few layoffs occurred a few weeks prior to the July 15, 1986 impact date and that these layoffs were attributed directly to a lack of work caused by increased company imports.

The intent of the certification is to cover all workers at Hanover, Pennsylvania plant of the Freeman Shoe Company who were adversely affected by increased imports of men's shoes. Accordingly, the certification is amended by changing the impact date to May 1, 1986.

The amended notice applicable to TA-W-18,661 is hereby issued as follows:

"All workers of the Freeman Shoe Company, Incorporated, Hanover, Pennsylvania, a division of the U.S. Shoe Corporation, who became totally or partially separated from employment on or after May 1, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 24th day of April 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-9967 Filed 4-30-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18, 516]

Lehigh Portland Cement Co.; Waco, TX; Negative Determination Regarding Application for Reconsideration

By an application dated April 9, 1987, after being granted a filing extension, counsel for the International Brotherhood of Boilermakers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Lehigh Portland Cement Company, Waco, Texas. The denial notice was signed on January 21, 1987 and published in the **Federal Register** on February 19, 1987 (52 FR 5211).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel presents testimony from both the union and company that the cement market is poor in the South and Southwest and that it was difficult for the Waco plants to compete with more modern plants in the Texas area. It is alleged that because of import competition, more modern domestic cement plants in South Texas redirected their markets to the North including the Waco or Central Texas area. As a result of this competition, the Waco plants reduced operations.

Findings in the investigation show that sales and production of cement for both Waco plants increased in 1985 compared to 1984 with average production employment being virtually unchanged in the same periods. A Departmental survey of the major customers of Lehigh Portland Cement for the January to June 1986 period compared to the same period of 1985 showed that none of the respodents imported cement.

Lehigh Portland Cement produced ready-to-mix Portland Cement for local cement suppliers for use in the construction industry. Findings show that both the private nonresidential and the housekeeping residential construction markets declined in the San Antonio and Houston standard metropolitcal statistical areas as well as for the state of Texas in 1985 compared to 1984 and in the first 6 months of 1986 compared to the same period in 1985. Also, industry sources indicate that energy costs in cement production can account for up to 50 percent of the total cost of production. Accordingly, soft markets and competition from more energy efficient domestic cement plants would not form a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 24th day of April 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-9968 Filed 4-30-87; 8:45 am]

BILLING CODE 4510-80-M

Final Planning Estimates for Program Year (PY) 1987 Basic Labor Exchange Activities Authorized Under the Wagner-Peyser Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning estimates for Program Year (PY) 1987 (July 1, 1987 through June 30, 1988) for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, 200 Constitution

Avenue, NW., Room N4470, Washington, DC 20210. Telephone: (202) 535–0157.

SUPPLEMENTARY INFORMATION: In accord with section 6(b)(5) of the Wagner-Peyser Act, the Employment and Training Administration is publishing final estimates for each State's projected allotment for PY 1987. Preliminary planning estimates were published in the **Federal Register** on February 13, 1987. The total amount of funds currently available for distribution to States for public employment service activities is $755,200,000 less $14,000,000 being withheld to finance postage costs associated with the conduct of employment service business. A proposed reduction of $90 million in trust fund authority is currently pending before Congress but will not be implemented if denied or if Congress has not acted on the request by July 1, 1987. Funds will be distributed in accord with formula criteria established in Section 6 (a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 1986 were used in making the formula calculations. The Secretary of Labor reserved 3 percent of the total available funds to assure that such State will have sufficient resources to maintain statewide employment services. In accordance with this provision, $22,236,000 has been set aside for distribution through the same administrative formula used in the prior year. See Wagner-Peyser Act section 6(b)(4); and 51 FR 8373 (March 11, 1986). The 3 percent distribution is included in the total planning estimate. Of this total, $9,746,779 is allotted to thirteen States whose relative share decreased and which have a CLF below one million and are below the median CLF density. These States are held harmless at 100 percent of their PY 1986 relative share of resources. The remaining $12,489,221 is distributed to States losing in relative share from PY 1986 but which do not meet the CLF size and density criteria.

Signed at Washington, DC, this 20th day of April 1987.

Roberts T. Jones,

Deputy Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
FINAL PY 1987 WAGNER-PEYSER ALLOTMENTS TO STATES
03-13-1987

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1*	STEP 2**	TOTAL	ALLOTMENT***
Alabama	12,060,729	0	0	0	12,060,729
Alaska	7,033,403	1,023,796	0	1,023,796	8,057,199
Arizona	8,937,791	0	0	0	8,937,791
Arkansas	6,717,034	0	724,518	724,518	7,441,552
California	74,386,342	0	0	0	74,386,342
Colorado	9,773,105	0	0	0	9,773,105
Connecticut	8,348,974	0	118,909	118,909	8,467,883
Delaware	2,008,040	0	62,261	62,261	2,070,301
District of Columbia	4,997,693	0	539,065	539,065	5,536,758
Florida	29,690,851	0	0	0	29,690,851
Georgia	16,158,252	0	0	0	16,158,252
Hawaii	2,674,147	0	288,442	288,442	2,962,589
Idaho	5,860,075	853,004	0	853,004	6,713,079
Illinois	33,818,223	0	280,015	280,015	34,098,238
Indiana	15,344,750	0	272,131	272,131	15,616,881
Iowa	8,534,045	0	920,506	920,506	9,454,551
Kansas	6,421,110	0	0	0	6,421,110
Kentucky	10,557,139	0	0	0	10,557,139
Louisiana	14,483,049	0	0	0	14,483,049
Maine	3,484,931	507,274	0	507,274	3,992,205
Maryland	11,728,773	0	0	0	11,728,773
Massachusetts	14,673,391	0	0	0	14,673,391
Michigan	26,896,000	0	567,507	567,507	27,463,507
Minnesota	11,525,856	0	153,794	153,794	11,679,650
Mississippi	8,028,180	0	197,370	197,370	8,225,550
Missouri	13,681,822	0	0	0	13,681,822
Montana	4,788,884	697,080	0	697,080	5,485,964
Nebraska	5,755,297	837,752	0	837,752	6,593,049
Nevada	4,655,299	677,635	0	677,635	5,332,934
New Hampshire	2,554,974	0	0	0	2,554,974
New Jersey	19,963,449	0	0	0	19,963,449
New Mexico	5,373,969	782,246	0	782,246	6,156,215
New York	51,495,888	0	5,554,493	5,554,493	57,050,381
North Carolina	16,626,939	0	0	0	16,626,939
North Dakota	4,876,516	709,835	0	709,835	5,586,351
Ohio	31,173,757	0	0	0	31,173,757
Oklahoma	11,774,144	0	1,269,993	1,269,993	13,044,137
Oregon	8,241,411	0	888,942	888,942	9,130,353
Pennsylvania	31,623,296	0	240,475	240,475	31,863,771
Puerto Rico	8,788,447	0	155,128	155,128	8,943,575
Rhode Island	2,491,206	0	255,672	255,672	2,746,878
South Carolina	8,732,001	0	0	0	8,732,001
South Dakota	4,507,022	656,051	0	656,051	5,163,073
Tennessee	13,644,028	0	0	0	13,644,028
Texas	50,244,912	0	0	0	50,244,912
Utah	9,857,406	1,434,863	0	1,434,863	11,292,269
Vermont	2,111,348	307,332	0	307,332	2,418,680
Virginia	14,790,522	0	0	0	14,790,522
Washington	13,018,292	0	0	0	13,018,292
West Virginia	5,158,733	750,915	0	750,915	5,909,648
Wisconsin	13,589,001	0	0	0	13,589,001
Wyoming	3,496,766	508,996	0	508,996	4,005,762
FORMULA TOTAL	717,157,212	9,746,779	12,489,221	22,236,000	739,393,212
Guam	346,824	0	0	0	346,824
Virgin Islands	1,459,964	0	0	0	1,459,964
Indicia Postage	14,000,000	0	0	0	14,000,000
NATIONAL TOTAL	732,964,000	9,746,779	12,489,221	22,236,000	755,200,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1986 TO THE PY 1987 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1986 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 17 STATES LOSING IN RELATIVE SHARE FROM PY 1986 TO THE PY 1987 BASIC FORMULA AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

MERIT SYSTEMS PROTECTION BOARD

Petitions for Review; Processing Time

AGENCY: Merit Systems Protection Board.

ACTION: Announcement of processing time for petitions for review.

SUMMARY: The Merit Systems Protection Board is announcing target dates for disposition of petitions for review that were pending 110 days or more on April 1, 1987. This announcement is pursuant to the policy set forth on December 18, 1986, at 51 FR 45405.

FOR FURTHER INFORMATION CONTACT: Matthew Shannon (202) 653–7262.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is required by 5 U.S.C. 7701(i)(1) to establish and publicly announce the date by which it intends to complete action on appeals filed with the Board.

Pursuant to the statute and to the general announcement published December 18, 1986 (51 FR 45405), the Board is announcing a target date of July 1, 1987, for disposition of petitions for review which were pending 110 days or more at close of business on April 1, 1987. As of December 12, 1986, the Board had 991 petitions for review that were pending for disposition. By April 2, 1987, that class of cases had been reduced to 376. The target date of July 1, 1987, is established for completing those petitions. The total as of April 27, 1987, was 259.

The Board will announce periodically target dates for subsequent petitions for review which are pending 110 days and are expected to require more than 30 days for disposition.

Merit Systems Protection Board; Petitions for Review Pending 110 Days or More; Processing Time

Announcement

Pursuant to 5 U.S.C. 7701(i)(1), the Merit Systems Protection Board hereby announces that it will attempt to complete action by July 1, 1987, on petitions for review which were pending 110 days or more as of April 1, 1987. A list of cases subject to this announcement will be posted at the Board's headquarters offices at 1120 Vermont Avenue, NW., Washington, DC. The Board will also post notice at its headquarters offices of the target dates for disposition of any petitions for review after April 1, 1987, which have been pending 110 days and are expected to require more than 30 days for disposition.

Dated: Apirl 28, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87–9963 Filed 4–30–87; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Individuals and Organizations Awarding Fellowships) to the National Council on the Arts will be held on May 19–20, 1987, from 9:00 a.m.–5:30 p.m. and on May 21, 1987, from 9:00 a.m.–4:30 p.m. in room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 21, 1987 from 3:00 p.m.–4:30 p.m. The topics for discussion will include policy issues.

The remaining sessions of this meeting on May 19–20, 1987 from 9:00 a.m.–5:30 p.m. and on May 21, 1987 from 9:00 a.m.–3:00 p.m. and 3:00 p.m.–5:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 27, 1987.

[FR Doc. 87–9933 Filed 4–30–87; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Performing Arts/Theater Section) to the National Council on the Arts will be held on May 20–22, 1987, from 9:00 a.m.–5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 20, 1987 from 9:00 a.m.–10:30 a.m. and May 22, 1987 from 2:00 p.m.–5:30 p.m. The topics for discussion will include general program overview and policy issues.

The remaining sessions of this meeting on May 20, 1987 from 10:00 a.m.–5:30 p.m. and on May 21, 1987 from 9:00 a.m.–5:30 p.m. and May 22, 1987 from 9:00 a.m.–1:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 27, 1987.

[FR Doc. 87–9934 Filed 4–30–87; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Overview Section) to the National Council on the Arts will be held on May 20–21, 1987, from 9:00 a.m.—5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 20, 1987, from 9:00 a.m.—1:00 p.m. and on May 21, 1987 from 2:00 p.m.—5:30 p.m. on a space available basis for a discussion of guidelines, the Five Year Plan and other policy issues.

The remaining sessions of this meeting on May 20, 1987, from 9:00 a.m.—10:30 a.m. and 2:00 p.m.—5:30 p.m. and on May 21, 1987, from 9:00 a.m.—1:00 p.m. are for the purpose of application review and discussion and development of confidential budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 52b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constitutencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

April 27, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR 87–9935 Filed 4–30–87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Section) to the National Council on the Arts will be held on May 19–20, 1987, from 9:00 a.m.–6:00 p.m. and on May 21, 1987, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 21, 1987 from 2:00 p.m.–3:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on May 19–20, 1987 from 9:00 a.m.–6:00 p.m. and on May 21, 1987 from 9:00 a.m.–2:00 p.m. and 3:00 p.m.–5:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained form Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/683–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 27, 1987.

[FR Doc. 87–9936, Filed 4–30–87; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Challenge Section) to the National Council on the Arts will be held on May 20, 1987, from 9:00 a.m.–5:30 p.m. in room MO–7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

April 27, 1987.

[FR Doc. 87–9937 Filed 4–30–87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Science and Engineering Education; Meeting

The National Science Foundation announces the following meetings:

Name: Advisory Committee for Science and Engineering Education (ACSEE).

Date and Time: Monday and Tuesday, May 18–19, 1987, 9:00 A.M.–5:00 P.M.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. A. Truman Schwartz, Executive Sectetary, Directorate for Science and Engineering Education, Room 516, National Science Foundation, Washington, DC 20550, (202) 357–7073.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for science and engineering education.

Agenda: May 18–19, 1987.

Overview of current programs, initiatives, budget, fiscal projections and 5 year strategic plan for Science and Engineering Education.

M. Rebecca Winkler,

Committee Management Officer.

April 27, 1987.

[FR Doc. 87–9854 Filed 4–30–87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cell Biology; Meeting

The National Science Foundation announces the following meetings:

Name: Advisory Panel for Cell Biology.

Date and Time: Wednesday, Thursday, and Friday, May 20, 21, and 22, 1987, from 9:00 AM to 5:00 PM.

Place: Room 212, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Edward Berger, Program Director, Cell Biology Program, Room 321, Telephone: 202–357–7474.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 27, 1987.

[FR Doc. 87-9851 Filed 4-30-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Geography and Regional Science; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Geography and Regional Science.

Date/Time: May 18, 1987: 8:30 a.m. to 6:00 p.m.; May 19, 1987: 8:30 a.m. to 6:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ronald F. Abler, Program Director, Geography and Regional Science, National Science Foundation, Washington DC 20550, Room 336, Telephone (202) 357-7326.

Purpose of Panel: To provide advice and recommendations concerning research in Geography and Regional Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 27, 1987.

[FR Doc. 87-9852 Filed 4-30-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel on Measurement Methods and Data Improvement; Meeting

The National Science Foundation announces the following meetings:

Name: Advisory Panel on Measurement Methods and Data Improvement.

Date/Time: May 18-19, 1986: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Murray Aborn, Program Director, Measurement Methods and Data Improvement, Room 336, National Science Foundation, Washington, DC 20550; telephone (202) 357-7913.

Purpose of panel: To provide advice in recommendations concerning support for research and research-related projects in Measurement Methods and Data Improvement.

Agenda: Review and evaluation of research and research-related proposals as part of the selection process.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer

April 27, 1987.

[FR Doc. 87-9853 Filed 4-30-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (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).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection:

10 CFR Part 4—Nondiscrimination on Basis of Age In Federally Assisted Commission Programs

3. The form number if applicable: Not applicable.

4. How often the collection is required:

5. Who will be required or asked to report: Recipients of Federal assistance provided by the Nuclear Regulatory Commission.

6. An estimate of the number of responses:

7. An estimate of the total number of hours needed to complete the requirement or request:

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The NRC is amending 10 CFR 4 in order to implement provisions of the Age Discrimination Act of 1975, as amended which will enable the NRC to assure that recipients of NRC financial assistance are in compliance with the Act.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, H Street, N.W. Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Richard D. Otis, Jr., (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, the 23rd day of April, 1987.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Deputy Director for Administration/ARM.

[FR Doc. 87-9970 Filed 4-30-87; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The three guides are:

Regulatory Guide 1.8, Revision 2, "Qualification and Training of Personnel for Nuclear Power Plants"

Regulatory Guide 1.134, Revision 2, "Medical Evaluation of Licensed Personnel for Nuclear Power Plants"

Regulatory Guide 1.149, Revision 1, "Nuclear Power Plant Simulation Facilities for Use in Operator License Examinations"

The revisions to these guides were developed to implement the amended 10 CFR Part 55, "Operators' Licenses," published as a final rule on March 25, 1987 (52 FR 9453) along with conforming amendments to 10 CFR Part 50.

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. 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.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by

contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 27th day of April 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 87–9971 Filed 4–30–87; 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.

April 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

A.T. & E. Corporation
Common Stock, $.01 Par Value (File No. 7–9903)
Avery International Corporation
Common Stock, $1.00 Par Value (File No. 7–9904)
Duff & Phelps Select Utilities, Inc.
Common Stock, $.001 Par Value (File No. 7–9905)
On-Line Software International, Inc.
Common Stock, $.01 Par Value (File No. 7–9906)
Philips, N.V.
Common Stock, $.10 Par Value (File No. 7–9907)
Texas Air Corporation
6.75% Junior Convertible Preferred, No Par Value (File No. 7–9908)
Tandem Computers, Inc.
Common Stock, $.025 Par Value (File No. 7–9909)

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 May 18, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–9869 Filed 4–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24391; File No. SR–CBOE–86–39]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change; Chicago Board Options Exchange, Inc.

On December 22, 1986, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend the maximum duration of nonequity options permits issued pursuant to COBE Rule 3.20 from three to four years. The CBOE requested this proposed rule change so that it will have the authority to extend for an additional year the rights of permit holders whose permits are not renewable under the present Rule.[3]

CBOE Rule 3.20 provides that permits issued for effecting transactions in nonequity options shall be effective for one year and are renewable annually for a maximum duration of three years from the date of issuance. Permits not issued by December 31, 1984 were withdrawn by the Exhange. Because all the permits issued pursuant to this Rule have already expired or will do so shortly, the Exchange has proposed to extend the maximum duration of the permits for an additional year, thereby enabling continued participation by permit holders in the CBOE nonequity options markets, specifically the Exchange's treasury securities options market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[4] and the rules and regulations thereunder. The Commission believes that an extension of the CBOE's nonequity options permits for an additional year will contribute to the liquidity of the CBOE's treasury securities options market by allowing additional market makers to participate in trading in this pit. This additonal liquidity should have a beneficial impact on execution of investors' orders in that market.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that the permits affected by the rule change were issued several years ago and no adverse comments concening the rights or obligations of permits holders have been received by the Commission.

It is therefore ordered, pursuant to section 10(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: April 24, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 9872 Filed 4–30–87; 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.

April 27, 1987.

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:

Philips N.V.
Common Stock, $.01 Par Value (File No. 7–9894)
Bluechip Value Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9895)
Anchor Class Container Corp.
Common Stock, $.01 Par Value (File No. 7–9896)

[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19–4 (1985).

[3] *See* letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Holly Smith, Esq., Division of Market Regulation, SEC, dated February 19, 1987.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2)(1982).

[6] 17 CFR 200.30–3(a)(12)(1985).

Asia Pacific Fund Inc. (The)
Common Stock, $.01 Par Value (File No. 7–9897)
Horizon Healthcare Corp.
Common Stock, $.01 Par Value (File No. 7–9898)
Domtar, Inc.
Common Stock, No Par Value (File No. 7–9899)
Blocker Energy Corp.
Common Stock, $.10 Par Value (File No. 7–9900)
Raychem Corporation (Delaware)
Common Stock, No Par Value (File No. 7–9901)

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 May 18, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–9870 Filed 4–30–87; 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.

April 27, 1987.

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:

Crystal Oil Company (New)
Common Stock, $0.01 Par Value (File No. 7–9902)

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 May 18, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–9871 Filed 4–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15698; 812–6556]

Application for Exemption; Bankers National Life Insurance Co., et al.

April 22, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Bankers National Life Insurance Company ("Company"), Bankers National Variable Account C ("Account"), and BNL Securities, Inc. ("BNL").

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) *from* sections 2(a) (35) and 27(a)(1) and paragraphs (b)(1), (b)(13)(i)(B), (c)(2), (c)(4), and (c)(4)(vii) of Rule 6e-3(T).

Summary of Application: Applicants seek an order granting exemptive relief: (1) To permit the exclusion from sales load of amounts deducted for cost of insurance based upon the 1958 Commissioners Standard Ordinary Mortality Table ("CSO Table"), to the extent such charges exceed those based on the 1980 CSO Table; and (2) to permit the Waiver of Monthly Risk Charge Benefit Rider ("Rider") under the contract and under any other flexible premium variable life insurance contract for which the Account may act, in the future, as the funding entity, to the extent such Rider may not be deemed to meet the definition of "incidental insurance benefits".

Filing Date: The application was filed on December 9, 1986, and amended on March 23, 1987.

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 May 18, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants 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 lawyers, 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. Applicants, c/o Conrad E. Rousseau, Esq., 1599 Littleton Road, Parsippany, NJ 07054.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272–2058 or Special Counsel Lewis B. Reich (202) 272–2061 (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) 253–4300).

Applicants' Representations

1. The requested exemptions involve technical and unforeseen matters under Rule 6e-3(T), the exemptive rule under the 1940 Act for separate accounts offering flexible premium variable life insurance contracts.

2. The Company is a stock life insurance company organized under the laws of the State of Texas and is admitted to do business in the District of Columbia and in all states except New York. The Company is the sponsor depositor for the Account. The Account, a segregated investment account of the Company, is registered under the 1940 Act as a unit investment trust. Each sub-account of the Account invests exclusively in shares of a corresponding portfolio of the Bankers National Series Trust (the "Trust"). The Trust is registered under the 1940 Act as an open-end, diversified management investment company.

Bankers Investment Adviser, Inc., the investment adviser to the Trust, has entered into a Sub-Advisory Agreement with Lexington Management Corporation, and intends to enter into a Sub-Advisory Agreement with Putnam Management Company effective May 1,

1987, to provide investment advice to the Trust. BNL, a registered broker-dealer, is the principal underwriter of the contracts. Applicants are relying on the provisions of Rule 6e-3(T) and have elected to be governed by paragraph (b)(13)(i)(B) thereunder.

3. The Account was established for the purpose of funding individual flexible premium variable life insurance contracts (the "contracts"), as defined in paragraph (c)(1) of Rule 6e-3(T). The contracts are designed to give the contractowner flexibility by permitting him to vary the frequency and amount of premium payments and to increase or decrease the sum insured (*i.e.*, the amount of insurance under a contract). Also, the death benefit may, and the net cash surrender value will, increase or decrease based upon the investment performance of the sub-accounts of the Account.

4. Applicants request an exemption from sections 2(a)(35) and 27(a)(1) of the 1940 Act and from Rule 6e-3(T)(b)(1), (b)(13)(i)(B), and (c)(4). Paragraph (c)(4) of Rule 6e-3(T) prescribes that the amount excluded from sales load for cost of insurance is limited to the cost of insurance for the period based on the 1980 CSO Table, with net interest at the annual effective rate of the greater of 5% or the rate guaranteed at issuance of the contract. Applicants seek an exemption to the extent necessary to permit the exclusion from sales load of amounts deducted for the cost of insurance based upon the 1958 CSO Table, with interest at 4%, compounded annually. Without exemption, any portion of the cost of insurance charge in excess of a charge based on the 1980 CSO Table would be deemed sales load, and when added to the contract's contingent deferred sales charge, could exceed Rule 6e-3(T)(b)((13)(i)(B)'s limitation of 9% of payments. Use of the 1980 CSO Table is inapposite when sales load is not determined by reference to a guideline annual premium and would force Applicants to lower the cost of insurance charge below current industry norms.

5. Applicants request exemption from Rule 6e-3(T)(c)(2) to the extent that the Rider may not be deemed to meet the definition of "incidental insurance benefits" in that paragraph. If not an incidental insurance benefit, then the charge for the Rider would be deemed a sales load under Rule 6e-3(T)(c)(4)(vii). The Rider provides that, in the event of disability of the insured, the Company will waive the monthly cost of insurance charge and any charges for riders elected under the contract. The monthly cost of insurance charge varies based upon the net amount at risk under a contract, which in turn varies with the investment experience of the Account. However, in significant respects, the coverage provided by the Rider is a fixed benefit. The monthly cost of insurance charge and any other charges for riders will be waived irrespective of the investment experience of the Account. Moreover, the cost of the Rider to the owner does not vary based on the amount of the monthly cost of insurance charge that will be waived. Applicants request relief from Rule 6e-3(T)(c)(2) and (c)(4)(vii) for the Rider under the contract and under any other flexible premium variable life insurance contract for which the Account may act, in the future, as the funding entity.

6. The requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, the Applicants agree that to the extent the final version of Rule 6e–3 provides relief on terms or conditions different from any relief granted to them by this order, they shall take such steps as may be necessary to comply with the final version of Rule 6e–3, to the extent it is applicable.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–9868 Filed 4–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24376]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 23, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declarations(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 18, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CNG Producing Company and CNG Development Company (70–7135)

CNG Producing Company ("Producing"), One Canal Place, Suite 3100, New Orleans, Louisiana 70130 and CNG Development Company ("Development"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, gas exploration and development subsidiaries of Consolidated Natural Gas Company, a register holding company, have filed a post-effective amendment to their declaration pursuant to sections 6(a) and 7 of the Act.

By orders dated October 1, 1985 (HCAR No. 23848) and May 7, 1986 (HCAR No. 24090), Producing and Development were authorized to obtain certain letters of credit in amounts aggregating approximately $8.4 million. Producing now proposes to increase from $475,000 to a maximum of $1,600,000 the amount of a letter of credit to the Minerals Management Service of the United States Department of Interior ("MMS") as Producing's proportionate interest, pending appeal from a decision of the Interior Board of Land Appeals, in MMS' audit of royalties paid by Forest Oil Corporation ("Forest"), operator of a gas and oil developmental program. Forest has requested the increase due to the continuing status of the pending appeal, including the accumulation of interest on the principal amount demanded by MMS.

Consolidated Natural Gas Company, et al. (70–7258)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc. ("CNG Service Company"), CNG Coal Company, CNG Energy Company, CNG Research Company, CNG Trading Company

("CNG Trading"), Four Gateway Center, Pittsburgh, Pennsylvania 15222; The Peoples Natural Gas Company, Two Gateway Center, Pittsburgh, Pennsylvania 15222; Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia 26301; CNG Producing Company ("CNG Producing"), CNG Pipeline Company ("CNG Pipeline"), One Canal Place, Suite 3100, New Orleans, Louisiana 70120; West Ohio Gas Company, 504 Colonial Building, Lima, Ohoi 45802; CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244; The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Cleveland, Ohio 44114; and Hope Gas, Inc., Union National Center West, Clarksburg, West Virginia 26301 (collectively, "Subsidiary Companies"), have filed a post-effective amendment to an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Act and rules 43(a), and 45(a) thereunder.

By orders dated June 12, 1986 (HCAR No. 24150) and July 16, 1986 (HCAR No. 24150), Consolidated and its Subsidiary Companies, with the exception of CNG Trading and CNG Pipeline, were authorized to establish and participate in the Consolidated System Money Pool ("Money Pool"), to be administered by CNG Service Company, for the purpose of loaning funds on a short-term basis to those Subsidiary Companies which have a need for short-term funds.

By order dated February 27, 1987 (HCAR No. 24329), Consolidated was authorized to form CNG Trading to market low-cost nonregulated gas. by order dated December 3, 1982 (HCAR No. 22754), CNG Producing was authorized to form CNG Pipeline as a subsidiary. Authorization is now requested for CNG Trading to be admitted to the Money Pool as a full participant and for CNG Trading to be admitted solely as a contributor and not as a borrower. The Money Pool consists of funds that may be available from day-to-day, and loaned on a short-term basis to those participants which have a need for short-term funds, other than Consolidated.

Eastern Edison Company (70–7373)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02043, a wholly owned electric utility subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application-declaration under sections 6(b), 9(a), and 10 of the Act, and Rules 42(a) and 50 thereunder.

Eastern Edison proposes to issue and sell, in one or more series, from time to time, by competitive bidding, not more than $100,000,000 aggregate principal amount of first mortgage and collateral trust bonds. The maturity date for each series of bonds will be not less than five nor more than thirty years from the first day of the month of issuance.

The number of series of new bonds, and the timing and amount of each series, will depend on market conditions and Eastern Edison's decision as to whether to redeem, tender and/or pay at maturity any or all of the following outstanding Eastern Edison First Mortgage and Collateral Trust Bonds: (i) 16⅞% Series due June 1, 1992 outstanding in the principal amount of $24,000,000, with a redemption price of 107.24% from June 1, 1987 through May 31, 1988; (ii) 12¼% Series due May 1, 2013 outstanding in the principal amount of $40,000,000 at a tender price not to exceed 116% of principal amount; (iii) 4⅝% Series due September 1, 1987 outstanding in the principal amount of $3,000,000; (iv) 13.9% Series due September 1, 1987 outstanding in the principal amount of $10,000,000; (v) 13.9% Series due December 1, 1987 outstanding in the principal amount of $11,000,000; (vi) 4⅜% Series due April 1, 1988 outstanding in the principal amount of $3,000,000. Proceeds of the sale of new bonds may also be used to pay underwriting costs and other issuance expenses and to reduce short-term bank indebtedness; they may also be temporarily invested.

Georgia Power Company (70–7374)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6(b), 9(a), 10, 12(c) and 12(d) of the Act and Rules 42 and 50 thereunder.

Georgia proposes to issue and sell on or before December 31, 1988, first mortgage bonds, preferred stock, and/or to enter into pollution control financings, in an aggregate amount of up to $850,000,000, in any combination of issuance. Georgia proposes to use the proceeds of the sale of these securities, among other purposes, for the refunding of certain series of Georgia's outstanding first mortgage bonds, preferred stock and/or pollution control revenue bonds.

Georgia requests an exception from the dividend limitation provisions of the Commission's 1956 Statement of Policy Regarding First Mortgage Bonds so that its new first mortgage bond issue and/or any collateral pollution control bonds would be subject to the common stock dividend restrictions of Georgia's June 1, 1984 Supplemental Indenture. Georgia proposes to use March 31, 1984, rather than the respective dates of issuance of the series of new bonds, as the starting date for accumulation of earned surplus, and to use $302 million as the annual dividend allowance.

Georgia proposes to issue and sell the first mortgage bonds, pollution control revenue bonds and/or preferred stock by competitive bidding in compliance with Rule 50. Georgia may later amend this application to seek an exception from Rule 50 for a negotiated public offering.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–9873 Filed 4–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24396; File No. SR–CBOE–87–10]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Hand Signals in the OEX Trading Pit

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1987 the Chicago Board Options Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; there are no deletions.

Rule 6.24. No change.

. . . Interpretations and Policies:

.01 No change.

02. (*a*) Without limiting the applicability of the foregoing, the use of hand signal communications on the floor of the Exchange may be used to initiate an order, to increase or decrease the size of an order, to change an order's limit, to cancel an order, or to activate a market order. *Unless an options class is exempted by the Exchange, a*[A]ny initiation, cancellation, or change of an order relayed to a floor broker through

the use of hand signals also must be relayed to the floor broker in written form, time-stamped, immediately thereafter. *All other rules applicable to order preparation and retention, and reporting duties are applicable to orders in exempted options classes, except that the record-keeping obligation lies with the member signalling the order where a hand signal is used.* All cancellations and changes of orders held by the Board Broker or Order Book Official must be provided in written form.

(b) Until further notice the following are exempt options clases under this Interpretation: OEX

.03 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in section (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to avoid unnecessary congestion and confusion in crowded trading pits by exempting orders in such pits from the requirement that orders transmitted to a floor broker by hand signal be followed up by a written order ticket.

Currently, the only pit which meets these criteria is OEX.[1] Because of the large amount of trading activity in OEX, delivering a written order into the trading pit after transmitting an order by hand signal causes confusion—the floor broker may believe he has a new order because of the frequency and number of orders. The congestion resulting from requiring delivery of such orders into a pit already containing over 400 traders is obvious (and, in fact, overrides the efficiency obtained by allowing orders to be transmitted by hand signal). OEX initially would be the only options class exempt from delivery of a follow-up written ticket under this revised rule interpretation.

All other rules concerning order preparation and reporting duties remain in effect, so there will be hard copies of the order and the order will be properly reported. Each order ticket would contain entry time, execution time and any other information required to be on order tickets. The member signalling the order by hand signal would be obligated to record the entry time, the execution time, and any other information requied to be on the order ticket.

The proposed rule change is consistent with the Securities Exchange Act of 1934 and, in particular, section 6(b)(5) thereof in that the rule change increases the efficiency of order handling while preserving record-keeping and reporting safeguards.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 21, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 27, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-9938 Filed 4-30-87; 8:45 am]

BILLING CODE 8010-01-M

[1] "OEX" is the Exchange symbol for the Standard & Poor's 100 index option contract.

[Release No. 34-24395; File No. SR-NYSE-87-3]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Use of the Uniform Application for Securities Industry Registration or Transfer (Form U-4)

Pursuant to section 19(b)(1) of the Securities Exchange of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby announces as a proposed rule change the use of Form U-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change reflects the Exchange's current use and commitment to future use of Form U–4 as part of its registration and over-sight of member organization personnel. The Exchange finds the use of the Form in connection with the National Association of Securities Dealers, Inc.'s Central Registration Depository (CRD) system an efficient method of reviewing and tracking the continuous and frequent entry and movement of individuals in the securities industry as well as changes in their employment histories.

Insofar as Form U–4 and the CRD system are used by the various self-regulatory organizations, including the Exchange, the rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in fostering "cooperation and coordination with persons engaged in regulating" transactions in securities. The information elicited from the Form also assists the Exchange in its section 6(c)(2) and (3) responsibilities in denying membership to those subject to a statutory disqualification or who cannot meet such "standards of training, experience, and competence as are prescribed by the rules of the Exchange" or those who have engaged or have a reasonable likelihood of again engaging in "acts or practices inconsistent with just and equitable principles of trade."

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were either solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 22, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 27, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–9939 Filed 4–30–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87–4–64, Docket 39706]

Aviation Proceedings; Proposed Revocation of the Section 401 Certificate Issued to Transwestern Airlines of Utah, Inc., D/B/A/ Trans Western Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 87–4–64), Docket 39707.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order revoking the certificate issued to Transwestern Airlines of Utah, Inc. d/b/a Trans Western Airlines, Inc., authorizing interstate and overseas scheduled air transportation operations.

DATES: Persons wishing to file objections should do so no later than May 19, 1987.

ADDRESSES: Responses should be filed in Docket 39706 and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: James A. Lawyer, Air Carrier Fitness Division, Office of Aviation Operation, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366–1064.

Dated: April 27, 1987.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–9942 Filed 4–30–87; 8:45 am]

BILLING CODE 4910–62–M

[Order 87–4–65, Docket 44843 et al.]

Aviation Proceedings; Order Instituting U.S.-Venezuela Route Proceeding and Granting Exemptions in Part

AGENCY: Department of Transportation.

ACTION: Institution of *U.S.-Venezuela Route Proceeding* and Grant in Part of Exemptions (Order 87–4–65)—Dockets 44843, 44181, 44252, 44261, 44367, 44429, 44612, 44626 and 44832.

SUMMARY: The Department has decided to institute the *U.S.-Venezuela Route Proceeding,* Docket 44843, to select primary and backup carriers to provide scheduled foreign air transportation of persons, property and mail between: (a) The coterminal points, New York, N.Y.-Newark, N.J. and Miami, Florida, on the one hand, and Caracas, Venezuela, on the other hand and (b) a point or points in Puerto Rico and Caracas, Venezuela. The proceeding will be set for an oral evidentiary hearing before an Administrative Law Judge. The Department is inviting interested air carriers to file applications for certificate authority to serve the routes at issue. The Department has also decided to grant the application of Eastern Air Lines, Inc., (Docket 44252) for exemption authority to serve the Miami-Caracas market and the applications of American Airlines, Inc., (Docket 44612) for exemption authority to serve the San Juan-Caracas market. The Department decided to deny Eastern's application in Docket 44252 and American's application in Docket 44832 for exemption authority to serve

the New York/Newark-Caracas market, and to dismiss, at its request, Eastern's application in Docket 44626 to serve San Juan-Caracas.

DATES: Applications for U.S.-Venezuela authority, motions to consolidate, petitions for leave to intervene and petitions for reconsideration of Order 87–4–65 should be filed by May 15, 1987. Answers shall be due 10 calendar days thereafter. Parties to the dockets listed above may obtain a service copy of the order by calling Documentary Services Division (202) 366–9329, or by writing to the address below.

ADDRESSES: Applications (U.S.-Venezuela), motions to consolidate, petitions for leave to intervene and petitions for reconsideration should be filed in Docket 44843 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 44843.

Dated: April 27, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–9943 Filed 4–30–87; 8:45 am]

BILLING CODE 4910–62–M

Maritime Administration

[Docket S–807]

Lykes Bros. Steamship Co., Inc.; Application for an Increase in Privilege Calls on the Trade Route 10 (U.S. Atlantic/Mediterranean) Portion of Lykes' Trade Route 13 (U.S. Gulf/Mediterranean) Service

Lykes Bros. Steamship Co., Inc. (Lykes) by letter of March 9, 1987, requests an amendment to Operating-Differential Subsidy Agreement, Contract MA/MSB–451 to increase the number of privilege sailings Lykes is authorized to provide on Trade Route (TR) 10 (U.S. Atlantic/Mediterranean) from the present 24 voyages inbound and 24 voyages outbound to 48 voyages inbound and 48 voyages outbound. Lykes would provide these additional privilege sailings in the same manner and with the same vessels as presently authorized.

Lykes notes that on October 2, 1986, the Maritime Administration and Maritime Subsidy Board (Board) authorized an amendment to MA/MSB–451 to permit Lykes to provide privilege service on TR 10 to the extent of 24 inbound voyages and 24 outbound voyages annually. Prior to this action, the Board had concluded in Docket S–749 that section 605(c) of the Merchant Marine Act, 1936, as amended (Act), was not a bar to such voyages.

Lykes states that the decision in Docket S–749 was based upon statistics which included cargo lifting capacity of the required services of Prudential Lines, Inc. (PLI). PLI is not in Chapter 11 bankruptcy and has ceased all operations on TR 10. The departure of this operator from TR 10 has created an even greater inadequacy in overall U.S.-flag capacity than was found to exist in Docket S–749 according to Lykes. The Board determined that U.S.-flag capacity on TR 10, including PLI's capacity as well as Lykes' privilege call capacity, would only be 36 percent of the cargo available on the trade route. Utilizing the Board's figures, Lykes concludes that if PLI's capacity was deleted from the Docket S–749 figures and the capacity assigned to Lykes by the Board was doubled—in effect substituting Lykes for PLI—the U.S.-flag capacity would only equal 38 percent of the cargo available for carriage.

Accordingly, Lykes avers that the authorization of 24 additional privilege voyages inbound and 24 outbound on TR 10 would clearly be consistent with the findings in Docket S–749 and the provisions of the Act. Furthermore, Lykes contends that 48 privilege calls would enable it to compete more effectively with the foreign-flag carriers if and when the trade requires a weekly service on TR 10, which would clearly be in accomplishment of the purposes and policies of the Act.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on May 15, 1987. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)).

Dated: April 27, 1987.

By Order of the Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 87–9941 Filed 4–30–87; 8:45 am]

BILLING CODE 4510–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 27, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, D.C. 20220.

U.S. Customs Service

OMB Number: 1515–0005
Form Numbers: Customs Forms 7512, 7512–A, 7512–B
Type of Review: Extension
Title: Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit
Description: Customs Forms 7512 and 7512–A are used to document the transportation of merchandise in-bond, from the port of importation to another Customs port prior to final release from Customs custody. Customs Form 7512–B is used only for merchandise which is transiting Canada from point to point in the U.S., or the U.S. from point to point in Canada.
Respondents: Businesses
Estimated Burden: 140,000 hours
Clearance Officer: B.J. Simpson, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, D.C. 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Internal Revenue Service

OMB Number: 1545–0162
Form Numbers: 4136
Type of Review: Revision
Title: Computation of Credit for Federal Tax on Gasoline and Special Fuels
Description: Internal Revenue Code Section 39 requires information in order to claim a credit for Federal excise tax on certain gasoline and special fuels used. This form is used to figure the amount of credit. Data is used to verify the validity of the claims of business entities that use

gasoline and special fuels for off-highway use.
Respondents: Individuals, Farms, Businesses
Estimated Burden: 155,013 hours
OMB Number: 1545-0857
Form Number: 6878
Type of Review: Extension
Title:
Project 419—Federal Tax Return Information for Use in Child Support Enforcement on Delinquent Payments for State or Local Child Support Enforcement Agencies
Request for Federal Tax Return Information for Use in Child Support Enforcement
Description: Internal Revenue Code 6103(1)(6) allows child support enforcement agencies (CSEAs) to request from IRS certain tax return information which is then used to assist in the collection of delinquent child support payments. IRS needs the information this Form to identify the taxpaper on whom the CSEA requests the tax return information. Furthermore, the CSEA must establish that the information is not reasonably available from any other source.
Respondents: State or local governments
Estimated Burden: 7,500 hours
OMB Number: 1545-0229
Form Number: 6406
Type of Review: Revision
Title: Short Form Application for Determination for Amendment of Employee Benefit Plan
Description: This form is used to determine if an employee plan meets the requirements under Code section 401(a) which would entitle the plan to a tax deduction.
Respondents: Businesses
Estimated Burden: 101,160 hours
OMB Number: 1545-0040
Form Number: 964
Type of Review: Extension
Title: Election of Shareholder Under Section 333 Liquidation
Description: Form 964 is used by shareholders of corporations to elect to liquidate under section 333. Section 333 requires that the corporation include certain amounts of income. The shareholders are to include any amounts remaining as gain or loss in their return. The IRS uses information from Form 964 to determine if corporations who liquidate under section 333 pass any gain or loss to their shareholders.
Respondents: Individuals, Farms, Businesses
Estimated Burden: 5,588 hours
OMB Number: 1545-0041
Form Number: 966
Type of Review: Extension
Title: Corporate Dissolution of Liquidation
Description: Form 966 is used by a corporation that is to be dissolved or if the corporation is going to liquidate any of its capital stock. IRS uses Form 966 to determine if the corporation has met the filing requirements and is able to dissolve or liquidate.
Respondents: Farms, Businesses
Estimated Burden: 20,000 hours
Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87-9880 Filed 4-30-87; 8:45 am]

BILLING CODE 4870-25-M

Comptroller of the Currency

[Docket No. 87-5]

Request for Comments on Proposed Guidelines Regarding Bank Bribery Law

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Request for comment on proposed guidelines.

SUMMARY: The Bank Bribery Amendments Act of 1985 requires that Federal agencies responsible for regulating financial institutions establish guidelines to assist officials of financial institutions in complying with this law. The proposed guidelines were developed by the Interagency Bank Fraud Working Group. The Office of the Comptroller of the Currency ("OCC") encourages all national banks to adopt codes of conduct to guide their employees and to prevent abuses. It is suggested that national banks incorporate these guidelines into their codes of conduct. The proposed guidelines describe the prohibitions of the bank bribery law and also identify situations which, in the opinion of the OCC, do not constitute violations of the Federal bank bribery law.

DATE: Comments must be received by or before June 30, 1987.

ADDRESS: Send written comments to Docket No. 87- , Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, SW., Washington, DC 20219, Attention: Lynnette Carter. Telephone: (202) 447-1800. Comments will be available for photocopying and inspection at this address.

FOR FURTHER INFORMATION CONTACT: Robert B. Serino, Deputy Chief Counsel (Operations), at (202) 447-1847. Office of the Comptroller of the Currency, Washington, DC.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473, Title 11, October 12, 1984) ("1984 Act") amended the Federal bank bribery law, 18 U.S.C. 215, to prohibit employees, officers, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. The amended law also prohibited any person from offering or giving anything of value to employees, officers, directors, agents or attorneys of financial institutions for or in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under 18 U.S.C. 215, and indicated that cases to be considered for prosecution under the new bribery law would entail breaches of fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the 1984 Act was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift giving or entertaining that does not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the 1984 Act provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99-370, August 4, 1986) ("1985 Act") to narrow the scope of 18 U.S.C. 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, 18 U.S.C. 215 provides in pertinent part:

Whoever—

"(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be [guilty of an offense]"

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. This exception is set forth in 18 U.S.C. 215(c).

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony punishable by up to five years imprisonment and a fine of $5,000 or three times the value of the bribe or gratuity. If the value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of $1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents and attorneys of financial institutions to comply with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. (132 Cong. Rec. S 944 (daily ed. feb. 4, 1986).) Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set forth in the statute.

Additionally, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the financial institution regulatory agencies' expertise and judgment in defining those activities or practices that the agencies believe do not undermine the duty of an employee, officer, director, agent or attorney to the financial institution. (*United States Attorney's Manual* section 9–40.439.) The OCC believes that if reasonable codes of conduct were adopted and complied with, the likelihood of criminal prosecution would be diminished.

Proposed Guidelines

The OCC encourages all national banks to adopt internal codes of conduct or amend their present codes of conduct or adopt written policies to include provisions suggested in the guidelines. The proposed guidelines relate only to the bribery law and do not address other areas of conduct that a national bank may find advisable to cover in its code of conduct. The bank's code of conduct should prohibit, consistent with the statute, any employees, officers, directors, agents or attorneys of a national bank from: (1) Soliciting for themselves or for a third party (other than the bank itself) anything of value from anyone in return for any business, service or confidential information of the bank (2) accepting anything of value (other than normal authorized compensation) from anyone in connection with the business of the bank, either before or after a transaction is discussed or consummated.

A national bank's code of conduct or policies should be designed to alert bank officials about the bank bribery statute, as well as to establish and enforce written policies on acceptable business practices.

In its code of conduct, a national bank may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank business. There are a number of instances where a bank official, without risk of corruption or breach of trust, may accept something of value from someone doing or seeking to do business with the bank. The most common examples are the business luncheon or the holiday season gift from a customer. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the bank official; or if the benefit would be paid for by the bank as a reasonable business expense if not paid for by another party.

Other exceptions to the general prohibition regarding acceptance of things of value in connection with bank business may include:

(a) Acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a bank official) when the circumstances make it clear that it is those relationships, rather than the business of the bank concerned, which are the motivating factors;

(b) Acceptance of meals, refreshments or entertainment of reasonable value in the course of a meeting or other occasion, the purpose of which is to hold bona fide business discussions (the bank may establish a specific dollar limit for such occasions);

(c) Acceptance of loans from other banks or financial institutions on customary terms to finance proper and usual activities of bank officials, such as home mortgage loans, except where prohibited by law;

(d) Acceptance of advertising or promotional material of nominal value such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Acceptance of gifts of modest value related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas or bar or bat mitzvah (the bank may establish a specific dollar limit for such occasions); or

(g) Acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the bank may establish a specific dollar limit for such occasions).

By adopting a code of conduct with appropriate allowances for such circumstances, a national bank recognizes that acceptance of certain benefits by its officials does not amount to a corrupting influence on the bank's transactions. The policy or code may also provide that, on a case-by-case basis, a national bank may approve of other circumstances, not identified above, in which a bank official accepts something of value in connection with bank business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

In issuing guidance under the statute in the area of business purpose entertainment or gifts, the OCC is not establishing rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A national bank should seek to embody the highest ethical standards in its code of conduct. In doing this, a national bank may establish in its own code of conduct a range of dollar values which cover the various benefits that its officials may receive from those doing or seeking to do business with the bank.

The code of conduct should provide that, if a bank official is offered, receives, or anticipates receiving something of value from a customer beyond what is expressly authorized in the bank's code of conduct or written policy, the official should disclose that fact to an appropriately designated official of the bank. The national bank should keep contemporaneous written reports of such disclosures. An effective

reporting and reviewing mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the bank to better protect itself from self-dealing. However, a bank official's full disclosure evidences good faith only when such disclosure is made in the context of properly exercised supervision and control. Thus, individuals cannot avoid the prohibitions of the bank bribery statute by simply reporting to management the acceptance of various gifts unless management reviews the disclosures and determines that what has been accepted is reasonable and does not pose a threat to the integrity of the national bank.

The OCC recognizes that a serious threat to the integrity of a national bank occurs when its officials become involved in outside business interests or employment that gives rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, national banks are encouraged to prohibit, in their codes of conduct or policies, their officials from self-dealing or otherwise trading on their positions with the bank or accepting from someone doing or seeking to do business with the bank a business opportunity not generally available to the public. In this regard, a national bank's code of conduct or policy should require that its officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed because of business or personal relationships with customers, suppliers, business associates or competitors of the bank.

Disclosures and Reports

To make effective use of these guidelines, the OCC recommends the following additional procedures:

(a) The national bank should maintain a copy of any code of conduct or written policy it establishes for its officials, including any modifications thereof.

(b) The national bank should require from its officials periodic written acknowledgement of its code or policy and the officials' agreement to comply therewith.

(c) The national bank should maintain contemporaneous written reports of any disclosures made by its officials in connection with a code of conduct or written policy.

Dated: April 27, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 87-9964 Filed 4-30-87; 8:45 am]

BILLING CODE 4810-33-M

VETERANS ADMINISTRATION

Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room B-121, Building 1, of the Veterans Administration Medical Center, Palo Alto, CA 94304, May 19, 20, and 21, 1987. The sessions will begin at 2 p.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contract Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-233-2886) prior to May 12, 1987.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9 a.m. on May 21, 1987.

Dated: April 22, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-9855 Filed 4-30-87; 8:45 am]

BILLING CODE 8320-01-M

Agency Information Collection 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 regulations, (2) the title of the regulations, (3) the associated agency form numbers and titles, (4) a description of the need and use, (5) how often the associated forms must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the forms, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms, regulations 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: April 27, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Office of Procurement and Supply.
2. VA Acquisition Regulations, Parts 809, 836 and 871, and Federal Acquisition Regulations, Parts 13, 14 and 15.
3. VA Forms 22-1903, Contract for Education and Training, 22-1904, Agreement to Train on the Job Disabled Veterans, 22-1931, Contract for Services Relating to Vocational Counseling, and 08-6298, Architect-Engineer Fee Proposal.
4. VA Acquisition Regulations support and supplement the Federal Acquisition Regulations. This information is required to set the terms and conditions of contracts for supplies services and equipment; to guarantee fair competition; and to determine eligibility of contractors.
5. On occasion.
6. Individuals or households; Businesses or other for-profit; Small businesses or organizations; Federal agencies or employees; and Non-profit institutions.
7. 385,869 responses.
8. 1,062,256 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Information Collected from Developers of Condominium Projects.
3. Not applicable.
4. This information is collected from developers of condominium projects and used by VA to aid in determining legality of projects under State laws in order to determine reasonable values of units in specific areas to guarantee VA loans.
5. On occasion.
6. Businesses or other for-profit.
7. 2,100 responses.
8. 2,100 hours.
9. Not applicable.

[FR Doc. 87-9921 Filed 4-30-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 84
Friday, May 1, 1987

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for May 5, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administratin in McLean, Virginia, on May 5, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: William A. Sanders, Jr., Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102-5090

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Approval of Minutes.
2. Final Regulations: Part 605—Information Security—Technical Amendments.
3. Examination and Enforcement Matters.*

Dated: April 24, 1987.

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-9954 Filed 4-28-87; 4:15 pm]

BILLING CODE 6705-01-M

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: None at this time.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

CHANGES IN THE MEETING: The following item has been added to the open meeting that has now been rescheduled for Tuesday, May 5, 1987, at 9:00 a.m.

Definition of Regulatory Capital

Jeff Sconyers,

Secretary.

No. 6, April 28, 1987.

[FR Doc. 87-10010 Filed 4-29-87; 11:51 am]

BILLING CODE 6720-01-M

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: None at this time.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

CHANGES IN THE MEETING: The Bank Board meeting that was previously scheduled for Wednesday, April 29, 1987 at 2:00 p.m., Has been changed to Tuesday, May 5, 1987, at 9:00 a.m.

Jeff Sconyers,

Secretary.

No. 5 April 28, 1987.

[FR Doc. 87-10011 Filed 4-29-87; 11:51 am]

BILLING CODE 6720-01-M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, April 30, 1987.

The business of the Committee requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific item to be considered: Proposal regarding the Retirement Plan.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: April 29, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-9986 Filed 4-29-87; 10:56 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:15 a.m., Friday, May 8, 1987.

PLACE: Kirkwood Motor Inn, Dresden Room, 800 South Third Street, Bismarck, North Dakota 58501 (701) 258-7700.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Central Liquidity Facility Investment Policies.
4. Insurance Fund Report.
5. Proposed Amendments to Freedom of Information Act Regulations.
6. Update on Examiner Laptop Project.
7. Legislative Update.

FOR MORE INFORMATION CONTACT: Becky Baker, Acting Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 87-10013 Filed 4-29-87; 12:20 pm]

BILLING CODE 7535-01-M

NATIONAL LABOR RELATIONS BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 28 April 1987, 52 FR 15410.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Tuesday 5 May 1987.

CHANGE IN THE MEETING: Time and date changed to 9:00 a.m., Monday 11 May 1987.

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 2057-Telephone: (202) 254–9430.

Dated, Washington, DC, 28 April 1987.

By direction of the Board.

Joseph E. Moore,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 87–10026 Filed 4–29–87; 2:01 pm]

BILLING CODE 7545–01–M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES:

9:00 a.m.–5:00 p.m., Thursday, May 7, 1987
9:00 a.m.–5:00., p.m., Friday, May 8, 1987

PLACE: The United States Institute of Peace, 730 Jackson Place, NW., Washington, DC 20036.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

Agenda (Tentative):

Meeting of the Board of Directors convened. President's Report. Committee Reports. Consideration of Grant Applications.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: April 28, 1987.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 87–10027 Filed 4–29–87; 2:02 pm]

BILLING CODE 3155–01–M

federal register

Friday
May 1, 1987

Part II

Environmental Protection Agency

40 CFR Part 716

Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies on Certain Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84022A; FRL-3181-5]

Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies on Certain Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding 102 chemical substances to the list of chemical substances and mixtures (henceforth referred to as substances) in the Health and Safety Data Reporting Rule, 40 CFR Part 716. Once EPA lists these substances in the Health and Safety Data Reporting Rule, past, current, and prospective manufacturers, importers, and processors of these substances will be required to provide EPA with lists and copies of unpublished health and safety studies on these substances. EPA will use this information to support a detailed assessment of the health and environmental risks of these substances.

DATES: This rule is effective on June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Telephone. (202) (554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

A. On Rule

Under section 8(d) of the Toxic Substances Control Act (TSCA), EPA issued the model Health and Safety Data Reporting Rule (40 CFR Part 716). An amendment to the model rule was published in the **Federal Register** of September 15, 1986 (51 FR 32720). The amendment lengthened the rule's sunset provision, added a provision for biennial review, limited three reporting exemptions and added an express exemption, clarified the rule's confidentiality provisions, and made technical revisions. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies furnish EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

The use of TSCA authority to gather information for other Federal agencies, and for other EPA offices outside the Office of Toxic Substances, provides them access to unpublished health and safety data which is otherwise unavailable. The data are vital to these offices and agencies in analyzing the risks posed by the listed substances.

As part of a continuing effort to coordinate information gathering requests from different offices in EPA and other Federal agencies, EPA included in this rule substances nominated by the Office of Toxic Substances, the Office of Drinking Water, the Office of Water Regulations and Standards, the Office of Solid Waste, and the Consumer Product Safety Commission (CPSC). This coordination will lead to resource savings for both industry and the government by avoiding duplicative information requests from multiple offices in EPA or other Federal agencies. This savings will be reflected in reduced Agency implementation costs and industry reporting costs.

A list of the substances being added and their nominating offices is given in Unit III of this preamble. This list represents an initial effort to coordinate the assessment activities of all offices in EPA, as well as certain other Federal agencies. It incorporates a backlog of requests for health and safety information and covers many currently identified Agency health and safety data needs for Fiscal Years 1986, 1987, and, in some cases, 1988. One hundred and seven substances comprised the list in the proposed rule published in the **Federal Register** of August 1, 1986 (51 FR 27562). Five substances have been removed from the list for the reasons discussed in Unit II of this preamble.

B. On Nominated Chemicals

Prior to listing the substances in this rule, information searches of several government chemical data bases were conducted by EPA to determine if the information needed by the requesting office was available. The list of substances was also given to other offices and programs in EPA, and to CPSC, requesting previously unavailable unpublished information for any of the listed substances. Thirty-eight substances were eliminated from the original list after the nominating office determined that the information provided met their needs. Only if the information needed on a substance was unavailable, or the available information did not meet the particular needs of the nominating office, was the substance retained on the list.

The particular reasons for each office's information request on the substances listed in this rule are discussed below.

1. *Office of Toxic Substances (OTS).* EPA's OTS has requested information on 26 diisocyanates. There is a concern about the potential for widespread human exposure to diisocyanates. With a few exceptions, toxicologic and health effects data are available only for toluene diisocyanate (TDI) and polymeric methylene diphenyl diisocyanate (PMDI). The health effects of greatest concern for these substances are those resulting from acute and chronic exposure, including respiratory tract effects, dermal irritation, nose and eye irritation, neurotoxic effects, hepatic, renal, and hematologic changes, and immune-mediated physiologic and pathologic changes.

The information obtained on these substances will help OTS to analyze quantitatively and qualitatively risks posed by them.

2. *Office of Water (OW).* The information requested on the 31 chemicals nominated by the Office of Drinking Water (ODW) and the Office of Water Regulations and Standards (OWRS) in EPA is necessary to develop drinking water regulations, health advisories, and ambient water quality criteria. Available toxicological information about these chemicals is variable in quality and quantity, and in some instances inadequate for proper scientific assessment of toxicity. Toxicity assessment requires the evaluation of acute, subchronic, and chronic studies. The primary health concerns are damage to the central nervous system, liver, kidneys, and/or adrenals, and testicular toxicity. Toxicity data on additional effects such as teratogenesis, mutagenesis, reproductive effects, and metabolism, as well as effects on aquatic organisms and the environment, must be assessed since they may make a significant contribution to toxicity assessment of these chemicals.

3. *Office of Solid Waste (OSW).* EPA's OSW needs health and environmental effects data for the development of background documents and **Federal Register** notices for its Listing Program. The Listing Program analyzes industrial wastes and their constituents and develops the background information, rationales, and support documents needed to add waste streams to the list of hazardous wastes from non-specific sources (40 CFR 261.31), or hazardous wastes from specific sources (40 CFR

261.32). The identification and listing of these industrial waste streams as hazardous results in their regulation under the authority of the Resource Conservation and Recovery Act (RCRA). OSW is particularly concerned with carcinogenicity, teratogenicity, reproductive effects, and chronic and systemic health effects data. It also needs information on environmental effects, aquatic toxicity, environmental fate, persistence and bioaccumulation. The existing literature yields only inconclusive or no data on the 34 chemicals nominated by OSW for this rule.

4. *Consumer Product Safety Commission (CPSC).* The 11 chemicals nominated by CPSC are found in a variety of consumer products such as deodorizers, paints, adhesives, textiles, flame retardants, dyes, solvents, and plastics, and are known or suspected of producing chronic effects in animals or adverse human health effects. CPSC hopes this rule will provide information that will help in evaluating potential consumer health risks from exposure to these chemicals. This information is not currently available in the published literature.

II. Comments on Proposed Rule

Most of the comments received from the public during the comment period for the proposed rule were chemical-specific, and some contained additional information on the chemicals. The nominating offices or agency reviewed the material received and determined whether the additional data met their needs. Three chemicals were removed from the list as a result. They are:

Methane, trichlorofluoro (CAS No. 75–69–4)

Methane, dichlorodifluoro- (CAS No. 75–71–8)

Urea, N-(4-chlorophenyl)-N' (3,4-dichlorophenyl)- (CAS No. 101–20–2)

Several commenters stated that the only use of the above listed urea (commonly known as trichlorocarbanilide) was as an antimicrobial in bar soap and thus it fell under the purview of the Food and Drug Administration, and was therefore not subject to TSCA reporting. However, this chemical had been reported for the TSCA Inventory and one manufacturer was listed. If, in fact, its only use is a non-TSCA one, then it was incorrectly reported. Nevertheless, CPSC has decided to drop its request for unpublished health and safety studies on trichlorocarbanilide.

Two additional chemicals were removed for other reasons—Pentachloroethane (CAS No. 76–01–7) because it is no longer produced or imported into the United States, and 2-Propanol (CAS No. 67–63–0) because it was included in the 19th List of the Interagency Testing Committee (ITC) and was automatically added to the Health and Safety Data Reporting Rule (51 FR 41328).

One commenter opposed the inclusion of Methane, trichloro- (CAS No. 67–66–3), Ethane, 1,2-dichloro- (CAS No. 107–06–2), and Ethene, tetrachloro- (CAS No. 127–18–4), saying that EPA had published health assessment documents in the last 2 years which contained the most current health and environmental information, and which had been extensively reviewed. OWRS, which nominated these chemicals, has noted that the focus of the health assessment documents was on human health, while OWRS needs to obtain data on the chemical's effects on aquatic organisms and/or the environment, as well as on human health. Furthermore, the health assessment documents were based on available studies and may not reflect unpublished studies that will be submitted under this rule.

Another commenter had three main concerns which are enumerated below with EPA's reply following each:

(1) The use and review of information received from industry on chemicals as a result of this rule will not be coordinated.

EPA plans to conduct a follow-up review to assess the utility of the information received and to ascertain what the ultimate use by the nominating offices or agency will be.

(2) EPA did not reiterate assurances to protect confidential business information in the proposed version of this rule.

The Agency will continue to protect confidential business information (CBI) which is properly submitted under the provisions of the model rule. It should be noted, however, that the amendment to the model Health and Safety Data Reporting Rule, which was cited in Unit I.A. of this preamble, changed the confidentiality provisions and made the exemptions less extensive.

(3) There has been a "sudden proliferation of new reporting requirements under section 8." The commenter specifically noted the Inventory Update Rule (51 FR 21438) and the proposed Comprehensive Assessment Information Rule (CAIR) (51 FR 35762).

EPA has made provision in the Inventory Update Rule to avoid potential duplicative reporting requirements between TSCA section 8 reporting rules. If similar information has been submitted under a section 8(a) rule within the year preceding the start of a reporting period under the Update rule, the submitter will not be required to report the same information again for that reporting period. However, the type of information to be reported under section 8(d) is quite different from the section 8(a) rules mentioned.

Finally, one commenter expressed strong support for the rule and stated that "it represents an exercise of discretionary authority by EPA that was clearly envisioned and intended by Congress."

III. Summary of This Rule

This rule adds 102 chemical substances to the list of substances in 40 CFR 716.120.

By listing these substances in the section 8(d) model rule, EPA triggers the model rule's reporting requirements for past, current, and prospective manufacturers, importers, and processors of these substances. The model rule requires manufacturers, importers, and processors of listed substances to submit data within 60 days of the effective date of any amendment to the model rule.

TSCA section 8(d) health and safety studies must be sent to: Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Room L–100, 401 M Street, S.W., Washington, D.C. 10460, ATTN: (8(d) Reporting).

The substances are listed by CAS number below with the requesting offices noted:

CAS No.	Chemical name	Requesting office*
67–66–3	Methane, trichloro-	OWRS
74–83–9	Methane, bromo-	ODW
74–95–3	Methane, dibromo-	ODW
74–97–5	Methane, bromochloro-	ODW
75–00–3	Ethane, chloro-	ODW
75–04–7	Ethanamine	OSW
75–25–2	Methane, tribromo-	ODW/ OWRS
75–27–4	Methane, bromodichloro-	ODW/ OWRS
75–29–6	Propane, 2-chloro-	OSW
75–34–3	Ethane, 1,1-dichloro-	ODW/ OWRS
78–88–6	1-Propene, 2,3-dichloro-	OSW
78–97–7	Propanenitrile, 2-hydroxy-	OSW
79–00–5	Ethane, 1,1,2-trichloro-	ODW/ OWRS/ OTS
79–34–5	Ethane, 1,1,2,2-tetrachloro-	ODW/ OWRS
90–42–6	[1,1'-Bicyclohexyl]-2-one	OSW
91–08–7	Benzene, 1,3-diisocyanato-2-methyl-.	OTS
91–20–3	Naphthalene	ODW
91–97–4	1,1'-Biphenyl, 4,4'-diisocyanato-3,3'-dimethyl-.	OTS
92–69–3	[1,1'-Biphenyl]-4-ol	OSW
92–84–2	10*H*-Phenothiazine	OSW
92–87–5	[1,1'-Biphenyl]-4,4'-diamine	OWRS
96–18–4	Propane, 1,2,3-trichloro-	ODW
97–18–7	Phenol, 2,2'-thiobis[4,6-dichloro-	CPSC
97–23–4	Phenol, 2,2'-methylenebis[4-chloro-.	CPSC
98–01–1	2-Furancarboxaldehyde	OSW

CAS No.	Chemical name	Requesting office*
98-06-6	Benzene, (1,1-dimethylethyl)-	ODW
98-83-9	Benzene, (1-methylethenyl)-	OSW
99-87-6	Benzene, 1-methyl-4-(1-methylethyl)-	ODW
100-48-1	4-Pyridinecarbonitrile	OSW
100-54-9	3-Pyridinecarbonitrile	OSW
100-70-9	2-Pyridinecarbonitrile	OSW
101-68-8	Benzene, 1,1'-methylenebis[4-isocyanato-.	OTS
104-49-4	Benzene, 1,4-diisocyanato-	OTS
104-51-8	Benzene, butyl-	ODW
104-76-7	1-Hexanol, 2-ethyl-	OSW
105-60-2	2*H*-Azepin-2-one, hexahydro-	OSW
106-43-4	Benzene, 1-chloro-4-methyl-	ODW
107-06-2	Ethane, 1,2-dichloro-	OWRS
108-60-1	Propane, 2,2'-oxybis [1-chloro-	ODW
108-86-1	Benzene, bromo-	ODW
108-95-2	Phenol	OWRS
109-87-5	Methane, dimethoxy-	CPSC
109-89-7	Ethanamine, *N*-ethyl-	OSW
111-69-3	Hexanedinitrile	OSW
111-92-2	1-Butanamine, *N*-butyl-	CPSC
120-12-7	Anthracene	OSW
121-44-8	Ethanamine, *N,N*-diethyl-	OSW
121-47-1	Benzenesulfonic acid, 3-amino-	OSW
122-66-7	Hydrazine, 1,2-diphenyl-	OWRS
123-61-5	Benzene, 1,3-diisocyanato-	OTS
124-48-1	Methane, dibromochloro-	ODW
127-18-4	Ethene, tetrachloro-	OWRS
129-00-0	Pyrene	OSW
135-98-8	Benzene, (1-methylpropyl)-	ODW
137-26-8	Thioperoxydicarbonic diamide tetramethyl-.	CPSC
139-25-3	Benzene, 1,1'-methylenebis[4-isocyanato-3-methyl-.	OTS
472-41-3	Phenol, 4-(3,4-dihydro-2,2,4-trimethyl-2*H*-1-benzopyran-4-yl)-.	OSW
506-96-7	Acetyl bromide	OSW
530-50-7	Hydrazine, 1,1-diphenyl-	OWRS
534-07-6	2-Propanone, 1,3-dichloro-	OSW
540-54-5	Propane, 1-chloro-	OSW
540-84-1	Pentane, 2,2,4-trimethyl-	CPSC
542-75-6	1-Propene, 1,3-dichloro-	OSW
580-51-8	[1,1'-Biphenyl]-3-ol	OSW
584-84-9	Benzene, 2,4-diisocyanato-1-methyl-.	OTS
598-21-0	Acetyl bromide, bromo-	OSW
630-20-6	Ethane, 1,1,1,2-tetrachloro-	ODW/OWRS
685-91-6	Acetamide, *N,N*-diethyl-	OSW
812-03-3	Propane, 1,1,1,2-tetrachloro-	OSW
822-06-0	Hexane, 1,6-diisocyanato-	OTS
828-00-2	1,3-Dioxan-4-ol, 2,6-dimethyl-, acetate.	CPSC
1070-78-6	Propane, 1,1,1,3-tetrachloro-	OSW
1208-52-2	Benzenamine, 2-[(4-aminophenyl)methyl]-.	OSW
1300-71-6	Phenol, dimethyl-	OWRS
1321-38-6	Benzene, diisocyanatomethyl- (unspecified isomer).	OTS
1331-47-1	[1,1'-Biphenyl]-4,4'-diamino, dichloro-.	OWRS
2536-05-2	Benzene, 1,1'-methylenebis[2-isocyanato-.	OTS
2556-36-7	Cyclohexane, 1,4-diisocyanato-	OTS
2778-42-9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl-.	OTS
3173-72-6	Naphthalene, 1,5-diisocyanato-	OTS
3296-90-0	1,3-Propanediol, 2,2-bis(bromoethyl)-.	CPSC
4098-71-9	Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-.	OTS
5124-30-1	Cyclohexane, 1,1'-methylenebis[4-isocyanato-.	OTS
5873-54-1	Benzene, 1-isocyanato-2-[(4-isocyanatophenyl) methyl]-.	OTS
7440-28-0	Thallium	OWRS
7440-48-4	Cobalt	OWRS
9016-87-9	Isocyanic acid, polymethylenepolyphenylene ester.	OTS
10347-54-3	Cyclohexane, 1,4-bis(isocyanatomethyl)-.	OTS
10436-39-2	1-Propene, 1,1,2,3-tetrachloro-	OSW
12001-85-3	Naphthenic acids, zinc salts	CPSC
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-.	OTS
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-.	OTS
18495-30-2	Propane, 1,1,2,3-tetrachloro-	OSW
19660-16-3	2-Propenoic acid, 2,3-dibromopropyl ester.	CPSC
26447-40-5	Benzene, 1,1'-methylenebis[isocyanato-.	OTS
26471-62-5	Benzene, 1,3-diisocyanatomethyl-	OTS
26530-20-1	3(2*H*)-Isothiazolone, 2-octyl-	CPSC
26952-23-8	1-Propene, dichloro-	OSW
32052-51-0	Isocyanic acid, trimethylcyclohexyl ester.	OTS
38661-72-2	Cyclohexane, 1,3-bis(isocyanatomethyl)-.	OTS
75790-84-0	Benzene, 2-isocyanato-4-[(4-isocyanatophenyl) methyl]-1-methyl-.	OTS
75790-87-3	Benzene, 1-isocyanato-2-[(4-isocyanatophenyl) thio]-.	OTS

*Requesting Office Designations:
CPSC = Consumer Product Safety Commission.
OSW = Office of Solid Waste, EPA.
OTS = Office of Toxic Substances, EPA.
ODW = Office of Drinking Water, EPA.
OWRS = Office of Water Regulations and Standards, EPA.

IV. Reporting Requirements

Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are reporting exemptions. As stated in Unit I.A. of this preamble, an amendment to the model rule (51 FR 32720) limited three reporting exemptions. Listed below are the general reporting requirements of the section 8(d) model rule.

1. A person who, in the 10 years preceding the date a substance is listed, either had proposed to manufacture, import, or process, or had manufactured, imported, or processed, the listed substance, must submit to EPA a copy of each unpublished health and safety study which is in their possession at the time the subtance is listed.

2. A person who, at the time the substance is listed, proposes to manufacture, import, or process, or is manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each unpublished health and safety study which is in their possession at the time the substance is listed.

b. A list of unpublished health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of health and safety studies that are initiated after the date the substance is listed and are conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. A person who, after the time a substance is listed, proposes to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their prossession at the time they propose to manufacture, import, or process the listed substance.

b. A list of unpublished health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of health and safety studies that are initiated after the time they propose to manufacture, import, or process the listed substance, and are conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

V. Economic Impact

EPA estimates that the establishment of section 8(d) reporting requirements for the substances listed in Unit III of this preamble, would cost industry approximately $342,659. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, those projections incorporate data submitted to the TSCA Inventory of Chemical Substances in 1979. Uncertainty is introduced into the economic analysis because some of the Inventory data is not current. Where there is uncertainty in the Agency's estimate of regulatory impact, EPA estimates an upper bound cost so as not to underestimate the potential impact. This cost maximizing approach is incorporated so as not to overlook a situation in which adverse economic impact may result from a regulatory action. Nevertheless, the cost of this rule is low in comparison with its potential benefits. Health and Safety studies concerning the listed substances will improve EPA's ability to identify and evaluate potential public health and environmental problems with regard to these substances. The Agency therefore will be better able to determine whether further regulatory action will be necessary.

The studies on chemicals nominated by CPSC will help that agency in evaluating potential consumer health risks from exposure to these chemicals.

The costs for reporting are broken down as follows:

Initial corporate review	$67,932
Site identification	46,818
File search	90,882
Title listing	5,814
Photocopying	18,911
Managerial review	93,636
Ongoing reporting	18,666
Total	$342,659

VI. Rulemaking Record

The following documents constitute the public record for this rule (docket control number OPTS–84022A). All of these documents, including the index to this public record, are available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Public Information Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, D.C. The public record includes the following information considered by the Agency in developing this rule.

1. The proposed rule.
2. Comments received on the proposed rule.
3. The final rule.
4. The economic analysis for this rule.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this rule is not "major" because it will not have an effect of $100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in annual sales. EPA does not expect this amendment to affect this distribution. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2070–0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: March 27, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 716 is amended as follows:

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. By adding substances to paragraph (a)(1) numerically by CAS Number, and alphabetically to paragraph (a)(2) of § 716.120 to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

(a) * * *

(1) * * *

CAS No.	Chemical name	Special exemptions	Effective date	Sunset date
*	* * * * * *			
67-66-3	Methane, trichloro-		6/1/87	6/1/97
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74-83-9	Methane, bromo-		6/1/87	6/1/97
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74-95-3	Methane, dibromo-		6/1/87	6/1/97
74-97-5	Methane, bromochloro-		6/1/87	6/1/97
75-00-3	Ethane, chloro-		6/1/87	6/1/97
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75-04-7	Ethanamine		6/1/87	6/1/97
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75-25-2	Methane, tribromo-		6/1/87	6/1/97
75-27-4	Methane, bromodichloro-		6/1/87	6/1/97
75-29-6	Propane, 2-chloro-		6/1/87	6/1/97
75-34-3	Ethane, 1,1,-dichloro-		6/1/87	6/1/97
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78-88-6	1-Propene, 2,3-dichloro-		6/1/87	6/1/97
*	* * * * * *			
78-97-7	Propanenitrile, 2-hydroxy-		6/1/87	6/1/97
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79-00-5	Ethane, 1,1,2-trichloro-		6/1/87	6/1/97
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79-34-5	Ethane, 1,1,2,2-tetrachloro-		6/1/87	6/1/97
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90-42-6	[1,1'-Bicyclohexyl]-2-one		6/1/87	6/1/97
91-08-7	Benzene, 1,3-diisocyanato-2-methyl-		6/1/87	6/1/97
91-20-3	Naphthalene		6/1/87	6/1/97
91-97-4	1,1'-Biphenyl, 4,4'-diisocyanato-3,3'dimethyl-		6/1/87	6/1/97
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92-69-3	[1,1'-Biphenyl]-4-ol]		6/1/87	6/1/97
92-84-2	10*H*-Phenothiazine		6/1/87	6/1/97
92-87-5	[1,1'-Biphenyl]-4,4'-diamine		6/1/87	6/1/97
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96-18-4	Propane, 1,2,3-trichloro-		6/1/87	6/1/97
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97-18-7	Phenol, 2,2'-thiobis[4,6-dichloro-		6/1/87	6/1/97
97-23-4	Phenol, 2,2'-methylenebis[4-chloro-		6/1/87	6/1/97
98-01-1	2-Furancarboxaldehyde		6/1/87	6/1/97
98-06-6	Benzene, (1,1-dimethylethyl)-		6/1/87	6/1/97

CAS No.	Chemical name	Special exemptions	Effective date	Sunset date
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98-83-9	Benzene, (1-methylethenyl)-		6/1/87	6/1/97
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99-87-6	Benzene, 1-methyl-4-(1-methylethyl)-		6/1/87	6/1/97
100-48-1	4-Pyridinecarbonitrile		6/1/87	6/1/97
100-54-9	3-Pyridinecarbonitrile		6/1/87	6/1/97
100-70-9	2-Pyridinecarbonitrile		6/1/87	6/1/97
101-68-8	Benzene, 1,1'-methylenebis[4-isocyanato-		6/1/87	6/1/97
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104-49-4	Benzene, 1,4-diisocyanato-		6/1/87	6/1/97
104-51-8	Benzene, butyl-		6/1/87	6/1/97
104-76-7	1-Hexanol, 2-ethyl-		6/1/87	6/1/97
105-60-2	2*H*-Azepin-2-one, hexahydro-		6/1/87	6/1/97
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106-43-4	Benzene, 1-chloro-4-methyl-		6/1/87	6/1/97
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107-06-2	Ethane, 1,2-dichloro-		6/1/87	6/1/97
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108-60-1	Propane, 2,2'-oxybis[1-chloro-		6/1/87	6/1/97
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108-86-1	Benzene, bromo-		6/1/87	6/1/97
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108-95-2	Phenol		6/1/87	6/1/97
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109-87-5	Methane, dimethoxy-		6/1/87	6/1/97
109-89-7	Ethanamine, *N*-ethyl-		6/1/87	6/1/97
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111-69-3	Hexanedinitrile		6/1/87	6/1/97
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111-92-2	1-Butanamine, *N*-butyl-		6/1/87	6/1/97
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120-12-7	Anthracene		6/1/87	6/1/97
121-44-8	Ethanamine, *N,N*-diethyl-		6/1/87	6/1/97
121-47-1	Benzenesulfonic acid, 3-amino-		6/1/87	6/1/97
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122-66-7	Hydrazine, 1,2-diphenyl-		6/1/87	6/1/97
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123-61-5	Benzene, 1,3,-diisocyanato-		6/1/87	6/1/97
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124-48-1	Methane, dibromochloro-		6/1/87	6/1/97
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127-18-4	Ethene, tetrachloro-		6/1/87	6/1/97
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129-00-0	Pyrene		6/1/87	6/1/97
135-98-8	Benzene, (1-methylpropyl)-		6/1/87	6/1/97
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137-26-8	Thioperoxydicarbonic diamide, tetramethyl-		6/1/87	6/1/97
139-25-3	Benzene, 1,1'-methylenebis[4-isocyanato-3-methyl-		6/1/87	6/1/97
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472-41-3	Phenol, 4-(3,4-dihydro-2,2,4-trimethyl-2*H*-1-benzopyran-4-yl)-		6/1/87	6/1/97
506-96-7	Acetyl bromide		6/1/87	6/1/97
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530-50-7	Hydrazine, 1,1-diphenyl-		6/1/87	6/1/97
534-07-6	2-Propanone, 1,3-dichloro-		6/1/87	6/1/97
540-54-5	Propane, 1-chloro-		6/1/87	6/1/97
540-84-1	Pentane, 2,2,4-trimethyl-		6/1/87	6/1/97
542-75-6	1-Propene, 1,3-dichloro-		6/1/87	6/1/97
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580-51-8	[1,1'-Biphenyl]-3-ol		6/1/87	6/1/97
584-84-9	Benzene, 2,4-diisocyanato-1-methyl-		6/1/87	6/1/97
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598-21-0	Acetyl bromide, bromo-		6/1/87	6/1/97
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630-20-6	Ethane, 1,1,1,2-tetrachloro-		6/1/87	6/1/97
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685-91-6	Acetamide, *N,N*-diethyl-		6/1/87	6/1/97
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812-03-3	Propane, 1,1,1,2-tetrachloro-		6/1/87	6/1/97
822-06-0	Hexane, 1,6-diisocyanato-		6/1/87	6/1/97
828-00-2	1,3-Dioxan-4-ol, 2,6-dimethyl-, acetate		6/1/87	6/1/97
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1070-78-6	Propane, 1,1,1,3-tetrachloro-		6/1/87	6/1/97
1208-52-2	Benzenamine, 2-[(4-aminophenyl)methyl]-		6/1/87	6/1/97
1300-71-6	Phenol, dimethyl-		6/1/87	6/1/97
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1321-38-6	Benzene, diisocyanatomethyl- (unspecified isomer)		6/1/87	6/1/97
1331-47-1	[1,1'-Biphenyl]-4,4'-diamino, dichloro-		6/1/87	6/1/97
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2536-05-2	Benzene, 1,1'-methylenebis[2-isocyanato-		6/1/87	6/1/97
2556-36-7	Cyclohexane, 1,4-diisocyanato-		6/1/87	6/1/97

CAS No.	Chemical name	Special exemptions	Effective date	Sunset date
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2778-42-9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl-		6/1/87	6/1/97
3173-72-6	Naphthalene, 1,5-diisocyanato-		6/1/87	6/1/97
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3296-90-0	1,3-Propanediol, 2,2-bis(bromoethyl)-		6/1/87	6/1/97
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4098-71-9	Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-		6/1/87	6/1/97
5124-30-1	Cyclohexane, 1,1'-methylenebis[4-isocyanato-		6/1/87	6/1/97
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5873-54-1	Benzene, 1-isocyanato-2-[(4-isocyanatophenyl) methyl]-		6/1/87	6/1/97
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7440-28-0	Thallium		6/1/87	6/1/97
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7440-48-4	Cobalt		6/1/87	6/1/97
*	* * * * * *	*		
9016-87-9	Isocyanic acid, polymethylenepolyphenylene ester		6/1/87	6/1/97
10347-54-3	Cyclohexane, 1,4-bis(isocyanatomethyl)-		6/1/87	6/1/97
10436-39-2	1-Propene, 1,1,2,3-tetrachloro-		6/1/87	6/1/97
12001-85-3	Naphthenic acids, zinc salts		6/1/87	6/1/97
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15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-		6/1/87	6/1/97
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-		6/1/87	6/1/97
18495-30-2	Propane, 1,1,2,3-tetrachloro-		6/1/87	6/1/97
19660-16-3	2-Propenoic acid, 2,3-dibromopropyl ester		6/1/87	6/1/97
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26447-40-5	Benzene, 1,1'-methylenebis[isocyanato-		6/1/87	6/1/97
26471-62-5	Benzene, 1,3-diisocyanatomethyl-		6/1/87	6/1/97
26530-20-1	3(2*H*)-Isothiazolone, 2-octyl-		6/1/87	6/1/97
26952-23-8	1-Propene, dichloro-		6/1/87	6/1/97
32052-51-0	Isocyanic acid, trimethylcyclohexyl ester		6/1/87	6/1/97
38661-72-2	Cyclohexane, 1,3-bis(isocyanatomethyl)-		6/1/87	6/1/97
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75790-84-0	Benzene, 2-isocyanato-4-[(4-isocyanatophenyl) methyl]-1-methyl-		6/1/87	6/1/97
75790-87-3	Benzene, 1-isocyanato-2-[(4-isocyanatophenyl) thio]-		6/1/87	6/1/97
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Chemical name	CAS number	Special exemptions	Effective date	Sunset date
*	* * * * *	*		
Acetamide, *N,N*-diethyl-	685-91-6		6/1/87	6/1/97
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Acetyl bromide	506-96-7		6/1/87	6/1/97
Acetyl bromide, bromo-	598-21-0		6/1/87	6/1/97
*	* * * * *	*		
Anthracene	120-12-7		6/1/87	6/1/97
*	* * * * *	*		
2*H*-Azepin-2-one, hexahydro-	105-60-2		6/1/87	6/1/97
Benzenamine, 2-[(4-aminophenyl)methyl]-	1208-52-2		6/1/87	6/1/97
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Benzene, 1,3-bis(1-isocyanato-l-methylethyl-	2778-42-9		6/1/87	6/1/97
Benzene, bromo-	108-86-1		6/1/87	6/1/97
Benzene, butyl-	104-51-8		6/1/87	6/1/97
Benzene, 1-chloro-4-methyl-	106-43-4		6/1/87	6/1/97
Benzene, 1,3-diisocyanato-	123-61-5		6/1/87	6/1/97
Benzene, 1,4-diisocyanato-	104-49-4		6/1/87	6/1/97
Benzene, diisocyanatomethyl-(unspecified isomer)	1321-38-6		6/1/87	6/1/97
Benzene, 1,3-diisocyanatomethyl-	26471-62-5		6/1/87	6/1/97
Benzene, 1,3-diisocyanato-2-methyl	91-08-7		6/1/87	6/1/97
Benzene, 2,4-diisocyanato-l-methyl-	584-84-9		6/1/87	6/1/97
Benzene, (1,1-dimethylethyl)-	98-06-6		6/1/87	6/1/97
Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)methyl]-	5873-54-1		6/1/87	6/1/97
Benzene, 2-isocyanato-4-[(4-isocyanatophenyl)methyl]-l-methyl-	75790-84-0		6/1/87	6/1/97
Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)thio]-	75790-87-3		6/1/87	6/1/97
Benzene, 1,1'-methylenebis[isocyanato-	26447-40-5		6/1/87	6/1/97
Benzene, 1,1'-methylenebis[2-isocyanato-	2536-05-2		6/1/87	6/1/97
Benzene, 1,1'-methylenebis[4-isocyanato-	101-68-8		6/1/87	6/1/97
Benzene, 1,1'-methylenebis[4-isocyanato-3-methyl-	139-25-3		6/1/87	6/1/97
Benzene, (1-methylethenyl)-	98-83-9		6/1/87	6/1/97
Benzene, 1-methyl-4-(1-methylethyl)-	99-87-6		6/1/87	6/1/97
Benzene, (1-methylpropyl)-	135-98-8		6/1/87	6/1/97
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Benzenesulfonic acid, 3-amino-	121-47-1		6/1/87	6/1/97
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[1,1'-Bicyclohexyl]-2-one	90-42-6		6/1/87	6/1/97
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[1,1'-Biphenyl]-4,4'-diamine	92-87-5		6/1/87	6/1/97
[1,1'-Biphenyl]-4,4'-diamino, dichloro-	1331-47-1		6/1/87	6/1/97
1,1'-Biphenyl, 4,4'-diisocyanato-3,3'-dimethyl-	91-97-4		6/1/87	6/1/97

Chemical name	CAS number	Special exemptions	Effective date	Sunset date
[1,1'-Biphenyl]-3-ol	580-51-8	6/1/87	6/1/97	
[1,1'-Biphenyl]-4-ol	92-69-3		6/1/87	6/1/97
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1-Butanamine, *N*-butyl-	111-92-2		6/1/87	6/1/97
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Cobalt	7440-48-04		6/1/87	6/1/97
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Cyclohexane, 1,3-bis(isocyanatomethyl)-	38661-72-2		6/1/87	6/1/97
Cyclohexane, 1,4-bis(isocyanatomethyl)-	10347-54-3		6/1/87	6/1/97
Cyclohexane, 1,4-diisocyanato-	2556-36-7		6/1/87	6/1/97
Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-	4098-71-9		6/1/87	6/1/97
Cyclohexane, 1,1'-methylenebis[4-isocyanato-	5124-30-1		6/1/87	6/1/97
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1,3-Dioxan-4-ol, 2,6-dimethyl-, acetate	828-00-2		6/1/87	6/1/97
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Ethanamine	75-04-7		6/1/87	6/1/97
Ethanamine, *N,N*-diethyl-	121-44-8		6/1/87	6/1/97
Ethanamine, *N*-ethyl-	109-89-7		6/1/87	6/1/97
Ethane, chloro-	75-00-3		6/1/87	6/1/97
Ethane, 1,1-dichloro-	75-34-3		6/1/87	6/1/97
Ethane, 1,2-dichloro-	107-06-2		6/1/87	6/1/97
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Ethane, 1,1,1,2-tetrachloro-	630-20-6		6/1/87	6/1/97
Ethane, 1,1,2,2-tetrachloro-	79-34-5		6/1/87	6/1/97
Ethane, 1,1,2-trichloro-	79-00-5		6/1/87	6/1/97
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Ethene, tetrachloro-	127-18-4		6/1/87	6/1/97
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2-Furancarboxaldehyde	98-01-1		6/1/87	6/1/97
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Hexane, 1,6-diisocyanato-	822-06-0		6/1/87	6/1/97
Hexane, 1,6-diisocyanato-2,2,4-trimethyl-	16938-22-0		6/1/87	6/1/97
Hexane, 1,6-diisocyanato-2,4,4-trimethyl-	15646-96-5		6/1/87	6/1/97
Hexanedinitrile	111-69-3		6/1/87	6/1/97
1-Hexanol, 2-ethyl-	104-76-7		6/1/87	6/1/97
Hydrazine, 1,1-diphenyl-	530-50-7		6/1/87	6/1/97
Hydrazine, 1,2-diphenyl-	122-66-7		6/1/87	6/1/97
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Isocyanic acid, polymethylene polyphenylene ester	9016-87-9		6/1/87	6/1/97
Isocyanic acid, trimethylcyclohexylester	32052-51-0		6/1/87	6/1/97
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3(2*H*)-Isothiazolone, 2-octyl-	26530-20-1		6/1/87	6/1/97
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Methane, bromo-	74-83-9		6/1/87	6/1/97
Methane, bromochloro-	74-97-5		6/1/87	6/1/97
Methane, bromodichloro-	75-27-4		6/1/87	6/1/97
Methane, dibromo-	74-95-3		6/1/87	6/1/97
Methane, dibromochloro-	124-48-1		6/1/87	6/1/97
Methane, dimethoxy-	109-87-5		6/1/87	6/1/97
Methane, tribromo-	75-25-2		6/1/87	6/1/97
Methane, trichloro-	67-66-3		6/1/87	6/1/97
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Naphthalene	91-20-3		6/1/87	6/1/97
Naphthalene, 1,5-diisocyanato-	3173-72-6		6/1/87	6/1/97
Naphthenic acids, zinc salts	12001-85-3		6/1/87	6/1/97
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Pentane, 2,2,4-trimethyl-	540-84-1		6/1/87	6/1/97
Phenol	108-95-2		6/1/87	6/1/97
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Phenol, 4-(3,4-dihydro-2,2,4-trimethyl-2*H*-1-benzopyran-4-yl)-	472-41-3		6/1/87	6/1/97
Phenol, dimethyl-	1300-71-6		6/1/87	6/1/97
Phenol, 2,2'-methylenebis[4-chloro-	97-23-4		6/1/87	6/1/97
Phenol, 2,2'-thiobis[4,6-dichloro-	97-18-7		6/1/87	6/1/97
10*H*-Phenothiazine	92-84-2		6/1/87	6/1/97
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Propane, 1-chloro-	540-54-5		6/1/87	6/1/97
Propane, 2-chloro-	75-29-6		6/1/87	6/1/97
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Propane, 2,2'-oxybis[1-chloro-	108-60-1		6/1/87	6/1/97
Propane, 1,1,1,2-tetrachloro-	812-03-3		6/1/87	6/1/97
Propane, 1,1,1,3-tetrachloro-	1070-78-6		6/1/87	6/1/97
Propane, 1,1,2,3-tetrachloro-	18495-30-2		6/1/87	6/1/97
Propane, 1,2,3-trichloro-	96-18-4		6/1/87	6/1/97
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1,3-Propanediol, 2,2-bis(bromoethyl)-	3296-90-0		6/1/87	6/1/97
Propanenitrile, 2-hydroxy-	78-97-7		6/1/87	6/1/97
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2-Propanone, 1,3-dichloro-	534-07-6		6/1/87	6/1/97
1-Propene, dichloro-	26952-23-8		6/1/87	6/1/97
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1-Propene, 1,3-dichloro-	542-75-6		6/1/87	6/1/97
1-Propene, 2,3-dichloro-	78-88-6		6/1/87	6/1/97
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1-Propene, 1,1,2,3-tetrachloro-	10436-39-2		6/1/87	6/1/97

Chemical name	CAS number	Special exemptions	Effective date	Sunset date
2-Propenoic acid, 2,3-dibromopropyl ester	19660-16-3		6/1/87	6/1/97
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Pyrene	129-00-0		6/1/87	6/1/97
* * * * *	*	*		
2-Pyridinecarbonitrile	100-70-9		6/1/87	6/1/97
3-Pyridinecarbonitrile	100-54-9		6/1/87	6/1/97
4-Pyridinecarbonitrile	100-48-1		6/1/87	6/1/97
* * * * *	*	*		
Thallium	7440-28-0		6/1/87	6/1/97
Thioperoxydicarbonic diamide, tetramethyl	137-26-8		6/1/87	6/1/97
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Friday
May 1, 1987

Part III

Office of Personnel Management

48 CFR Ch. 16

Federal Employees Health Benefits Acquisition Regulation; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Ch. 16

Federal Employees Health Benefits Acquisition Regulation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a regulation to implement and supplement the Federal Acquisition Regulation (FAR) for the Federal Employees Health Benefits (FEHB) Program. This regulation identifies basic and significant acquisition policies unique to the FEHB Program. The regulation is referred to as the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). For the most part, these policies were contained in the Office of Personnel Management Procurement Regulation (OPMPR) (41 CFR Chapter 16).

EFFECTIVE DATE: January 1, 1987, and to be applied to the 1987 FEHB contracts.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On July 30, 1986, OPM published a proposed regulation in the **Federal Register** (51 FR 27384) that describes the method by which OPM will implement and supplement the FAR for the specific purpose of acquiring and administering contracts with health insurance carriers in the FEHB Program. The FAR system consists of those Governmentwide acquisition regulations in 48 CFR Chapter 1 and agency acquisition regulations in subsequent chapters issued by individual agencies.

OPM received comments from 16 FEHB Program carriers, 3 health benefits underwriters, 2 associations representing Federal health organizations, and 1 law firm. The commenters offered a number of suggestions concerning specific provisions of the FEHBAR. These comments are treated below with explanations as to why they were or were not adopted.

Effective Date

A number of commenters questioned the effective date of the FEHBAR and two suggested that OPM delay its implementation until the 1988 contract year so that it would be in place during contract negotiations.

The FAR, as supplemented by the FEHBAR, applies beginning with contracts covering calendar year 1987. We understand the reason for the comments in favor of an effective date prior to the beginning of contract negotiations. Nevertheless, to maintain continuity of those contract policies established under OPM's previous procurement regulation, the OPMPR, that lapsed December 31, 1985, we must have the FEHBAR in place for the 1987 contract year. For the 1986 contract year only, the entire FAR applies. Further, the FEHB carriers have been aware since July 1986 that OPM intends to apply the FEHBAR to the 1987 contracts and have had sufficient time to prepare for its application. We will apply some flexibility in certain administrative requirements in cases where a carrier can show it will be unduly harmed by the application of the FEHBAR in the 1987 contract year. In addition, those Parts dealing with contract negotiation would not be applicable until the 1988 rate negotiations.

Applicable and Irrelevant Provisions

Four commenters noted the format change from that of the OPMPR. These groups favor the OPMPR format, which cited applicable provisions, over that of the proposed FEHBAR, which does not cite the applicable provisions.

The entire FAR applies to all Federal Government contracts, even though some provisions of the FAR have no immediate practical applicability to certain types of contracts. According to the FAR-prescribed format, agency regulations must be limited to those necessary to implement FAR policies and procedures and to supplement the FAR according to the specific needs of the agency. Further, agency regulations may not unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR. Following these guidelines, the FEHBAR does not address FAR sections that are clearly applicable. Yet, it provides supplementary information where necessary to conform to the FEHB Program. Where the FAR has no practical applicability to the FEHBP contracts but OPM believes this fact may be unclear, the FEHBAR makes specific notation, along with the authority for the determination of nonapplicability. Portions that are clearly irrelevant are not addressed in the FEHBAR.

The required FAR and FEHBAR contract clauses denote the most significant actions required of carriers for satisfying FAR requirements. Carriers and/or underwriters should refer to these clauses as guides in applying the FAR. When a carrier or underwriter has a particular concern, that concern should be presented in writing to the contracting officer for clarification.

Definitions

A number of carriers suggested that OPM define some of the terms used in the regulation. Of particular concern are the definitions of "subcontractor" and those having to do with community rating. The carriers suggested that some or all of the definitions in the OPMPR be incorporated into the FEHBAR to make clear what OPM intends by those terms. The regulation now includes definitions of terms that have specific application to the FEHB Program. More general terms are defined in the FAR.

Advertising (1603.70)

Two carriers believe that advertising should be an allowable charge against FEHBP contracts because OPM provides insufficient information to Federal employees to enable them to select the best plan for their needs. We disagree. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements because we believe that the benefits comparison booklet and benefits brochures made available to Federal employees provide them with sufficient information to make an informed choice. While we have made some clarifying changes to this section of the FEHBAR, we have not eliminated the restriction on advertising costs.

One carrier commented that FEHBAR 1603.701(b) could lead to the inference that carriers are obliged to ensure that individuals purchase coverage suited to their needs, when OPM has always placed that burden on the individual subscribers. We have adopted the language suggested by the carrier that accurate advertising is required "so that individuals can exercise an informed choice."

The same carrier suggested that union-sponsored plans be required to include the cost of associate membership entitling individuals to join the organization's health plan as part of their rate so that subscribers are not misled about the actual cost of the plan. We have not adopted the suggestion because associate membership dues are not part of the contract and OPM has no role in their determination.

Three commenters objected to OPM's restrictions on advertising. They believe that OPM should allow general comparisons in carrier advertising and that OPM should permit the message to suggest contacting the plan for information. We disagree with the commenters that carriers should be allowed to depict portions of the OPM

comparison charts in advertisements and that OPM should allow the message to suggest contacting the plan. However, we have adopted language at 1603.702(e) that permits the plan to advertise its enrollment code and advise the viewer to contact his or her personnel office to enroll.

One carrier commented that OPM should enforce "cease and desist" orders that would enable OPM to respond quickly to obvious violations during open season. When we learn of violations of our advertising policy, we will determine the action necessary to meet the particular circumstances.

The carrier also suggested that 1603.701(d) be clarified to state that it is not intended to grant a new cause of action to subscribers to sue carriers for misleading advertising. The intent of this section was not to grant any new cause of action to subscribers to sue carriers. However, OPM has no authority to bar a subscriber from suing a carrier for any reason.

Another carrier suggested that FEHBAR 1603.702 be changed to apply only to advertising directed to Federal employees. Although such clarification in the FEHBAR should not be necessary since the FEHBAR applies only to matters within the scope of the FEHBP, we have made some clarifying changes.

Five commenters were concerned that proposed FEHBAR 1603.702(a)(2) may be a violation of the freedom of speech granted by the Constitution. These concerns are valid and we have removed the provision.

Three commenters wanted clarification of the term "subcontractor" used in the clause required by 1603.703. We have, therefore, added the definition of "subcontractor" to 1602.170 to clear up any questions that may arise.

Contractor Records Retention (1604.7)

Three commenters objected to the new records retention provisions contained in the FEHBAR that call for a carrier's retaining records until OPM makes an audit or until the contracting officer agrees to make alternative arrangements as to costs without an audit. The commenters suggested reverting to the OPMPR requirement of 3 years for claim records and 5 years for administrative expense records.

We understand the respondents' concerns. Consequently, we have agreed to revert to the OPMPR requirement. The section has been changed accordingly.

Price Negotiation (1615.8)

These comments also relate to 1652.215–70 (Price Reduction for Defective Certificate of Community Rating) and 1652.216–70 (Accounting and Price Adjustment).

Seven community rated carriers believe that the terms "community rate" and "true community rate" should be defined. Others suggested that OPM define "adjusted community rate." The final FEHBAR contains a definition of "community rate." References to "true" and "adjusted" community rate have been deleted.

One carrier questioned whether OPM recognized community rating by class. The definition of "community rate" now in the FEHBAR allows OPM to consider variations reflecting prospective rating methodologies that OPM approves in advance. Any variation will be at the sole discretion of OPM and will be based on data and methodology presented by the plan. The data and methodology must, in the judgment of OPM, predict differences in the use of health services and be in keeping with the spirit of one rate for the same level of benefits during the same contract period. Any carrier using a methodology which OPM does not deem to comply with community rating will be required to experience rate the contract and follow all of the requirements of experience rating.

We have not adopted the definition of community rating defined by the Health Care Finance Administration (HCFA) of the Department of Health and Human Services, as suggested by some respondents, because HCFA regulations provide broad rate selection guidelines for the Health Maintenance Organizations (HMO) industry for the sole purpose of determining plan qualification. OPM, on the other hand, contracts as an employer for health benefits on behalf of Federal employees under the FEHB law. In this capacity, OPM has a responsibility to establish criteria that it believes to be in the best interest of FEHB subscribers.

Three plans believe that the Certificate of Community Rating is unnecessary in view of the fact that community rates are filed with the Department of Insurance in the various States. This certificate is necessary because not all plans operate in States that require Insurance Department approval. Further, the Certificate provides OPM with a basis for adjusting rates which are found inconsistent with OPM community rating requirements.

Profit (1615.9)

General. Some community rated prepaid plans commented that the profit factors are sound in principle but vague and subjective and suggested that they should be translated into a formula that can be applied evenhandedly. These plans should note that the service charge factors apply only to contracts based on cost analysis. OPM wants to guarantee that the contracting officer has sufficient latitude in determining an appropriate service charge for each experience rated plan. By definition, a "formula" approach would reduce, or virtually eliminate, such latitude.

Other commenters are concerned that the service charge factors do not guarantee a minimum profit for FEHBP contracts. The commenters stated that, inasmuch as carriers could receive no profit or a minimum profit, the factors and weights proposed are not reasonable and ignore explicit Federal procurement policy.

We are not aware of any Federal policy governing acquisition contracts that mandate a profit. The FAR states that the profit prenegotiation objectives represent that element of the total remuneration that contractors *may* receive for contract performance over and above allowable costs (FAR 15.901). The FAR also states that it is in the Government's interest to offer contractors opportunities for financial rewards. It does not state that the contractor should receive a profit when it fails to meet the basic criteria outlined in the structured approach. In response to these comments, however, we have reconsidered the weight ranges for contractor performance and cost control and have increased the maximum weight ranges for these two factors by .05.

Three commenters believed that the contractor performance factor undervalues contractor effort. They believed that OPM-mandated cost containment efforts increase contractor effort and should, therefore, be reflected in this factor. We continue to hold that contractors who merely perform tasks required and implement features directed by OPM will receive a minimum weight. Nevertheless, we agree that cost control measures mandated by OPM, such as coinsurance and hospice care, should not be considered in the cost control factor. Consequently, we have amended the cost control factor and have revised the factor's minimum weight from −.1 to 0. To offset this increase, we have revised the minimum weight under contractor effort from −.1 to −.2. This offset allows a greater reduction for an inadequate response to OPM-mandated features on the part of the carriers.

The carriers suggested that OPM adopt a definition of a disputed claim that takes into account plan design features that generate a higher volume, but no more valid, disputed claims. We

believe that our description of a disputed claim and revised administrative procedures published under the FEHB Program (5 CFR Part 890) in the **Federal Register** on May 21, 1986, (51 FR 18562) are adequate. The carriers may be confused about the application of the volume of disputed claims to the contractor performance factor. OPM does not discount plan performance solely on the basis of the number of disputed claims received. However, OPM's determination that the plan is not effectively processing claims would be a cause to reduce the service charge.

The carriers also believed that plan enrollment should make up a lesser percentage of the total contract cost factor. We believe that the percentage split between the enrollment factor and other factors represents the most effective way to illustrate and determine the enrollment portion of cost risk to be considered for individual carriers.

The same three commenters also believed that, while the loss carry forward basis of experience rated group insurance practices can limit the amount of contractor risk, the concept is limited in the FEHBP. The carriers contended that the competitive environment of the FEHBP precludes make-up of high losses in a single year. We recognize that, under experience rating, losses may not be made up within 1 year, and we take this fact into consideration. However, we believe that this is one facet of risk that must be considered during contract negotiations.

One carrier objected to a weight range that minimizes the cost risk associated with underwriting FEHBP contracts and conversion contracts. We believe the adverse experience is lessened because gains and losses under experience rated plans are carried forward into future years. Further, the FEHBAR does not prevent carriers from raising premiums for converted contracts to cover possible added risk.

We believe that the proposed factors are adequate. The guidelines are not intended to increase the general level of profits currently being awarded under the contracts. They are intended to give structure to the process of determining the service charge and to provide justification and documentation of the profits paid.

Cost Principles (1631)

FEHBP credits (1631.201–701). This FEHBAR provision, derived from FAR 31.201–5, requires the applicable portion of any income, rebate, allowance, or other credits resulting from benefit payments (including erroneous benefit payments) received by or accruing to the carrier to be credited to the Government. One carrier cited a conflict between this provision and its State law that requires payment to it for uncashed and returned checks made by health care contractors. The carrier should be aware, however, that the FEHB law preempts State law in matters pertaining to the nature or extent of coverage or benefits (including payments with respect to benefits) (5 U.S.C. 8902(m)(1)). The same carrier was also concerned that this provision includes unrecovered amounts due to erroneous benefit payments. This provision pertains only to actual receipt of income, rebates, refunds, allowances, etc.

Contracts with commercial organizations (1631.203–70). Two commenters questioned OPM's limiting this FAR requirement to the allocation of general and administrative (G&A) costs. They suggested that the requirement should be applied to the allocation of all home office indirect costs. It was not our intention to restrict the application of this section to G&A expenses. We have clarified this provision by stating that the FAR provision applies to the allocation of *indirect* costs.

Advertising (1631.205–70). Three carriers objected to the requirement for OPM approval of advertising messages. We reserve the right to approve media messages that are not directed at advising current FEHBP subscribers on how to obtain benefits. However, we have clarified 1631.205–70(b)(3) to require contracting officer approval of the total dollar amount of only those carrier messages that are to be charged to the FEHBP.

Interest expense (1631.205–73). Four respondents suggested that this provision be modified to provide that borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio, and not solely to the positive balance of the carrier's FEHBP Special Reserve. We agree and have amended the paragraph as suggested.

Two carriers questioned why the service charge risk factor will be adjusted downward if interest expenses are allowed. The carriers stated that the FEHBAR contract cost risk factor does not include interest costs and suggest that the risk factor include a statement that it includes a consideration of the extent of financial assistance the carrier renders to the contract. In the treatment of interest, OPM does not want to allow credit for interest in the risk portion of the service charge if it agrees to recover interest under 1631.205–73. We agree with the carriers' comments and have clarified the contract cost risk factor.

FEHBP professional and consultant service costs (proposed FEHBAR 1631.205–75). One carrier objected to the disallowance of legal expenses incurred by a contractor in bringing suit against the Government to secure a right under the contract. FAR 31.205–33(d) makes unallowable the costs of prosecuting claims against the Government. An April 1986 amendment to the FAR also makes unallowable the cost of services incurred in the defense against Government claims. This is designed so that each party to the claim bears its own expense. If the contractor could charge the costs of litigation to the contract, the Government would be paying both to defend the action and to prosecute the action against itself. It would also encourage frivolous legal actions against the Government. Because FAR 31.205–33 now incorporates the principle intended by this FEHBAR provision, the FEHBAR provision is no longer necessary and has been deleted from the final regulation. For a more detailed explanation of the FAR change, see Federal Acquisition Circular No. 84–15 of April 9, 1986.

Selling costs (1631.205–76). Two carriers disagreed with the unallowability of selling costs. Selling costs have traditionally been considered unallowable in the FEHBP. OPM has long held that participating plans are not permitted to charge costs related to advertising or promoting their respective plans. Each Open Season, OPM provides all Federal employees and annuitants information that they may use to select a health plan. We believe that the publication of rates and benefits offered by each plan is sufficient notice to all interested Federal employees and annuitants. Therefore, we have modified the FAR cost principle to make unallowable commissions and/or fees paid to individuals for enrolling Federal employees and annuitants in FEHBP plans. Such costs have not been allowable in the past and it is not our intent to make them allowable as a consequence of implementing the FAR.

Trade, business, technical, and professional activity costs (1631.205–77). Two commenters are concerned that carriers will be required to obtain approval from OPM before joining a trade association. OPM is not requiring carriers to obtain OPM approval before joining a trade association. OPM is concerned about the benefits accruing to the FEHBP from such activities and the reasonableness and allowability of the associated costs. For most activity in this area, we believe that allocations to the FEHBP would not exceed $1,000 and that advance approval would not be

necessary. However, to alleviate concern, we have diminished the approval level by adding a provision that approval need only be sought if the carrier allocates more than 50 percent of membership costs to the FEHBP and the amount exceeds $1000.

Reinsurance premiums and stop loss insurance (proposed FEHBAR 1631.205–80). Four HMOs commented that the contracting officer should not have to approve charges for reinsurance or stop loss protection because the timing of negotiations for reinsurance and stop loss insurance does not always lend itself to a subsequent sign-off by the contracting officer. We have decided to delete this provision because reinsurance and stop loss insurance are purchased primarily by community rated plans, to which the cost principles do not apply.

Major subcontractor service charges (1631.205–81 (renumbered)). Two carriers questioned whether this provision applies to experience rated plans and, if so, how it would be applied. The provision does apply to experience rated plans. It means that the service charge awarded the carrier is the total profit payable under the contract. A subcontractor's profit must be paid from the carrier's service charge and only the actual costs of the subcontract may be charged to the FEHBP contract. The FEHBAR now contains a definition of "subcontractor" that should clarify the application of this provision to HMOs.

Contract Financing Clause (1632.111)

A number of community rated plans commented on the date premium money is paid to the carrier. FEHBAR creates a payment date of 30 days after premiums are received by the FEHB Fund. The carriers contended that under insurance industry practices, payment is due in advance of the period during which the employee is eligible to receive services from the plan. Thus, the carriers argued that the due date for payment under the Federal contract is the first day of each pay period and that the date payment must be received by the plan is 30 days after the first day of the pay period.

OPM's responsibility under the Prompt Payment Act extends to only those funds over which OPM has control. Under the FEHBAR, the due date for all FEHBP plans will be 30 days after premiums are received by the FEHB Fund. Nevertheless, OPM will consider adopting a rate loading for an individual plan if the plan can present a case that it will be financially harmed by the regulatory provision, and the plan charges all of its accounts a similar loading to equalize income from alternate payment practices.

Tax Credit (1632.607, 1632.617)

FAR 32.607 requires an agency to comply with a contractor's request to recognize a tax credit in its debt collection. FEHBAR has deemed this provision as having no practical application to FEHBP contracts because the FEHB Fund is comprised of contributions by enrollees as well as the Government and carriers may not offset debts to the Fund by a tax credit that is solely a Government obligation. Two commenters objected to OPM's decision.

Under the FAR provision, a contractor's debt to the contracting agency is reduced by the amount of the tax credit previously deposited in the U.S. Treasury. If this provision were to be applied to the FEHBP contracts, the carrier would deduct the amount of the tax credit from the amount it owes the FEHB Fund and the withheld money would not be available for program purposes. For this reason, we will retain the provision as set out in the proposed FEHBAR.

Contingency Reserve Payments (1632.770)

One underwriter believed OPM's assertion of "sole discretion" in making "good cause" payments from the contingency reserve is ambiguous. It contended that the FEHBAR could be interpreted to mean that, even when a carrier has shown good cause to OPM's satisfaction, OPM nevertheless has discretion to deny the payment of contingency funds below the preferred minimum balance. The underwriter claims that this is in conflict with OPM's reserve regulations published on March 4, 1986 (51 FR 7428).

The FEHBAR does not conflict with OPM's reserve regulations. OPM retains discretion to determine "good cause" and to make payments accordingly.

Non-commingling of FEHBP Funds (1632.771)

Many community rated plans commented on non-commingling of funds. This provision does not apply to community rated plans. Because there appears to be a misunderstanding concerning the type of plans to which this provision applies, we have added a clarifying introductory statement.

One underwriter felt that the FEHBAR requirement of maintaining separate accounts for FEHB Funds may conflict with State insurance laws. We recognize that the requirement to maintain separate accounts may present a burden to the underwriters. Demonstration by the underwriter that it will have extreme difficulty harmonizing FEHB law with State law may be the basis for granting a waiver under the redesignated 1632.771(d). However, the underwriter must provide evidence satisfactory to OPM that its investment policy is sound and that the FEHBP will not suffer a detriment as a result of commingling funds.

The objective of the non-commingling provision is to prevent commingling not only of cash but also of investment funds of the carrier or underwriter. The comments we received indicate that the second objective was unclear. Consequently, we have clarified this point in the final regulation.

Further, because the proposed FEHBAR was unclear about the duration of and criteria for the waiver discussed at 1632.771(c) (now 1632.771(d)), we have amended the section to provide that the non-commingling waiver will remain in effect until withdrawn by OPM. The waiver would be withdrawn if it is found that the carrier or underwriter no longer provides adequate accounting controls.

Subcontracting (1644)

The FAR definition of "subcontractor" has been adopted in the final FEHBAR, with modification to exclude providers of direct medical services or supplies. It is not OPM's intention to review the records of and approve those entities. The elimination of providers from the definition of "subcontractor" enables OPM to apply the provisions of the subcontract clause (1652.244–70) to contracts based on price analysis as well as to those based on cost analysis.

The adaptation of the FAR definition called for some minor technical revisions to the FEHBAR subcontracting provision and the clause required under that provision to maintain consistency with the FAR.

Termination of Contracts (1649)

One commenter questioned whether the substantive remedies portion of FAR Part 49 are applicable. The FEHBAR specifically incorporates the FAR settlement procedures, but does not incorporate the procedures relating to substantive remedies.

Termination procedures for FEHBP contracts are found in the FEHBP law and regulations at 5 U.S.C. 8902(e) and 5 CFR 890.204, respectively. These provisions outline established remedies for termination, including the carrier's right to a hearing. Because these remedies are already established in FEHBP law and regulation, it is

appropriate to apply only the settlement provisions of the FAR.

Contract Clauses (Part 1652)

Clause Dates

One carrier noted that FAR clause 52.222–4 has been revised since April 1985, the clause date cited in the proposed FEHBAR. The date has been revised in the final regulation. OPM expects to use the most recent FAR clauses in effect at the beginning of each contract year in the FEHBP contracts. The contracts will reflect the dates of the applicable FAR and FEHBAR clauses to avoid questions concerning which version of a clause applies to any given contract.

Officials Not To Benefit (FAR 52.203–1). One carrier was concerned that this provision would prohibit a Member of Congress from enrolling as a subscriber in an FEHBP plan. This is not a valid concern. Congress clearly provided that Members of Congress could enroll in a plan under the FEHB Program (5 U.S.C. 8901(1)(B)).

Price Reduction for Defective Cost or Pricing Data (FAR 52.215–23, 52.215–25). One carrier believes that these clauses are not applicable to community rated contracts. The clauses are required in community rated contracts to ensure that the Government recovers monies lost because of a plan's or a subcontractor's providing defective cost or pricing data. The clauses refer not only to loadings but also to the basic community rate where a plan has filed a capitation with the State but uses Federal demographic data to convert the capitation rate to a self and family rate. If the data on which the initial rate was converted is found defective, the clause provides a remedy for the Government.

Price Reduction for Defective Certificate of Community Rating (1652.215–70). One carrier questioned why OPM dropped its OPMPR requirement that community rated plans who failed to charge a community rate must determine a community rate or experience rate the contract. The proposed FEHBAR substituted a requirement that the carrier determine a community rate or adjust its rate to one that does not exceed the lowest rate charged by the carrier to another group with similar benefits. OPM, in its experience under the OPMPR, has never encountered a community rated plan that was able to retroactively experience rate the FEHB contract. Nevertheless, we have amended this clause to include an option for experience rating in the event a community rated plan is able to do so.

Two carriers suggested that the requirement for a community rate be replaced with a requirement that the subscription rate be "based on" a community rate. We reject this terminology as too broad for the FEHBP.

Refunds Due the Government (1652.215–70(c)). Two carriers were concerned that the refunds due under this paragraph would not be used to reduce future FEHBP subscription charges. The clause text is clear on this point. The preceding paragraph (1652.215–70(b)) explicitly states that one of the uses of a refund will be "to reduce future FEHBP subscription charges of the Carrier. . . ." The Government will use its discretion through negotiations with the carrier as to whether the refunds will be used to reduce future FEHBP subscription charges of the carrier, returned for deposit to the FEHBP Fund, or used to offset contingency reserve payments to the carrier.

Investment income (1652.215–71). One carrier stated that this clause should not be required for direct service plans regardless of the means by which the carrier determines the Federal rate. The clause does not apply to price analysis contracts. The carrier is attempting to draw a distinction between direct service plans and other types of comprehensive medical plans. We would like to point out that FEHB Program contracts are based on two pricing mechanisms, cost analysis or price analysis, not on the provision of service.

Upon review of this clause, we believe the phrase "due consideration to the safety and liquidity of investments" needs clarification. OPM's intention is that reserves be invested in securities of appropriate risk, marketability, and maturity. As a general rule, we would expect that maturities will not exceed one year's duration and would under no circumstances exceed three years' duration.

Accounting and Allowable Cost (1652.216–71(b)). Four commenters objected to the provision that allowable costs chargeable to the contract for a contract period are those "determined in accordance with . . . (stated provisions) applicable on the first day of the contract period." The commenters are concerned that a cost principle change will become effective prior to the first day of a new contract period but after the conclusion of the benefits and rate negotiations for that new contract period.

Changes to cost principles generally do not have a major impact on contract costs. So long as carriers are aware of the provisions before any costs are incurred, we see no reason for changing the FEHBAR requirement. Thus, if a regulatory change occurs before the commencement of a new contract year that impacts on cost, it will be effective during the new contract year. However, if, in OPM's opinion, a change would impact on a carrier's rates for that year, consideration will be given to adjusting the effective date.

Payment for overtime premiums (FAR 52.222–2). One commenter believed that this clause should be deleted because FEHBP contracts are fixed-price contracts and the clause applies only to cost reimbursement contracts. We agree and have deleted the clause requirement from the FEHBAR.

Notice of significant events (1652.222–70). One carrier objected to the requirement that notice be given of the withdrawal of State licensing, HHS qualification, or any other status under State or Federal law and suggested that the section be limited to a status that would affect the plan's qualification to provide services to Federal members. Another carrier objected to the requirement that notice be given if a carrier loses 15 percent of its overall membership. It contends that the loss of one or two large groups could result in a 15 percent loss of membership without seriously jeopardizing the financial integrity of the HMO.

This is a current contract provision that has not been changed. Elimination of these requirements automatically assumes that the occurrence of these events would not jeopardize the financial integrity of the plan. We believe that in certain circumstances the occurrence of these events may affect the plan's qualification to provide services to Federal members, and we want to retain the right to make such a determination. The carriers should note that OPM has added the addition and termination of provider agreements to this clause as events requiring notice to OPM. Because providers are not included in the definition of "subcontractor," and are, therefore, not subject to FEHBAR subcontracting provisions, this addition to the significant events clause gives OPM additional control over the Comprehensive Medical Plan's ability to meet FEHBP requirements. The clause has also been modified to incorporate the provisions of FAR 52.222–1 "Notice to the Government of Labor Disputes." Thus, the requirement to include the FAR provision in FEHBP contracts is redundant and has been deleted from the FEHBAR.

Federal, State, and local taxes (FAR 52.229–3). This FAR provision calls for an increase in price resulting from an after-imposed tax, providing the contracting officer determines that no amount for the newly imposed tax was included in the contract price, as a contingency reserve payment or otherwise. It also calls for a decrease in price resulting from an after-relieved tax.

One carrier believes that OPM should agree to pay to a carrier from the contingency reserve the amount of any tax imposed during a contract period upon the carrier which is measured by the amount of subscription charges or by a carrier's gross receipts, or any portion of either, limited to the portion of tax attributable to the contract.

We do not believe that such a provision needs to be singled out for taxes. Any changes in the community rate occurring after rate negotiations are covered under the Accounting and Price Adjustment clause, 1652.216–70(b)(2).

Coordination of benefits (proposed FEHBAR 1652.232–70). One carrier objected to the requirement that this clause be incorporated into all contracts because many HMOs do not coordinate benefits. The carrier believes that forcing the plans to coordinate benefits solely for the Federal group will result in an increase in costs.

The coordination of benefits requirement is not new. It reflects OPM's longstanding policy, based on the National Association of Insurance Commissioners' (NAIC) guidelines, that all carriers coordinate benefits. It is contained in our health benefits brochures as the double coverage provision, and we believe that it is a valid requirement. While the clause has been revised somewhat from the proposed FEHBAR, it will continue to be required in all FEHBP contracts.

Another commenter was concerned about the coordination of benefits for automobile/medical payments insurance and homeowners insurance. The NAIC guidelines followed by OPM in administering the FEHBP contracts do not suggest coordinating with individual type contracts, with the exception of no-fault automobile insurance. Consequently, we will not require coordination of benefits for automobile/medical payments insurance and homeowners insurance unless they are brought within the NAIC guidelines at some future date.

Upon review, we have determined that the section requiring the coordination of benefits clause (proposed FEHBAR 1632.170) should be removed from Part 1652—"Contract Financing" and should more properly be placed under Part 1604—"Administrative Matters." The reference may now be found at FEHBAR Part 1604.

Non-commingling of FEHBP funds (652.232–71 (renumbered)). The comments received concerning this clause were from carriers whose premiums and subscription income are determined on the basis of community rating and whose pricing is therefore based on price analysis. We have added a statement to 1632.771 clarifying that the non-commingling of funds provisions apply only to contracts based on cost analysis.

Government property (fixed-price contracts) (FAR 52.245–2) and limitation of liability—services (FAR 52.246–25). One carrier questioned how this clause applies to FEHBP contracts since Government property is not a part of the contract with the carrier. On occasion, OPM has allowed FEHBP carriers to use FEHBP funds to purchase equipment through Goverrment contracts. Under the terms of these contracts, the items purchased remain the property of the Government. Consequently these FAR requirements may apply under some circumstances.

OPM-Carrier Public Hearing

One plan requested that OPM schedule a public hearing prior to publication of the final regulation to discuss significant changes from prior OPM procurement policy. The FEHBAR does not represent a significant departure from OPM's established procurement policy. Consequently, we do not believe a public hearing is necessary.

Numerous clarifying changes have been made to the FEHBAR as a result of suggestions received pursuant to the proposed regulation. We wish to thank the commenters for their continuing interest in the FEHB Program.

Waiver of 30-day Delay in Effective Date of Final Regulation

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective immediately so that it will be applicable to contracts covering calendar year 1987.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation implements and supplements the Federal Acquisition Regulation (FAR), which has already been established for entities contracting with the Federal Government.

List of Subjects in 48 CFR Chapter 16

Administrative practice and procedure, Government contracts, Health insurance.

Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending Title 48, Code of Federal Regulations, by establishing Chapter 16 to read as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1601.1—Purpose, Authority, Issuance

Sec.

1601.101 Purpose.
1601.102 Authority.
1601.103 Applicability.
1601.104 Issuance.
1601.104–1 Publication and code arrangement.
1601.104–2 Arrangement of regulation.
1601.105 OMB approval under the Paperwork Reduction Act.

Subpart 1601.1—Purpose, Authority, Issuance

1601.301 Policy.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1601.1—Purpose, Authority, Issuance

1601.101 Purpose.

(a) This subpart establishes Chapter 16, Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation, within Title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be FEHBAR.

(b) The purpose of the FEHBAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering contracts with health insurance carriers in the Federal Employees Health Benefits Program (FEHBP).

1601.102 Authority.

The FEHBAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5

U.S.C. Chapter 89 and other applicable law and regulation.

1601.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEHBP pursuant to 5 U.S.C. Chapter 89. The FEHBAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEHBP.

1601.104 Issuance.

1601.104-1 Publication and code arrangement.

(a) The FEHBAR and its subsequent changes are published in

(1) Daily issues of the **Federal Register**; and

(2) Cumulative form of the Code of Federal Regulations.

(b) The FEHBAR is issued as Chapter 16 of Title 48 of the Code of Federal Regulations.

1601.104-2 Arrangement of regulation.

(a) *General.* The FEHBAR conforms with the arrangement and numbering system prescribed by FAR 1.104. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding FEHBAR part, subpart, etc. The FEHBAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;

(2) FEHBAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of Chapter 16 material that has been published in the **Federal Register** will be to Title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of Chapter 16 may be identified as "FEHBAR" followed by the section number.

1601.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

Provision	Control No.
FEHBAR 1604.705	3206-0145
FAR 9.1	3206-0145

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEHBP shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with the unique nature of health care procurements, or necessary to satisfy specific needs of the Office of Personnel Management shall be implemented as amendments to the FEHBAR and published in the **Federal Register**, or as deviations to the FAR in accordance with FAR Subpart 1.4.

(b) Internal procedures, instructions, and guides that are necessary to clarify or implement the FEHBAR *within* OPM may be issued by agency officials specifically designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the FEHBAR must—

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Sec.

1602.000-70 Scope of part.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.
1602.170-1 Carrier.
1602.170-2 Community rate.
1602.170-3 Comprehensive medical plan.
1602.170-4 Contractor.
1602.170-5 Director.
1602.170-6 Experience rate.
1602.170-7 FEHBP.
1602.170-8 Health benefits plan.
1602.170-9 OPM.
1602.170-10 Subcontractor.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1602.000-70 Scope of part.

This part defines words and terms commonly used in this regulation.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

1602.170-1 Carrier.

"Carrier," as defined in 5 U.S.C. 8901(7), means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization.

1602.170-2 Community rate.

"Community rate" means a rate of payment that is equivalent to that charged on the effective date to all subscriber groups of the carrier for the same contract period for the same level of health benefits. The rate of payment will be determined without regard to the differences among the subscriber groups in actual or projected utilization of health care services, except that rates may be determined for individuals and families by classes if such rates are equivalent across all subscriber groups for all individuals in the same class and for all families of similar composition in the same class. Proposed classes must be approved by OPM prior to the contract year in which their use is implemented.

1602.170-3 Comprehensive medical plan.

"Comprehensive Medical Plan" means a plan as defined under 5 U.S.C. 8903(4).

1602.170-4 Contractor.

"Contractor" means carrier.

1602.170-5 Director.

"Director" means the Director of the Office of Personnel Management.

1602.170-6 Experience rate.

"Experience rate" means a rate for a given group that is the result of that group's actual paid claims, administrative expenses, retentions, and *estimated* claims incurred but not reported, adjusted for benefit modifications, utilization trends, and trends in the economy.

1602.170-7 FEHBP.

"FEHBP" means the Federal Employees Health Benefits Program.

1602.170-8 Health benefits plan.

"Health benefits plan," as defined in 5 U.S.C. 8901(6), means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services.

1602.170-9 OPM.

"OPM" means the Office of Personnel Management.

1602.170-10 Subcontractor.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.

PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

Sec.

1603.701 Policy.
1603.702 Additional guidelines.
1603.703 Contract clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

1603.701 Policy.

(a) OPM prepares and distributes or makes available to Federal employees and annuitants a comparison booklet which presents summary information and a benefits brochure which details benefits, limitations, and premium rates for all participating plans. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements. However, while OPM believes that advertising is unnecessary, it recognizes that the decision to use advertising rests with each carrier.

(b) OPM discourages advertising that is misleading or deceptive. This includes advertising that is directed at other carriers' plans participating in the Program and which uses incomplete or inappropriate comparisons or disparaging or minimizing techniques. Such unfair practices are prejudicial to the interests of the vast majority of carriers whose advertising is fair and accurate.

(c) Failure to conform to the requirements of this subpart shall be a material breach of the contract and may result in withdrawal of approval to continue participation in the FEHB Program.

1603.702 Additional guidelines.

Any advertisements which identify a carrier's participation in the FEHBP shall—

(a) Be limited to the merits of the carrier's FEHBP plan and shall be limited to factual statements of the benefits and rates offered by that plan. The official document for benefit and rate comparisons among FEHBP plans is the comparison chart issued by OPM.

(b) Not use the FEHBP logo.

(c) Recognize that the officially approved plan brochure is the sole contractual statement of benefits, limitations, and exclusions. All advertisements that in any way discuss plan benefits shall contain the following statement:

This is a summary (or brief description) of the features of the (plan's name). Before making a final decision, please read the plan's officially approved brochure, (brochure number). All benefits are subject to the definitions, limitations, and exclusions set forth in the official brochure.

(d) Set forth the rates for the plan, if the advertisements discuss benefits.

(e) Not give instructions on enrollment. Statements on enrollment procedures, requirements, or eligibility shall be limited to those such as:

To sign up, fill out a Health Benefits Registration Form (Standard Form 2809) from your personnel office indicating the enrollment you want:

The enrollment codes for (plan's name) are:

Self Only _____ Enrollment Code_____

Self and Family _____ Enrollment Code _____

The form must then be returned to your personnel office before the (date) deadline. Your (plan's name) coverage will begin the first pay period in January, (year). If you are a retired Federal employee and need forms, contact the Office of Personnel Management at P.O. Box 809, Washington, DC 20044.

1603.703 Contract clause.

The clause at 1652.203-70 shall be inserted in all FEHBP contracts.

PART 1604—ADMINISTRATIVE MATTERS

Subpart 1604.7—Contractor Records Retention

Sec.

04.703 Policy.
04.705 Specific retention periods.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1604.7—Contractor Records Retention

1604.703 Policy.

In view of the unique payment schedules of FEHBP contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1).

1604.705 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215-2 "Audit—Negotiation," the contracting officer shall insert the clause at 1652.204-70 in all FEHBP contracts.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

OPM expects all FEHBP plans to coordinate benefits. Accordingly, the clause set forth at 1652.204-71 shall be inserted in all FEHBP contracts.

PART 1605—PUBLICIZING CONTRACT ACTIONS

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1605.000 Applicability.

FAR Part 5 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR Part 890.

PART 1606—COMPETITION REQUIREMENTS

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1606.001 Applicability.

FAR Part 6 has no practical application to FEHBP contracts in view of the statutory exception provided by 5 U.S.C. 8902.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1614—SEALED BIDDING

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1614.000 Applicability.

FAR Part 14 has no practical application to FEHBP contracts in view

of the statutory exemption provided by 5 U.S.C. 8902.

PART 1615—CONTRACTING BY NEGOTIATION

Subpart 1615.1—General Requirements for Negotiation

Sec.

1615.170 Negotiation authority.

Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

Subpart 1615.6—Source Selection

1615.602 Applicability.

Subpart 1615.8—Price Negotiation

1615.802 Policy.
1615.804–70 Certificate of community rating.
1615.804–71 Price reduction for defective certificate of community rating clause.
1615.805–70 Carrier investment of FEHB funds.
1615.805–71 Investment income clause.

Subpart 1615.9—Profit

1615.902 Policy.
1615.905 Profit analysis factors.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1615.1—General Requirements for Negotiation

1615.170 Negotiation authority.

The authority to negotiate FEHBP contracts is conferred by 5 U.S.C. 8902.

Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

FAR Subpart 15.4 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR Part 890.

Subpart 1615.6—Source Selection

1615.602 Applicability.

FAR Subpart 15.6 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. Chapter 89 and 5 CFR Part 890 rather than on the basis of competition *between* prospective carriers.

Subpart 1615.8—Price Negotiation

1615.802 Policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR Subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a) Cost analysis for contracts where premiums and subscription income are determined on the basis of experience rating; and

(b) Price analysis for contracts where premiums and subscription income are determined on the basis of community rating. A community rate is deemed the equivalent of the FAR's description of an established catalog or market price.

(c) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based on cost analysis.

1615.804–70 Certificate of community rating.

Each carrier proposing a community rate shall submit the following certification. The certification shall be signed by an official authorized to execute the contract.

Certificate of Community Rating

(a) This is to certify that the proposed subscription rate(s), subject to adjustments recognized by OPM, is a community rate(s).

(b) If it is determined that the subscription rate, subject to the allowable adjustments, is not a community rate, the Government shall be entitled to an adjustment of the price in accordance with the clause at FEHBAR 1652.215–70, Price Reduction for Defective Certificate of Community Rating.

Organization: _____
Certifying Official: _____
Title: _____
Date: _____

(End of Certificate)

1615.804–71 Price reduction for defective certificate of community rating clause.

The clause set forth in 1652.215–70 shall be inserted in all FEHBP contracts based on established catalog or market price.

1615.805–70 Carrier investment of FEHB funds.

(a) This subsection does not apply to contracts based on price analysis.

(b) The carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(c) *Investment income.* Investment income is the net amount earned by the carrier after deducting investment expenses.

1615.805–71 Investment income clause.

The clause set forth in 1652.215–71 shall be inserted in all contracts based on cost analysis.

Subpart 1615.9—Profit

1615.902 Policy.

(a) OPM will determine the profit or fee prenegotiation objective (service charge) portion of FEHBP contracts by use of a weighted guidelines structured approach when the pricing of such contracts is determined by cost analysis. The service charge so determined shall be the *total* service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

1615.905 Profit analysis factors.

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHBP contracts. The following factors as defined in FAR 15.905–1 will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's *basic* responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the FEHBP through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHBP generally a plus weight, documented inattention or indifference to cost control a negative weight.

(2) *Contract cost risk.* OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract, in assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor in negotiating profit. It should be noted that the "loss carry forward basis" of experience rated group insurance

practices limits this factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of *cost* risks only, taking into account such elements as the adequacy and reliability of data for estimating costs, etc., offset by the "loss carry forward basis" of experience rating.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905–1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a plus weight; poor support will receive a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEHBP contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investments costs of direct benefit to the FEHBP that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost control.* OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. This factor shall be used to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development.* OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of demonstrated value to the FEHBP and for which developmental costs have not been recovered directly or indirectly through allowable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the program at large. Improvements and innovations recognized and rewarded under any of the other profit factors can not be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

Profit factor	Weight ranges (percent)
1. Contractor performance.	−.2 to +.45.
2. Contract cost risk*	+.02 to +.2.
3. Federal socioeconomic programs.	−.05 to +.05.
4. Capital investments	0 to +.02.
5. Cost control	0 to +.35.
6. Independent development.	0 to +.03.

*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less	.06 to .10.
10,001–50,000	.05 to .09.
50,001–200,000	.04 to .07.
200,001–500,000	.03 to .06.
500,001 and over	.02 to .04.

PART 1616—TYPES OF CONTRACTS

Subpart 1616.1—Selecting Contract Types

Sec.

1616.102 Policies.
1616.105 Solicitation provision.

Subpart 1616.2—Fixed-Price Contracts

1616.270 Clause—contracts based on established catalog or market price (community rate).
1616.271 Clause—contracts based on cost analysis (experience rate).

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1616.1—Selecting Contract Types

1616.102 Policies.

(a) FEHBP contracts in which benefits provided and subscription income are based on community rating (i.e., established catalog or market price) shall be negotiated fixed-price contracts with economic price adjustments.

(b) FEHBP contracts in which benefits provided and subscription income are based on experience rating shall be a combination of negotiated fixed-price contracts with provisions for a form of retroactive price redetermination.

1616.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. Chapter 89 obviate the issuance of solicitations.

Subpart 1616.2—Fixed-Price Contracts

1616.270 Clause—contracts based on established catalog or market price (community rate).

The clause at 1652.216–70 shall be inserted in all FEHBP contracts based on established catalog or market price.

1616.271 Clause—contracts based on cost analysis (experience rate).

The clause at 1652.216–71 shall be inserted in all FEHBP contracts based on cost analysis.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1622.1—Basic Labor Policies

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1622.103–70 Contract clause.

The clause at 1652.222–70 shall be inserted in all FEHBP contracts with Comprehensive Medical Plans.

PART 1624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1624.1—Protection of Individual Privacy

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1624.104 Contract clause.

Records retained by FEHBP carriers on Federal subscribers and members of their families serve the carriers' own commercial function of paying health benefits claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for carriers to keep certain records confidential. The clause at 1652.224–70 shall be inserted in all FEHBP contracts.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1631.2—Contracts With Commercial Organizations

Sec.

1631.200 Scope of subpart.
1631.201–70 FEHBP credits.
1631.203–70 FEHBP General and Administrative (G&A) expenses.
1631.205 Selected costs.
1631.205–70 FEHBP public relations and advertising costs.
1631.205–71 FEHBP bad debts.

1631.205–72 FEHBP compensation for personal services.
1631.205–73 FEHBP interest expense.
1631.205–74 FEHBP losses on other contracts.
1631.205–75 Selling costs.
1631.205–76 Trade, business, technical and professional activity costs.
1631.205–77 FEHBP start-up and other nonrecurring costs.
1631.205–78 FEHBP printed material costs.
1631.205–79 Mandatory statutory reserves.
1631.205–80 Major subcontractor service charges.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1631.2—Contracts With Commercial Organizations

1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

1631.201–70 FEHBP credits.

The provisions of FAR 31.201–5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments that include, but are not limited to—

(a) Coordination of benefit refunds;

(b) Hospital year-end settlements;

(c) Uncashed and returned checks;

(d) Utilization review refunds;

(e) Refunds attributable to litigation with subscribers or providers of health services; and

(f) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

1631.203–70 FEHBP General and Administrative (G&A) expenses.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a "dividend or retention formula."

1631.205 Selected costs.

1631.205–70 FEHBP public relations and advertising costs.

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205–1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

1631.205–71 FEHBP bad debts.

Erroneous benefit payments are not automatically disallowed by FAR 31.205–3.

1631.205–72 FEHBP compensation for personal services.

Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

1631.205–73 FEHBP interest expense.

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205–20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHB Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

1631.205–74 FEHBP losses on other contracts.

FAR 31.205–23 shall not be construed to prohibit the application of the normal "loss carry forward" principle that is fundamental to continuing insurance contracts that are based on experience rating.

1631.205–75 Selling costs.

(a) FAR 31.205–38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHB plan.

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season health fairs and other similar activities sponsored by Government agencies (but see FAR 31.205–1 "Public relations and advertising costs", and Federal Personnel Manual Supplement 890–1, Subchapter S2–3(f) "Controlling contacts between employees and carriers").

1631.205–76 Trade, business, technical, and professional activity costs.

(a) FEHBP participating plans, carriers, and underwriters shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities (FAR 31.205–43) when the allocable costs of such participation to the FEHBP will exceed $1,000 annually and when the carrier or underwriter allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEHBP.

(b) When approval of costs for membership in an organization is required, the carrier or underwriter must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing care and services to FEHBP enrollees, and that the organization is not engaged in activities such as those

cited in FAR 31.205–22 (lobbying costs) for which costs are not allowable.

1631.205–77 FEHBP start-up and other nonrecurring costs.

Precontract costs (FAR 31.205–32) shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

1631.205–78 FEHBP printed material costs.

Unless OPM determines that it is in the best interest of the FEHBP to do otherwise, if a carrier orders printed material that is available from the Government Printing Office (GPO) under the "rider system" from another source, the allowable contract charges shall be the lesser of the amount actually paid or the cost that would have been incurred had the carrier ridden OPM's GPO order.

1631.205–79 Mandatory statutory reserves.

Charges for mandatory statutory reserves are not allowed unless provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the carrier, a pro rata share based upon FEHBP's contribution to the total carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

1631.205–80 Major subcontractor service charges.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits, and payment or provision of actual health services, and/or assumption of insurance risk or underwriting, when costs are determined on the basis of actual costs incurred or experience rating, any amount that exceeds the allowable cost of the subcontract (whether entitled service charge, profit, fee, contribution to reserve, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the service charge negotiated between OPM and the Carrier.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

Sec.
1632.111 Contract clause.

Subpart 1632.6—Contract Debts

1632.607 Tax credit.
1632.617 Contract clause.

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.
1632.771 Non-commingling of FEHBP funds.
1632.772 Contract clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1632.1—General

1632.111 Contract clause.

The funding provisions of 5 U.S.C. 8909 obviate the need for carriers to submit invoices or vouchers. Consequently, the clause at FAR 52.232–1 shall be modified in all FEHBP contracts to delete the phrase "upon the submission of proper invoices or vouchers" and insert "within thirty days after receipt of premiums by the Federal Employees Health Benefits Fund."

Subpart 1632.6—Contract Debts

1632.607 Tax credit.

FAR 32.607 has no practical application to FEHBP contracts. The statutory provisions at 5 U.S.C. 8906(c) and (d) authorize joint enrollee and Government contributions to the FEHBP Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, carriers may not offset debts to the Fund by a tax credit which is solely a Government obligation.

1632.617 Contract clause.

The clause at FAR 52.232–17 will be modified in FEHBP contracts based on established catalog or market price to exclude the words "net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)."

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.

(a) Payments from the contingency reserve shall be made in accordance with 5 CFR 890.503.

(b) A carrier for an FEHB plan may apply to OPM at any time for a payment from the contingency reserve that is in addition to those amounts, if any, paid under 5 CFR 890.503(c)(1) through (c)(4), if the carrier can show good cause, such as, unexpected adverse claims experience. OPM will decide whether to allow the request in whole or in part and will advise the carrier of its decision. However, OPM shall not unreasonably withhold approval for amounts requested that exceed the plan's preferred minimum balance for the contingency reserve.

1632.771 Non-commingling of FEHBP funds.

(a) This section applies to contracts based on cost analysis.

(b) Carrier or underwriter commingling of FEHBP funds with those from other sources makes it difficult to precisely determine FEHBP cash balances at any given time or to precisely determine investment income attributable to FEHBP invested assets.

(c) FEHBP funds shall be maintained separately from other cash and investments of the carrier or underwriter. Cash and investment balances reported on FEHBP Annual Accounting Statements must agree with the carrier's books and records.

(d) This requirement may be waived by the contracting officer in accordance with the clause at 1652.232–70 when adequate accounting and other controls are in effect. If the requirement is waived, the waiver will remain in effect until it is withdrawn by OPM. The waiver shall be withdrawn if OPM determines that the accounting controls are no longer adequate to properly account for FEHBP funds.

1632.772 Contract clause.

The clause at 1652.232–70 shall be included in all contracts that are based on cost analysis.

PART 1633—PROTESTS, DISPUTES, AND APPEALS

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1633.070 Designation of the Board of Contract Appeals.

The Armed Services Board of Contract Appeals (ASBCA) serves as the Board of Contract Appeals for the FEHBP. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1644.1—General

Sec.
1644.170 Policy for FEHBP subcontracting consent.

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1644.1—General

1644.170 Policy for FEHBP subcontracting consent.

For all FEHBP contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged the FEHBP contract exceeds $100,000.

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

The clause set forth at 1652.244–70 shall be inserted in all FEHBP contracts.

PART 1646—QUALITY ASSURANCE

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1646.301 Contractor inspection requirements.

The clause set forth at 1652–.246–70 shall be inserted in all FEHBP contracts.

PART 1649—TERMINATION OF CONTRACTS

Sec.
1649.002–70 Applicability of the FAR to FEHB acquisitions.

Subpart 1649.1—General Principles

1649.101–70 FEHBP renewal and withdrawal of approval clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1649.002–70 Applicability of the FAR to FEHB acquisitions.

Termination of FEHBP contracts is controlled by 5 U.S.C. 8902(e) and 5 CFR 890.204. The procedures for settlement of contracts after they are terminated shall be those contained in FAR Part 49.

Subpart 1649.1—General Principles

1649.101–70 FEHBP renewal and withdrawal of approval clause.

The clause in 1652.249–70 shall be inserted in all FEHBP contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

Sec.
1652.000 Applicable clauses.

Subpart 1652.2—Texts of FEHBP Clauses

1652.203–70 Misleading, deceptive, or unfair advertising.
1652.204–70 Contractor records retention.
1652.204–71 Coordination of benefits.
1652.215–70 Price reduction for defective certificate of community rating.
1652.215–71 Investment income.
1652.216–70 Accounting and price adjustment.
1652.216–71 Accounting and allowable cost.
1652.222–70 Notice of significant events.
1652.224–70 Confidentiality of records.
1652.232–70 Non-commingling of FEHBP funds.
1652.244–70 Subcontracts.
1652.246–70 FEHBP inspection.
1652.249–70 Renewal and withdrawal of approval.

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1652.000 Applicable clauses.

The clauses of Subpart 52.2 specified below shall be applicable to FEHBP acquisitions.

Section and clause title

52.202–1 Definitions (Apr. 1984).
52.203–1 Officials not to Benefit (Apr. 1984).
52.203–3 Gratuities (Apr. 1984).
52.203–5 Covenant Against Contingent Fees (Apr. 1984).
52.215–1 Examination of Records by Comptroller General (Apr. 1984).
52.215–2 Audit—Negotiation (Jan. 1987).
52.215–22 Price Reduction for Defective Cost or Pricing Data (Apr. 1984).
52.215–23 Price Reduction for Defective Cost or Pricing Data—Modifications (Apr. 1985).
52.215–24 Subcontractor Cost or Pricing Data (Apr.1985).
52.215–25 Subcontractor Cost or Pricing Data—Modifications (Apr. 1985).
52.215–30 Facilities Capital Cost of Money (Apr. 1984).
52.215–31 Waiver of Facilities Capital Cost of Money (Apr. 1984).
52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (June 1985).
52.219–13 Utilization of Women-Owned Small Businesses (Aug. 1986).
52.220–3 Utilization of Labor Surplus Area Concerns (Apr. 1984).
52.222–3 Convict Labor (Apr. 1984).
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Mar. 1986).
52.222–26 Equal Opportunity (Apr. 1984).
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts (Apr. 1984).
52.222–29 Notification of Visa Denial (Apr. 1984).
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Apr. 1984).
52.222–36 Affirmative Action for Handicapped Workers (Apr. 1984).
52.223–2 Clean Air and Water (Apr. 1984).
52.229–3 Federal, State, and Local Taxes (Apr. 1984).
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract) (Apr. 1984).
52.229–5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (Apr. 1984).
52.229–6 Taxes—Foreign Fixed-Price Contracts (Apr. 1984).
52.230–3 Cost Accounting Standards (Aug. 1986).
52.230–4 Administration of Cost Accounting Standards (Apr. 1984).
52.230–5 Disclosure and Consistency of Cost Accounting Practices (Aug. 1986).
52.230–6 Consistency in Cost Accounting Practices (Apr. 1984).
52.232–1; 1632.111 Payments (Jan. 1987).
52.232–8 Discounts for Prompt Payment (July 1985).
52.232–11 Extras (Apr. 1984).
52.232–17; 1632.617 Interest (Jan. 1987).
52.232–23 Assignment of Claims (Jan. 1986).
52.232–24 Prohibition of Assignment of Claims (Jan. 1986).
52.233–1 Disputes (Apr. 1984).
52.242–1 Notice of Intent to Disallow Costs (Apr. 1984).
52.243–1 Changes—Fixed Price—Alternate I (Apr. 1984).
52.244–5 Competition in Subcontracting (Apr. 1984).
52.245–2 Government Property (Fixed-Price Contracts) (Apr. 1984).
52.246–25 Limitation of Liability—Services (Apr. 1984).
52.247–63 Preference for U.S.-Flag Air Carriers (Apr. 1984).
52.251–1 Government Supply Sources (Apr. 1984).
52.252–2 Clauses Incorporated by Reference (Apr. 1984).
52.252–4 Alterations in Contract (Apr. 1984).
52.252–6 Authorized Deviations in Clauses (Apr. 1984).

Subpart 1652.2—Texts of FEHBP Clauses

1652.203–70 Misleading, deceptive, or unfair advertising.

As prescribed in 1603.703, the following clause shall be inserted in all FEHBP contracts:

Misleading, Deceptive, or Unfair Advertising (Jan. 1987)

(a) The Carrier agrees that any advertising material, including that labeled promotional material, marketing material, or supplemental literature, shall be truthful, not misleading, and consistent with the guidelines set forth in 1603.702.

(End of Clause)

1652.204–70 Contractor records retention.

As prescribed in 1604.705, the following clause shall be inserted in all FEHBP contracts.

Contractor Records Retention (Jan. 1987)

Notwithstanding the provisions of FAR 52.215–2(d) "Audit—Negotiation," carriers will retain and make available all records applicable to a contract year that support the annual statement of operations for that year for a period of 5 years after the end of the contract year to which the records relate, except that individual enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract year to which the claim records relate.

(End of Clause)

1652.204–71 Coordination of benefits

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts:

Coordination of Benefits (Jan. 1987)

(a) The Carrier shall implement a coordination of benefits program to coordinate on a primary-secondary basis the payment of benefits under this contract with the payment of benefits under Medicare, other group health benefits coverages, and the payment of medical and hospital costs under no-fault automobile insurance.

(b) The Carrier shall normally not pay benefits under this contract until it has determined whether it is the primary or secondary Carrier.

(c) In coordinating benefits between plans, the Carrier shall follow the model guidelines for Coordination of Benefits set forth in the FEHBP contracts.

(End of Clause)

1652.215–70 Price reduction for defective certificate of community rating.

As prescribed in 1615.804–71, the following clause shall be inserted in contracts based on established catalog or market price:

Price Reduction for Defective Certificate of Community Rating (Jan. 1987)

(a) If it is determined that the subscription rate(s), subject to the adjustments recognized by OPM is not a community rate, the Government shall be entitled to an adjustment of the price so that it is a community rate. If the Carrier cannot determine a community rate, OPM may require the Carrier to experience rate the contract or charge a rate for that contract period that does not exceed the lowest rate charged by the Carrier to another group or groups with similar benefits for similar contract periods.

(b) If the price of the community rate determined under paragraph 1652.215–70(a), the experience rate, or the lowest rate charged to another group, is less than the original subscription price, the price of this contract shall be reduced accordingly. At the discretion of the Contracting Officer, refunds due the Government shall be used to reduce future FEHBP subscription charges of the Carrier, returned to the Government for deposit in the FEHB Fund, or used to offset Contingency Reserve payments to the Carrier.

(c) When the Contracting Office determines that the Carrier submitted a defective community rate and the Government is entitled to a refund under 1652.215–70(b), the refund shall bear interest from the date the overcharge was paid by the Government to the Carrier until the date the overcharge is liquidated as provided in 1652.215–70(b). In calculating the amount of interest due, the semiannual rate determinations by the Secretary of the Treasury under the authority of the Renegotiation Act of 1951 (50 U.S.C., para. 1211, *et. seq.*) applicable to the periods the overcharge was retained by the Carrier shall be used.

(End of Clause)

1652.215–71 Investment income.

As prescribed in 1615.805–71, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

Investment Income (Jan 1987)

(a) The Carrier or underwriter shall invest and reinvest all FEHBP funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier or underwriter shall seek to maximize investment income with due consideration to the safety and liquidity of investments.

(b) All investment income earned on FEHBP funds shall be credited to the Special Reserve on behalf of the FEHBP.

(c) When the Contracting Officer concludes that the Carrier or underwriter has failed to comply with paragraphs (a) or (b) of this clause, the Contracting Officer may direct the Carrier or underwriter to credit the Special Reserve with investment income that would have been earned at the rate(s) specified in paragraph (e) had it not been for the Carrier's or underwriter's noncompliance. "Failed to comply with paragraphs (a) or (b)" means failure to place excess funds, including refunds, credits, payments, deposits, investment income earned, or other amounts owed the Special Reserve, in income producing investments and accounts. Interest income shall be due for the period from the date the Carrier or underwriter failed to invest the funds until the date the Carrier or underwriter invests such funds.

(d) On charges for benefits, administrative expenses, and other items, made by the Carrier or underwriter that are subsequently determined to be unallowable, interest shall be charged from the date of the Contracting Officer's notification of disallowance of the cost to the date the funds are deposited in the Special Reserve.

(e) If directed, the Carrier or underwriter shall credit the Special Reserve for income due in accordance with this clause. In calculating the amount of the interest credit due the FEHBP, the semiannual rate determinations by the Secretary of the Treasury under authority of the Renegotiation Act of 1951 (50 U.S.C. App., para. 1211, *et seq.*) applicable to the period of noncompliance shall be used.

(f) The Carrier shall incorporate this clause into agreements with underwriters that underwrite the Carrier's FEHBP plan.

(End of Clause)

1652.216–70 Accounting and price adjustment.

As prescribed in 1616.270, the following clause shall be inserted in all FEHBP contracts based on established catalog or market price:

Accounting and Price Adjustment (Jan 1987)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBAR § 1602.170–2.

(2) If during the contract period the Carrier establishes a community rate higher than the rate established for the contract period and the rate increase is made effective on the same calendar date in all other group health benefits contracts held by the Carrier, OPM agrees to pay the Carrier an amount equal to the product of—

(i) The increase in the rates that has been produced by the community rate increase, multiplied by

(ii) The number of subscribers determined by OPM, multiplied by

(iii) The number of months between the effective date of the increase and the end of the contract period during which the rates apply.

(3) Amounts payable under this subsection may, at the discretion of the Contracting Officer, be paid to the Carrier by (i) paying all or part of the amount from funds available in the Contingency Reserve (or as funds become available in later contract periods); or (ii) accepting an additional loading to the rates for the earliest possible contract period following the community rate increase; or (iii) establishing a reimbursement schedule combining elements of both (i) and (ii) of this subparagraph.

(4) If during the contract period the Carrier establishes a community rate that is lower than the rate agreed upon for the contract benefit period or if the agreed upon rate is based on an anticipated community rate increase that exceeds the actual community rate increase established for the contract period, the Carrier agrees to accept an adjustment to the agreed upon rate that is calculated to recover the amount of the excess charged under this contract as a result of the lower community rate. At the discretion of the Contracting Officer, refunds due the Government shall be (i) returned to the Government for deposit in the FEHBP Fund; (ii) used to reduce future FEHBP subscription charges of the Carrier; or (iii) used to offset Contingency Reserve payments to the Carrier. The refund calculated pursuant to this clause shall not bear interest as described in FEHBAR 1652.215–70(c).

(End of Clause)

1652.216–71 Accounting and allowable cost.

As prescribed in 1616.271, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

Accounting and Allowable Cost (Jan 1987)

(a) *Annual Accounting Statement.* (1) The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM and shall include, among other things, the following items for each option provided by the contract:

(i) Subscription charges received and accrued (including those received from the Contingency Reserve);

(ii) Health benefits charges;

(iii) Expenses and other charges;

(iv) Income on investments;

(v) Sum of items (i) minus (ii) minus (iii) plus (iv).

(2) Based on the results of audit, the Carriers' annual accounting statements may

be (i) reduced by amounts found not to constitute allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Allowable cost.* The allowable costs chargeable to the contract for a contract period shall be the actual, necessary amounts incurred in the administration of this contract, with proper justification and accounting support, determined in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employee Health Benefits Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(End of Clause)

1652.222-70 Notice of significant events.

As prescribed in 1622.103-70, the following clause shall be inserted in all FEHBP contracts with Comprehensive Medical Plans:

Notice of Significant Events (Jan 1987)

(a) The Carrier agrees to notify OPM of any Significant Event within ten (10) working days after the Carrier becomes aware of it. As used in this section, a Significant Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Carrier's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of major assets;

(2) Loss of 15% or more of the Carrier's overall membership;

(3) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Carrier's obligations under this contract;

(4) Addition or termination of provider agreements;

(5) Any changes in underwriters, reinsurers, or participating plans;

(6) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(7) The withdrawal of, or notice of intent to withdraw, State licensing, HHS qualification, or any other status under Federal or State law;

(8) Default on a loan or other financial obligation;

(9) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Carrier's facilities or facilities used by the Carrier in the performance of the contract;

(10) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Carrier's participation in the Federal Employees Health Benefits Program; or

(11) Any significant changes in policies and procedures or interpretations of the contract or brochure which would affect the benefits available under the contract or the costs charged to the contract.

(b) Upon learning of a Significant Event, OPM may institute action as it deems necessary to protect the interest of subscribers, including, but not limited to—

(1) Suspending new enrollments under this contract;

(2) Advising subscribers of the Significant Event and providing them an opportunity to transfer to another Carrier;

(3) Terminating the enrollment of those subscribers who, in the judgment of OPM, would be adversely affected by the Significant Event;

(4) Terminating this contract pursuant to the clause set forth in 1652.249-70 entitled "Renewal and Withdrawal of Approval."; or

(5) Directing the Carrier to take corrective action.

(c) The Carrier shall insert this provision in all subcontracts and provider agreements over $25,000.

(End of Clause)

1652.224-70 Confidentiality of records.

As prescribed in 1624.104, the following clause shall be inserted in all FEHBP contracts:

Confidentiality of Records (Jan. 1987)

(a) The Carrier shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the **Federal Register** as a part of OPM's notice of systems of records.

(b) The Carrier shall also hold all medical records, and information relating thereto, of Federal subscribers and family members confidential except as follows:

(1) As may be reasonably necessary for the administration of this contract;

(2) As authorized by the patient or his or her guardian;

(3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged criminal actions;

(4) As necessary to audit the contract;

(5) As necessary to carry out the coordination of benefits provisions of this contract; and

(6) For bona fide medical research or educational purposes. Release of information for medical research or educational purposes shall be limited to aggregated information of a statistical nature that does not identify any individual by name, social security number, or any other identifier unique to an individual.

(c) If the carrier uses medical records for the administration of the contract, or for bona fide medical research or educational purposes, it shall so state in the plan's brochure.

(End of Clause)

1652.232-70 Non-commingling of FEHBP funds.

As prescribed in 1632.772, the following clause shall be inserted in all contracts based on cost analysis.

Non-Commingling of Funds (Jan. 1987)

(a) The Carrier or its underwriter shall keep all FEHBP funds (cash and investments) physically separate from funds obtained from other sources. Accounting for such FEHBP funds shall not be based on allocations or other sharing mechanisms and shall agree with the Carrier's accounting records.

(b) In certain instances the physical separation of FEHBP funds may not be practical or desirable. In such cases, the Carrier may request a waiver from this requirement from the Contracting Officer. The waiver shall be requested in advance and the Carrier shall demonstrate that accounting techniques have been established that will clearly measure FEHBP cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(c) This clause shall be included in all subcontracts that exceed $25,000.

(End of clause)

1652.244-70 Subcontracts.

As prescribed by 1644.270, the following clause shall be inserted in all FEHBP contracts:

Subcontracts (Jan. 1987)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if the amount of the subcontract or modification charged to the FEHB Program exceeds $100,000.

(b) The advance notification required by paragraph (a) of this clause shall include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Carrier's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Carrier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Carrier and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Carrier's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Carrier shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraphs (a), (b), and (c) of this clause where the Carrier and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR Subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiation of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Carrier of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d).

(g) The Carrier shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Carrier by any subcontractor or vendor that, in the opinion of the Carrier, may result in litigation related in any way to this contract with respect to which the Carrier may be entitled to reimbursement from the Government.

(End of Clause)

1652.246-70 FEHBP Inspection.

As prescribed in 1646.301, the following clause shall be inserted in all FEHBP contracts:

FEHB Inspection (Jan 1987)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Carrier or a subcontractor, the Carrier shall furnish and require the subcontractor to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of Clause)

1652.249-70 Renewal and Withdrawal of Approval.

As prescribed in 1649.101-70, the following clause shall be inserted in all FEHBP contracts:

Renewal and Withdrawal of Approval (Jan 1987)

(a) The contract renews automatically for a term of one (1) year each January first, unless written notice of non-renewal is given either by OPM or the Carrier not less than 60 calendar days before the renewal date, or unless modified by mutual agreement.

(b) This contract also may be terminated at other times by order of OPM pursuant to 5 U.S.C. 8902(e). Pending termination, OPM may take action as it deems necessary to protect the interests of enrollees, including but not limited to—

(1) Suspending new enrollments under the contract;

(2) Advising enrollees of the asserted deficiencies; and

(3) Providing enrollees an opportunity to transfer to another plan.

(c) OPM may, after proper notice, terminate the contract at the end of the contract term if it finds that the Carrier did not have at least 300 subscribers enrolled in its plan at any time during the two preceding contract periods.

(End of Clause)

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

(a) The matrix in this section lists the FAR and FEHBAR clauses to be used with contracts based on cost analysis and contracts based on established catalog or market price. Carriers shall submit initial applications and requests for renewals on the basis that the new contract or contract renewal will include the clauses indicated.

(b) Certain contract clauses are mandatory for FEHBP contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or FEHBAR. An "M" in the "Use Status" column indicates that the clause is mandatory. An "A" indicates that the clause is to be used only when the applicable conditions are met.

(c) Clauses are incorporated in the contract either in full text or by reference. If the full text is to be used, the matrix indicates a "T". If the clause is incorporated by reference, the matrix indicates an "R".

FEHBP CLAUSE MATRIX

Clause No.	Text reference	Title	Use status	Use with contracts based on—	
				Cost analysis	Price analysis
FAR 52.202-1	FAR 2.2	Definitions	M	R	R
FAR 52.203-1	FAR 3.102-2	Officials Not to Benefit	M	R	R
FAR 52.203-3	FAR 3.202	Gratuities	M	R	R
FAR 52.203-5	FAR 3.404(c)	Covenant Against Contingent Fees	M	R	R
1652.203-70	1603.703	Misleading, Deceptive, or Unfair Advertising	M	R	R
1652.204-70	1604.705	Contractor Records Retention	M	T	T
1652.204-71	1604.7001	Coordination of Benefits	M	R	R
FAR 52.215-1	FAR 15.106-1(b)	Examination of Records by Comptroller General	M	R	R
FAR 52.215-2	FAR 15.106-2(b)	Audit-Negotiation	M	T	T
FAR 52.215-22	FAR 15.804-8(a)	Price Reduction for Defective Cost or Pricing Data	M	R	
FAR 52.215-23	FAR 15.804-8(b)	Price Reduction for Defective Cost or Pricing Data-Modifications	M		R
FAR 52.215-24	FAR 15.804-8(c)	Subcontractor Cost or Pricing Data	M	R	
FAR 52.215-30	FAR 15.904	Facilities Capital Cost or Money	M	R	
FAR 52.215-25	FAR 15.804-8(d)	Subcontractor Cost or Pricing Data-Modifications	M		R
FAR 52.215-31	FAR 15.904	Waiver of Facilities Capital Cost of Money	A	R	
1652.215-70	1615.804-71	Price Reduction for Defective Certificate of Community Rating	M		R
1652.215-71	1615.805-71	Investment Income	M	R	
1652.216-70	1616.270	Accounting and Price Adjustment	M		R
1652.216-71	1616.271	Accounting and Allowable Cost	M	R	
FAR 52.219-8	FAR 19.708(a)	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	M	R	R
FAR 52.219-13	FAR 19.902	Utilization of Women-Owned Small Businesses	M	R	R
FAR 52.220-3	FAR 20.302(a)	Utilization of Labor Surplus Area Concerns	M	R	R
FAR 52.222-3	FAR 22.202	Convict Labor	M	R	R

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with contracts based on—	
				Cost analysis	Price analysis
FAR 52.222-4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M	R	R
FAR 52.222-26	FAR 22.810(e)	Equal Opportunity	M	R	R
FAR 52.222-28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts	M	R	R
FAR 52.222-29	FAR 22.810(h)	Notification of Visa Denial	A	R	R
FAR 52.222-35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M	R	R
FAR 52.222-36	FAR 22.1406(a)	Affirmative Action for Handicapped Workers	M	R	R
1652.222-70	1622.103-70	Notice of Significant Events	A[1]	R	R
FAR 52.223-2	FAR 23.105(b)	Clean Air and Water	M	R	R
1652.224-70	1624.104	Confidentiality of Records	M	R	R
FAR 52.229-3	FAR 29.401-3	Federal, State and Local Taxes	M		R
FAR 52.229-4	FAR 29.401-4	Federal, State and Local Taxes (Noncompetitive Contract)	M	R	
FAR 52.229-5	FAR 29.401-5	Taxes-Contracts Performed in U.S. Possessions or Puerto Rico.	A	R	R
FAR 52.229-6	FAR 29.402-1(a)	Taxes-Foreign Fixed Price Contracts	A	R	R
FAR 52.230-3	FAR 30.303-2(a)(1)	Cost Accounting Standards	A	R	R
FAR 52.230-4	FAR 30.303-2(b)(1)	Administration of Cost Accounting Standards	A	R	R
FAR 52.230-5	FAR 30.303-2(c)(1)	Disclosure and Consistency of Cost Accounting Practices	A	R	R
FAR 52.230-6	FAR 30.303-2(d)	Consistency in Cost Accounting Practices	A	R	
FAR 52.232-1	FAR 32.111(a)(1) (Modification: 1632.111).	Payments	M	T	T
FAR 52.232-8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	R	R
FAR 52.232-11	FAR 32.111(d)(2)	Extras	M	R	R
FAR 52.232-17	FAR 32.617(a) (Modification: 1632.617).	Interest	M		T
FAR 52.232-23	FAR 32.806-(a)(1)	Assignment of Claims	M	R	R
FAR 52.232-24	FAR 32.806(b)	Prohibition of Assignment of Claims	A	R	R
1652.232-70	1632.772	Non-Commingling of FEHBP Funds	M	R	
FAR 52.233-1	FAR 33.214	Disputes	M	R	R
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs	M	R	
FAR 52.243-1	FAR 43.205(a)(1)	Changes—Fixed-Price—Alternate I	M	R	R
1652.244-70	1644.270	Subcontracts	M	R	R
FAR 52.244-5	FAR 44.204(e)	Competition in Subcontracting	M	R	R
FAR 52.245-2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts)	M	R	R
FAR 52.246-25	FAR 46.805(a)(4)	Limitation of Liability—Services	M	R	
1652.246-70	1646.301	FEHBP Inspection	M	R	R
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	R	R
1652.249-70	1649.101-70	Renewal and Withdrawal of Approval	M	R	R
FAR 52.251-1	FAR 51.107	Government Supply Sources	A	R	
FAR 52.252-2	FAR 52.107(b)	Clauses Incorporated by Reference	M	T	T
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	M	T	T
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

[1] Applies to all Comprehensive Medical Plans.

PART 1653—FORMS

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1653.000 FEHBP forms.

The following forms specified in FAR Subparts 53.2 and 53.3 are applicable to FEHBP acquisitions:

Part 53.2	Part 53.3	Form title
53.201-1	53.301-1402	SF 1402-Certificate of Appointment.
53.203	53.301-119	SF 119—Statement of Contingent or Other Fees.
53.204-2(a)	53.301-279	SF 279 FPDS—Individual Contract Action Report (over $10,000).
53.204-2(b)	53.301-281	SF 281 FPDS—Summary of Contract Actions of $10,000 or less.
53.215-2(b)	53.301-1412	SF 1412—Claim for Exemption from Submission of Certified Cost or Pricing Data.
53.229	53.301-1094	SF 1094—U.S. Tax Exemption Certificate.
53.229	53.301-1094A	SF 1094A—Tax Exemption Certificates Accountability Record.

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May 1, 1987

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1928
Field Sanitation; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1928

[Docket No. H-308]

Field Sanitation

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule.

SUMMARY: This action amends Title 29 of the Code of Federal Regulations, Part 1928, by adding a new final occupational safety and health standard entitled "Field Sanitation" (§ 1928.110). This standard requires employers of 11 or more hand-laborers in the field to provide toilets, potable drinking water and handwashing facilities in the field without cost to these employees.

DATES: This regulation becomes effective on May 30, 1987, when employers are required to provide potable drinking water, as specified in § 1928.110(c)(1). Compliance with requirements for the provision of toilet and handwashing facilities, in accordance with § 1928.110(c)(2); for their maintenance, in accordance with § 1928.110(c)(3); and for communication of information, in accordance with § 1928.110(c)(4), must be achieved by July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: As an aid to the reader, the following is an outline of the contents of this **Federal Register** notice:

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C. Agricultural Employer and Establishment
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I. Background, Legal History, and Pertinent Legal Authority

A. Background

The Occupational Safety and Health Act ("The Act"; 29 U.S.C. 651, *et seq.*) was enacted "to ensure so far as possible every working man and woman in the Nation safe and healthful working conditions . . . . " The absence of, or inadequate sanitation and hygiene has long been recognized by medical science as a principal factor in the transmission of bacterial, viral and parasitic diseases. Inadequate water supply and human waste removal have been shown to produce critical health problems. The provision of potable drinking water, the proper disposal of human wastes, and the use of personal and public hygienic practices are known to prevent the transmission of many communicable diseases. Thus, the provision of sanitation facilities is necessary to ensure safe and healthy working conditions.

Requirements for the provision of sanitation facilities are included in OSHA's General Industry Standard, which applies to all employers in general industry, and in the construction and maritime standards. Agricultural employees are covered by the Act, and OSHA has promulgated several standards for protection of the safety and health of agricultural workers (29 CFR Part 1928). These standards do not include rules for sanitation facilities in the field. A separate OSHA standard does require sanitation facilities in temporary labor camps (29 CFR 1910.142. Ex. 11-020), where most migrant farm workers reside while working away from home.

An estimated 471,600 hired farm workers will be covered by this standard (see Section VI). Many of these workers are migrant workers, who may contract and pass on communicable diseases as they move from area to area and state to state. Large groups of migrant workers who provide hand labor to cultivate and harvest food and fiber crops typically spend the winter months in South Texas, Florida and California, where the mild climate provides growing seasons of 300 or more days per year. During the cultivating and harvesting seasons, these workers find employment along three principal routes in other parts of the continental United States. The group based in Florida travels north to work in the eastern states, and the workers residing in Texas and Mexico travel north to work in the midwestern and far northwestern states. Migrant workers originating in California and Mexico also find work along the West Coast. Other non-migrant workers remain throughout the year near their sources of summer employment to form a permanent cadre of seasonal and part-time workers.

B. History of the Standard

On September 1, 1972, the National Congress of Hispanic American Citizens filed a petition asking OSHA to issue a standard for agricultural workers requiring employers to provide potable drinking water and handwashing and toilet facilities in the field. Pursuant to a 1982 court-approved settlement agreement resolving almost 10 years of litigation surrounding OSHA's activities with regard to this issue, the Agency, on March 1, 1984, published a notice of proposed rulemaking and a request for comments. (A fuller explanation of the background and legal history surrounding the field sanitation standard can be found at 49 FR 7589 and 50 FR 15086).

The 1984 proposal required employers to provide potable drinking water and toilet and handwashing facilities, in a specified ratio, to employees engaged in hand labor in the field on farms where, on any given day, 11 or more such field workers were employed (42 FR 7589). OSHA noted that the exemption for farms with ten or fewer field workers was because of limitations imposed on the Agency by Congress in the annual appropriations bill (Pub. L. 98-139, Ex. 11-009) and because it may be infeasible, and perhaps unnecessary, for very small farms to provide such

facilities. In the notice, the Agency solicited comment on a number of issues, including whether the standard should apply to agricultural employees other than hand laborers in the fields; whether minimum ratios of toilets and handwashing facilities per number of field workers and maximum distances between the facilities and the field workers should be specified and, if so, what the appropriate ratios and maximum distances should be; whether substitutes for soap and water, such as moist towelettes, would be adequate to reduce exposures to both agricultural chemicals and pathogenic organisms; and whether there is a need for a federal field sanitation standard.

Following publication of the 1984 proposal an extensive rulemaking record was developed. The record includes 487 prehearing comments; testimony by 243 witnesses at five public hearings, held between May 23, and June 28, 1984, in Washington, DC (from May 23 to May 30, and described in citations as volumes W1 through W5), in Orlando, Florida (from June 5 to June 7, and described in citations as volumes O1 through O3), in Lubbock, Texas (from June 12 to 13, and described in citations as volumes L1 and L2), in Toledo, Ohio (from June 19 to 21, and described in citations as T1 through T3), and in Fresno, California (from June 26 to 28, and described in citations as F1 through F3); and more than 200 exhibits and post hearing comments. The rulemaking record was closed on August 31, 1984.

Following the public hearings, to aid in its consideration of the public record, OSHA contracted with two experts, Dr. Jesse S. Ortiz, Associate Professor of Environmental Health, School of Health Sciences, University of Massachusetts (Amherst), and Eugene J. Gangarosa, M.D., professor and Director, Master of Public Health Program, Emory University School of Medicine, to summarize and analyze the scientific evidence in the record and, if possible, to make quantitative assessments of the risks faced by farmworkers due to inadequate drinking water and field sanitation. Those risk assessments were completed and delivered to OSHA in early October 1984, following the closing of the public record.

In January 1985, one month before the 31-month deadline for completion of the rulemaking and pursuant to the provisions of the settlement agreement, the Secretary requested a two-month extension of time for publication of his decision. Prior to a ruling on the extension request, on March 6, 1985, the case was transferred to the D.C. Court of Appeals under the authority of *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW* v. *Donovan*, 756 F.2d 162 (D.C. 1985) and assigned a new Case Number: 85–1176. On March 29, 1985, the Court of Appeals granted the extension, concluding that the Secretary had demonstrated that the deviation from the settlement agreement's timetable was in good faith. The court admonished the Secretary, however, that it would "look with extreme displeasure on any variance from the schedule and will not hesitate to set a date certain for completion of the administrative proceeding if . . . [the Secretary] unreasonably delay[s]." [J.A. at 35].

On April 16, 1985, the Secretary announced his decision not to issue a federal sanitation standard (50 FR 15086). The Secretary gave two reasons for this decision: (1) The low priority in enforcement relative to most other health standards and (2) the belief that the states could more appropriately protect field workers than the federal government. With regard to the priorities argument, the Secretary concluded that it would not be appropriate to divert scarce agency resources from the enforcement of other OSHA standards protecting workers from more life-threatening toxic exposures. With regard to the federalism issue, the Secretary concluded that the states, which increasingly were moving to regulate the problem, were better positioned to regulate in this traditional public health area, especially since OSHA had been prohibited by Congress from regulating farms with 10 or fewer employees.

Having complied with the terms of the Settlement Agreement, the Secretary filed a motion in the Court of Appeals to dismiss the case (No. 85–1176). Over petitioner's opposition, the court dismissed the case on July 24, 1985.

While Secretary Donovan's motion to dismiss the case was pending, however, the newly designated Secretary of Labor, William E. Brock, stated during his confirmation hearings on April 24, 1985, that he would review the former Secretary's decision not to issue a federal field sanitation standard. Shortly thereafter, on May 7, 1985, the Secretary received a petition filed by the Farmworker Justice Fund and 28 other organizations urging him to reconsider the April 16 decision. While the Secretary was reviewing that decision, plaintiffs filed suit in the Court of Appeals challenging the validity of the April 16 decision. This became Case No. 85–1139.

On October 21, 1985, Secretary Brock published the results of his review and reopened the rulemaking record to insert the two risk assessments and to solicit public comment (50 FR 42660). He announced that a federal field sanitation standard would be promulgated within 24 months unless existing state standards and enforcement programs were strengthened and unless adequate standards were adopted and enforced in the remaining states with significant farmworker populations so that the vast majority of farmworkers in those states not already covered would be protected. Although Secretary Brock did not reject the former Secretary's policy reasons for the April 16, 1985, decision, he concluded that "the clear evidence in the record to date of unacceptable risks to the health of farmworkers arising from the currently inadequate provision of sanitary facilities and drinking water at their worksites means that the decision not to issue a federal standard must now be set aside." Secretary Brock concluded that further regulation was required to deal with farmworkers' health problems.

The Secretary observed, however, that approximately three quarters of the affected workers were already covered by some sort of state regulation and that state activity had increased significantly in recent years. Since the Secretary continued to believe that "state action responsive to this need would be preferable to, and more effective than federal action," he deferred federal action for 18 months to "afford the states an opportunity to take adequate action." The Secretary committed himself to deciding in April 1987 whether the states had acted sufficiently to protect farmworkers to preclude the need for federal action, and in the event they had not, he further committed himself to promulgating a federal field sanitation standard within the following 6 months (i.e., by October 1987).

In the October 1985 notice, the Secretary also established guidelines for determining the adequacy of state action. First, with regard to content, an adequate state standard had to "provide protection equivalent to the federal field sanitation standard proposed in 1984" (49 FR 7589, March 1, 1984). This meant, according to the Secretary, that a state standard must require (1) that employers provide and maintain the three basic facilities—drinking water, toilets and handwashing—in the fields for farmworkers' use; and (2) that the manner in which the three facilities are provided "must, viewed as a whole, provide protection equivalent to the 1984 proposal." The state standard did not

have to be identical to the federal proposal. Indeed, the Secretary set only minimum criteria for adequate state regulation and expressly stated that the guidelines were intended to provide individual states with sufficient flexibility so they could shape provisions to fit local climatic, topographical, crop and labor conditions. [The Secretary concluded, however, that moist towelettes were not an adequate substitute for handwashing facilities.]

Second, regarding the extent of state action required in states without field sanitation standards as of October 1985, the increase in the number of states with adequate standards had to be sufficient to ensure that the vast majority of hand laborers working in the fields, who were not then covered by state standards, would be protected. This meant that states without standards that have significant farmworker populations must promulgate field sanitation standards.

Third, to assure compliance with their standards, states also had to have adequate enforcement programs, including the necessary legal authority, compliance staff, resources, inspections, notice requirements and methods to compel abatement. In addition, in order for states to adequately protect field workers, those states with existing, but inadequate, field sanitation standards had to appropriately strengthen their regulations and enforcement.

After announcing the October 1985 decision, which superseded the April 16, 1985 decision, the Secretary moved to dismiss Case No. 85–1349, challenging the revoked April 16 decision, as moot. Plaintiffs opposed this motion and moved to reinstate the original case, previously renumbered as Case No. 85–1176. The Court of Appeals granted the Secretary's motion to dismiss and denied plaintiff's motion to reinstate (Order No. 85–1359). Plaintiffs also challenged the October 1985 decision as a violation of the 1982 settlement agreement, the Occupational Safety and Health Act, and the Administrative Procedures Act (D.C. Cir., No. 85–1824).

On February 6, 1987, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Secretary's October 1985 decision was based on factors the Secretary could not lawfully consider and on an unreasonable expectation that the states could be encouraged to provide adequate protection to farmworkers within 18 months. The court ordered the Secretary to promulgate a federal field sanitation standard within 30 days of the issuance of its order (*Farmworker Justice Fund* v. *Brock* (D.C. Cir., No. 85–1824).

Writing for the majority, Chief Judge Wald stated that the court was "not evaluating the Secretary's fundamental administrative decision about how best to allocate his agency's resources or to order its priorities" (p. 21). The Secretary, she stated, had already determined that unacceptable health risks to farmworkers necessitated further regulation. He had committed OSHA to issuing a federal standard within 24 months, regardless of other priorities, if the states did not take adequate action within 18 months. The Secretary's preference for state action in that context, the court said, insofar as it constituted reliance on the Secretary's own vision of federalism as a basis for not issuing a federal field sanitation standard, was beyond the Secretary's authority. It violated the balance of responsibility between state and federal governments that Congress has set in the Occupational Safety and Health Act.

While finding that "the adequacy of existing or imminent state regulation is a permissible consideration" in the Secretary's determination of the need for a federal standard, the Court also held that the Secretary, in this case, had unreasonably delayed the federal standard on this basis. The states, the court said, had already had ample opportunity to develop field sanitation standards by October 1985.

In a separate action, on March 6, 1987, OSHA made a preliminary determination that promulgation of a federal field sanitation standard is necessary and, on March 11, 1987, the Agency published a **Federal Register** notice of this determination (52 FR 7451). In this notice, OSHA also reopened the rulemaking record for the limited purpose of permitting public comment on the states' responses to the Secretary's October 1985 notice. In the March 6 notice, the Assistant Secretary committed OSHA to promulgating the standard as expeditiously as possible (on or about April 21, 1987). Noting that many states had responded positively to the Secretary's October 1985 notice, OSHA, nonetheless, found that the response had been inadequate under the Secretary's guidelines. Comments subsequently received in response to the March 6 notice (Ex. 228) did not add significant new information on this issue and therefore have not affected the Secretary's decision, which is now final, that a federal field sanitation standard is needed at this time.

At the time of the Secretary's October 1985 decision, 12 states (California, Connecticut, Florida, Idaho, Illinois, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania and Texas) had enforceable field sanitation standards of some sort. Based on recently updated demographic information (see Section VI), these standards covered approximately 63 percent of the field workers on farms with 11 or more employees. Since that time, 10 more states (Alaska, Arizona, Delaware, Hawaii, Maryland, New Mexico, South Carolina, Utah, Wisconsin, and Wyoming) have promulgated such standards, covering an additional 7 percent of field workers. Another 11 states (including Colorado, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, North Dakota, Ohio, Rhode Island, Virginia, and Washington) and Puerto Rico, covering approximately 21 percent of those field workers, were as of March 6, 1987, in the process of developing standards. Thus, by April 1987, as many as 34 states and territories, covering 93 percent of field workers on farms with 11 or more employees, possibly could have had field sanitation standards. The Secretary was gratified by the efforts made by these states.

However, four of the states which had standards March 6, 1987 (Hawaii, Idaho, North Carolina, and New York) do not require employers to provide all three of the sanitation facilities deemed necessary to provide adequate protection. These four states contain approximately 15 percent of all of the field workers on farms having 11 or more employees. The standards in five other states (Florida, Illinois, Maine, Oregon and Wisconsin) permit employers to provide moist towelettes as a substitute for handwashing facilities. These five states account for approximately 18 percent of all field workers on farms of 11 or more employees. Finally, 17 states (including Alabama, Arkansas, Georgia, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, Oklahoma, South Dakota, Tennessee, Vermont and West Virginia) and the Virgin Islands, with approximately 7 percent of the field workers on farms with 11 or more employees, have not promulgated any field sanitation standards and are not in the process of developing them.

Thus, without considering the adequacy of their enforcement programs, as of March 6, 1987, at best only 13 states, covering approximately 39 percent of the field workers on farms with 11 or more employees, had standards providing protection that could be considered basically equivalent to the federal field sanitation standard proposed in 1984. Even assuming that all 12 of the states in the

process of developing field sanitation standards promulgated adequate standards prior to April 1987, no more than 60 percent of the field workers on farms with 11 or more employees would have been adequately protected. In addition, only 45 percent of all field hand laborers (i.e., those on farms with fewer than 11 employees as well as those on farms with 11 or more employees) were covered by state field sanitation standards as of March 6, 1987. This amounts to an increase of only 5 percent over the percentage of all farm workers covered at the time of the Secretary's October 1985 determination. No more than an additional 8 percent of all farm field workers might have been covered as a result of state actions taken between March and April 1987. Thus, the percentage of all field workers protected by state standards could not have significantly increased by April.

Consequently, based on the extent and adequacy of the states' responses, the Secretary made a preliminary determination that a federal field sanitation standard must be promulgated. The Secretary directed OSHA to issue the standard as expeditiously as possible (on or about April 21, 1987).

Having made this determination, the Secretary, on March 9, 1987 filed a petition with the Court of Appeals for a rehearing *en banc* of the case (Case No. 85–1824). The Secretary argued, as Judge Williams had explained in his concurring and dissenting opinion, that the Secretary's action was based solely on consideration of permissible factors and involved no ascertainable abuse of discretion. The Secretary believes that the majority decision raises crucial questions regarding the ability of federal agencies to allocate enforcement resources and to consider the comparative effectiveness of state regulatory efforts. The judicial overreaching of the Court's majority opinion is demonstrated, in the Secretary's view, by its issuance two months prior to the Secretary's own scheduled determination and by its requirement that a complex federal regulatory scheme be introduced within 30 days.

In particular, the Secretary believes the majority opinion fails to appropriately defer to executive decisions regarding use of enforcement resources and supplants the Secretary's own evaluation with that of the Court. The opinion, the secretary believes, further chills innovative attempts to achieve the most efficient use of federal and state resources by holding that the Agency may not temporarily delay regulation in accordance with a fixed timetable in order to encourage more comprehensive state action. Finally, the decision establishes a new rule that when a Court rejects an agency decision to take action contingent on future events, the Court itself may order immediate agency action, instead of remanding the Agency's decision in accordance with settled principles of administrative law. Because the majority's opinion not only misapprehends the basis of the Secretary's action, but also marks a radical departure from settled administrative law doctrine, the Secretary has argued that the case warrants rehearing *en banc*.

The petition for rehearing addresses the critical issues of administrative law and not the underlying question of whether a federal field sanitation standard should be issued. Concerning that, there is no dispute, since the Secretary had already preliminarily determined that a federal standard would be issued as a result of the ongoing process of review set in motion by his October 1985 decision. Based upon the Secretary's review of the entire record, that decision is now final.

C. Pertinent Legal Authority

Authority for this action is found primarily in sections 6(b) and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655 (b) and 657(g)(2). Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 3(8) of the Act, 29 U.S.C. 652(8), defines an occupational safety and health standard as:

> a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe or healthful employment and places of employment.

The Supreme Court has said that section 3(8) applies to all permanent standards promulgated under the Act and requires the Secretary, before issuing any standard to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* vs. *American Petroleum Institute*, 448 U.S. 607 (1980).

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed regulatory action, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of health * * *" (Section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981).

Specific authority for requiring employers to inform employees about the hazards to which they are exposed and the precautions needed to minimize that exposure is found in section 6(b)(7) of the OSHA Act, which states:

> Any standard promulgated under this subsection shall prescribe . . . appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

The Secretary's authority to issue this standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under the Act"—in this case as part of or ancillary to, a section 6(b) standard. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include:

> Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(4));
>
> Authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to business affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under there Act; (29 U.S.C. 657(b)(3));
>
> Building upon advances already made through employee and employer initiative for providing safe and healthful working conditions (29 U.S.C. 651(b)(4));
>
> Providing for the development and promulgation of occupational safety and health standards; providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem; exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * * (29 U.S.C. 651(b)(6));

Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651(b)(13));

And developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (19 U.S.C.), 651(b)(5).

Because this field sanitation standard is reasonably related to these statutory goals, the Secretary finds that this proposed action is necessary to carry out his responsibilities under the Act. In addition to its status as a section 6(b) standard, therefore, it also falls within the broader class of section 8 regulations.

II. Population at Risk

Of the farm labor population at risk, OSHA proposed to cover approximately 471,600 workers engaged in hand labor in the fields of approximately 54,000 farms across the United States (see Ex. 16 and Section VI below). OSHA limits its coverage to hand laborers because they are at greatest risk of disease from inadequate provision of drinking water and sanitation facilities in the fields. OSHA further limits its coverage of hand laborers to those on farms with 11 or more such workers, because an annual amendment to the House Appropriations Bill prohibits the Agency from regulating farms with fewer than 11 employees (Ex. 11–009; also see current FY 1986 Appropriations Act at paragraph 518.19). Thus, only the largest 10% of all farms engaged in hand labor activities, which employ 36% of all agricultural field hand laborers, are covered by the standard.

Of the 471,600 hand laborers, approximately 118,000 are interstate migrant workers. The total workplace population tends to be between 18 and 45 years old, is approximately 25–30% female, includes young adults and children under 18 years of age and generally has diminished health, more illness and shorter life spans (Ex. 16; 90; 179) than the average American population of comparable age and sex distribution (Ex. 170; 11–004; 11–026; 11–028; 11–030; Tr. T3, pp. 273–274; T3, p. 114; L2, p. 105).

Since OSHA is covering only hand laborers working on farms that employ 11 or more field workers, employees working under conditions of higher population density will be protected. The average crew size on these farms is 10 employees. Size of crews varies with the operation, crop, and crop-yield (see section VI). These field workers work a variety of crops, many of which, like tomatoes, strawberries, cucumbers and apples, require pickers to return to the same fields repeatedly during the harvest to pick the crop as it ripens. Therefore, where facilities are not available, these employees are often subject to multiple hazard exposures and resulting higher risks of infection, because the risk of infection or contamination increases with repeated exposure (Tr., W1, pp. 82–7; W1, p. 97; Ex. 11–047).

During cultivation and harvest seasons, the migrant field worker population moves North from the three year-round growing areas of California, South Texas and Florida, across more than 41 states, to supplement the "settled-out," local rural labor force or, in some operations, to provide all the labor required. Since only twelve states, at best, have standards that could be considered adequate, farmworkers in many states are not adequately protected. Even those who work only in states that do provide adequate protection, are exposed to infections carried by migrant farmworkers who have contracted diseases in states without such protection. Consequently, without nationwide sanitation rules and their enforcement, existing state rules may be rendered less effective.

III. Absence of Facilities in the Field

Although public health authorities here and abroad have proven that toilets and potable water for drinking and handwashing are essential interventions to prevent the occurrence of such diseases as heatstroke and to interrupt the transmission of communicable disease (Ex. 11–010; 11–036 and 11–041), toilets, handwashing facilities and drinking water frequently are absent from agricultural fields in the United States. According to a 1984 survey carried out by Centaur Associates under contract with OSHA, approximately 37% of farmworkers were not provided with toilets; approximately 55% had no handwashing facilities; and about 21% were not furnished drinking water. Only 22 to 45% of the relevant farms were estimated to provide all three facilities to workers. Comparable estimates from a 1978 survey of Wisconsin farmworkers (Ex. 11–004, p. 46) and a 1984 Michigan Farm Bureau survey (Ex. 120, p. 63) support the conclusion that large numbers of farmworkers are not now provided with drinking water and sanitation facilities. More than half of the responding farmworkers in the Wisconsin study indicated they did not have access to one or more of the three facilities. In addition, many farmworkers from across the nation who testified at the hearings for this rule have supported the finding that facilities are frequently absent from the field (Tr. W2, p. 496; W3, p. 583; W3, p. 610–11; 02, p. 1566; 03, p. 2000; T3, pp. 30, 47).

Based on testimony repeatedly provided at hearings, published estimates of the extent of provision of facilities and water may well be too high. Even in regulated jurisdictions like Florida, an important agricultural state with a large number of hand laborers and a well established field sanitation standard (Ex. 11–073), provision of facilities is estimated to be well below 50%. For example, Mr. John Sharp, a central Florida citrus grower, testified that only 10% of Florida's citrus growers and 25–50% of its vegetable growers provide any of the sanitation facilities required by Florida's regulations (Tr. 02, pp. 1622–23).

And in Texas, another important agricultural state with a field sanitation standard, state officials report approximately 80% compliance with the state standard in the Rio Grande Valley but much lower levels (0% to 5%) of compliance elsewhere (Tr., L2, pp. 42, 50). One Texas Department of Health official indicated that "enforcement arrangements" at that time were underfunded for field sanitation and that poor compliance was linked to a lack of enforcement (Tr., L2, p. 49). These findings concerning the absence of field sanitation facilities are supported and summarized (Ex. 13–60) by a comment from Texas State Representative Rene O. Oliveira who wrote, "Although Texas has field sanitation standards on the state level, almost no money is spent for enforcement, and most of the states to which farmworkers travel have no protection whatsoever." The extraordinarily high incidence of pathogenic and parasitic roundworms (nematodes) in farmworker populations in Arizona, Florida, North Carolina and Massachusetts (Ex. 148A; 81; 13–418; 11–031), suggests a lack of toilets at worksites in those states, as well.

Employers throughout the nation differed in their provision of facilities (Ex. 141; Tr., F2, p. 90; W3, p. 728, 730; T2, p. 212; T1, p. 251). Some growers and their trade associations recognized the need for good sanitation in the field (Tr., W2, pp. 463–4; T2, p. 195). One major grower with operations in Michigan and Texas, for example, was highly commended on the record by a worker representative for providing good sanitation facilities in the fields near Weslaco, Texas (Tr., T2, p. 243). Nonetheless, the weight of the record evidence strongly supports the view that this is the exception, not the rule. Moreover, according to testimony at the hearings and comments submitted to the record, when facilities are provided, frequently they are too few for the size of the crew (Tr., FL, p. 321), not located

for easy access (Tr., W3, p. 583) or not clean enough to use (Tr., W2, p. 523; L1, p. 2135; Ex. 148b).

Where facilities are unavailable or inadequate, farmworkers are faced with alternatives that threaten their health because they cannot take care of their most basic physiological needs. Working in hot environments (Ex. 151; Tr., L1, pp. 2103, 2286), if they minimize their fluid intake to try to limit their need to urinate, they risk dehydration and heat stress (Ex. 11–018, p. 140; Tr., T2, p. 281). If they drink water from irrigation pipes or ditches to quench their thirst, as some do (Tr., F1, p. 12), they risk being poisoned by agrichemicals or infected by pathogens from solid waste eliminated into the soil or ground water (Tr., T1, p. 159). They can try to retain their urine, but thereby, for women especially, risk getting urinary tract infections (Tr., W1, p. 275; Ex. 2–374, 62, 2–318, T1, p. 155). Or they can simply urinate and defecate in the fields, subjecting their co-workers to exposure to communicable diseases (Tr., W2, p. 504; L2, p. 253).

In fact, testimony shows that, where toilet facilities in the fields are not adequate, reasonably accessible and clean enough to be usable, employees have been forced to urinate and defecate in the fields. Many farmworkers testified that when facilities were unavailable, they frequently saw human feces in the fields where they worked (Tr., W3, p. 610; 02, p. 1720; L1, p. 2290; T3, p. 119; F1, p. 209, 226, 236). This widespread contamination of the fields is further confirmed by a video tape survey (Ex. 98), by written comments (Ex. 2–291, 2–302, 2–307, 2–309, and 2–388), and by the testimony of some growers, grower's wives and their friends, who stated they had deposited their excreta in the fields when facilities were unavailable (Tr., W3, p. 712; W3, p. 737; T1, p. 276).

When human excreta containing infective agents are deposited directly into the fields, the soil becomes a nourishing medium (Ex. 10) for the survival, and in some cases the growth of human pathogens. There, a pathogen may persist as an infective agent for additional days, months and in the case of some parasites, in warm, moist soil, for more than a year (Ex. 11–010, pp. 34–35). Some parasites require this interval in the soil to complete their life-cycles and to become infective. Thus, infections can be prevented by the provision of toilets, which isolate fecal contamination.

IV. Health Effects

A. Health Hazards in the Farm Field

1. Introduction

The basic public health principle upon which this standard relies is that poor sanitation increases the prevalence of disease. (Ex. 11–030). This principle has been well understood and universally accepted for over 100 years (Ex. 11–010; 11–028; 11–060). Diarrheal diseases, for example, have long been known to be associated with unsanitary conditions (Ex. 11–037; 11–039; 11–041; 11–053; Tr., W1, p. 09). The late Dr. John Knowles, former President of Rockefeller University, observed that good sanitation practices and facilities are among the major contributors to the improved health and decreased mortality of people in the Western world during the last three centuries (Ex. 11–070, p. 57). Testimony from health professionals and data in the field sanitation record confirm this basic public health principle. (See the preamble to OSHA's proposed standard at 49 FR 7592 for a literature review of the relationship between excreted diseases and the lack of sanitation).

Unsanitary conditions in the U.S. agricultural workplace and concern about the spread of communicable disease were documented as early as 1908 by President Theodore Roosevelt's *Country Life Commission* (Ex. 11–026). After 1940, scientific verification of the adverse health effects from unsanitary conditions on the farm began to appear in reports of Federal and State public health officers (e.g., Ex. 11–026). By 1962–63, the Senate Subcommittee on migratory labor had reviewed the evidence and concluded that farmworkers suffered widespread diseases related to the unsanitary conditions where they worked and lived (Ex. 11–026; 11–030).

Based on such evidence, agricultural states like California and Connecticut more than 20 years ago passed field sanitation rules similar to OSHA's 1984 proposal. In 1968, the American National Standards Institute issued a voluntary labor camp standard for temporary employee housing in agriculture (ANSI, Z4.4, 1968), which was adopted as an OSHA consensus standard after the Agency was established in 1970 (29 CFR 1910.142). In so far as employers have achieved compliance with this temporary labor camp standard (29 CFR 1910.142) for migrant worker residences, sanitation should be adequate where these workers live. Since then, workers in virtually all other industries have been protected by OSHA standards from diseases associated with unsanitary working conditions (see the section Federal regulation). However, until now a Federal field sanitation rule has not been promulgated. The current field sanitation record shows that the continuing absence of adequate sanitation facilities in the fields constitutes a serious health hazard to hundreds of thousands of farmworkers.

Adverse effects on the health of agricultural workers may result from: (a) Exposure to drinking water that is contaminated with disease-causing organisms or toxic agrichemical substances (b) insufficient potable water to prevent dehydration, heat exhaustion, heat stroke, or other illnesses related to exposure to hot environment; (c) insufficient washing water to prevent or reduce fecal-oral transmission of disease-causing organisms and to prevent or reduce agrichemical exposure and absorption through the skin; (d) inadequate toilet facilities, leading to employee defecation or urination in fields with resulting employee exposure to disease-causing organisms in urine and feces; and (e) urine retention over long work days causing possible physical harm and increased risk of disease.

The risk of these adverse effects is augmented by a variety of factors. The larger the number of workers employed in hand labor operations without adequate toilet facilities, the greater will be the risk of communicable disease because of the greater likelihood of employee exposure to disease-causing organisms carried in urine and feces deposited in the field. The less well nourished the workers are, the more susceptible they are likely to be to disease (Ex. 11–002, 11–027). The more workers are employed in hand labor in fields sprayed with agrichemicals, the more likely are they to be exposed to the toxic chemicals because of increased contact with sprayed plants. The less adequate the quantities of drinking water available, the less the body is able to handle an increased toxic load from exposure to agricultural chemicals (Ex. 11–027).

Four types of health hazards associated with a lack of drinking water and sanitation facilities appear to be the major causes of occupation-related illness among farm field workers. These hazards are heat, communicable disease including parasites, and agricultural chemicals. Each of these and their resultant health effects is discussed below.

2. Heat Related Illness

Exposure to excess ambient heat has been recognized as an important health

hazard for centuries. Human body functions operate normally within a narrow range of temperatures (approximately 37 degrees centigrade [37 °C]). Increases in body core temperature as small as 5 °C above that range often result in serious or fatal heat related illnesses. The balance between heat production by the body and heat transferred to and from the environment determines body core temperature. The evaporation of perspiration is the most important process for cooling the body (Ex. 13–378), but evaporation and cooling capacity decrease as environmental heat and humidity increase (Ex. 24). Temperatures of 90 degrees Fahrenheit (32.2 °C) with 80% humidity, a common field condition, put workers at high risk of heat-related injury, according to testimony by OSHA's expert witness on heat stress (Tr., W2, p. 305).

Dehydration, which reduces the body's capacity to dissipate heat by perspiration, is a primary cause of heat-related illness (Tr., W1, p. 195; Ex. 145B). Death can result if dehydration is severe. If proper tissue hydration is to be maintained, allowing bodily functions to continue, lost water must be replaced. Estimates of water requirements for persons engaged in moderate work in the summer in temperate regions range from 6 to 10 quarts per person, per day, depending on temperature, humidity, number of hours worked and amount of activity in direct sunlight (Ex. 11–063, 11–064).

Reports of the effects and occurrence of water deprivation are found throughout the rulemaking record (Tr, F2, p. 143; F3, p. 129; F3, pp. 137–8; F3, p. 200; T2, p. 170; L1, p. 2249). With physical exertion under hot and humid conditions, such deprivation can lead to a variety of heat-related illnesses, such as heatstroke, heat cramps, and heat exhaustion. The most serious of these is heatstroke (Ex. 199). At best, it leaves the sufferer highly sensitive to heat for the rest of his life, which effectively means a farmworker can no longer work in the fields (Ex. 199). At worst, experience shows that more than 10 percent (reaching levels of 20 to 25 percent) of heatstroke cases are fatal (Tr, W2, p. 323). Heatstroke can be, and recently has been fatal in the farm field, even for young and healthy adults (Ex. 137). The risks are higher still among those who are obese, fatigued, unacclimatized, have diarrhea, are alcoholics, are old, have other chronic diseases or are in poor physical condition, conditions known to occur among farmworkers (Ex. 24). For an undetermined number who survive heatstroke, the illness produces varying degrees of brain damage. Heat cramps and heat exhaustion are debilitating, but less serious.

OSHA's expert witness on heat stress testified that among a healthy strong population working without water in the heat of the farm field, more than fifty percent would suffer heat-related illness including an incidence of heatstroke of one to two percent (Tr., W2, pp. 321–22). In order to eliminate, or greatly reduce heat-related diseases, cool, potable water must be provided to farmworkers throughout their work day. Substitutes, such as fruit, soda and beer, are not sufficient and, at least in the case of beer, may be harmful. (See "Provision of Drinking Water," below, for a more thorough discussion of drinking water.)

Statistically reliable data in the rulemaking record show that farmworkers suffer an excess risk of heat related occupational illness. An analysis in *Professional Safety*, September 1983 (Ex. 24), of the incidence of Workmen's Compensation claims for heat-related injuries, which used statistics gathered by the Department of Labor's Bureau of Labor Statistics (BLS), showed the incidence of compensation claims for heat-related injuries among farm laborers to be the highest of any occupation in the United States. Farmworkers, with a claim rate of 9.2 claims per 100,000 employees, ranked higher than firemen, construction workers and miners, all of whom routinely work in hot environments at high risk. Farmworkers had a 1.44 times greater rates of claims than construction workers and a 1.83 times greater rate than mine workers. Data published in *Occupational Diseases in California, 1979* (Tables A–1 and A–6) further confirm that farmworkers have a much greater risk of heat-related illness than other workers. This data shows that farmworkers had a relative risk of 4.11 times greater than the average risk for all other occupations (Ex. 225).

The rates shown in these two reports are very consistent. If these annualized rates are converted into rates per working lifetime, the comparable figures are approximately 4.5 workers per 1,000 farmworkers who would claim workman's compensation for heat-related illness. These data, described by the author of one of the risk analyses as the "tip of the iceberg," undoubtedly understate the extent of the problem (Ex. 225, p. 16). First, the Workmen's Compensation claim data do not include cases from any states that do not report to BLS, examples of which include most of the hot, often humid states of the south and southwest. Second, farmworkers often do not have easy access to the Workmen's Compensation system, and thus are likely to report fewer claims per number of incidents than workers in many other occupations. Finally, less serious incidents of heat-related injury or illness inevitably are either underreported or not reported at all.

Nevertheless, if the very conservative 4.5 per 1,000 rate for farmworkers' claims accurately reflects actual incidents, and if two-thirds of those incidents represent cases of heatstroke (which is the only heat-related illness likely to be serious enough to be reported), then 3 farmworkers per 1,000 would suffer from heatstroke over their working lives. At this rate it is estimated that more than 3 farmworkers in 10,000 would die from heatstroke, more would suffer brain damage, and the rest would not be able to resume their occupations because of the reduction in their functional capacity to withstand heat.

That these projections are likely to be reasonable is confirmed by the fact that, during the 1984–85 growing season, three field workers are known to have died from heatstroke in California alone (Ex. 137a, 137b, 160). Since under the assumptions made above, 3 workers per 10,000 would be expected to die from heatstroke over their working lives, among an estimated population of approximately 471,600 agricultural workers, 3.1 farmworkers would be expected to die annually from heatstroke.

3. Communicable Disease

In the absence of sanitation facilities and a source of potable water at the worksite, communicable diseases often arise that are easily transmitted in the workplace. These infectious diseases, found among U.S. farmworkers, have been classified recently by Feachem and his associates (Ex. 11–010), based on the mode of transmission and epidemiology of the infectious agents, into three classes, as shown in Table I. These classes are water-borne diseases, enteric (intestinal) bacterial diseases and intestinal roundworm infections.

Class-one, water-borne pathogens and class-two, enteric bacteria are all single-celled pathogens. Pathogens from both classes are immediately infective upon excretion, have relatively simple life-cycles, and do not require intermediate animal hosts or incubation time to become infective or to survive. Class-one, water-borne pathogens include viruses and protozoal parasites. Enteric bacteria are classified as a separate class, because they require 10,000 to one million cells (high infective dose) to

overcome the physiological defenses of a new human host to produce an infection. By contrast, water-borne infectious agents face little resistance and need only 1–200 cells (low infective dose) to produce disease. However, the class-two, enteric bacteria, like Shigella and Salmonella, can generate the minimum effective dose needed to overwhelm the defenses of a new host because, unlike class-one pathogens, they are able to multiply in organic matter in the field or in food outside the host. Thus, a small number of deposited pathogenic cells, distributed by contact with a fly's leg or with vermin, can multiply to produce disease in humans. As shown in table I, the survival time for each of the infectious agents in these two classes varies from 3 weeks to 3 months. As survival time increases, the risk of acquiring the particular infection increases.

TABLE I—COMMUNICABLE DISEASE ORGANISMS IN FARMWORKERS POPULATIONS

[EX.11-010, pp. 33-35]

Organisims/type	Reported by	Survival time in the field	Time required before infective in the field	Intermediate animal host/ reservoir	Established control method
Water-borne Agents:					
● Giardia (Single cell)	(Ex.2-253) (Ex. 44) (Ex.94) (Ex.106) (Ex. 13-400) (Ex. 11.031) (Ex. 13-418) (Ex. 148A).	25 days	None	No/Yes	●Potable water supply. ●Handwashing. ●Health Education. ●Provision of Toilets.
● Entamoeba histolytica (Single Cell).	(TR.W4,p.941) (Ex. 13-418) (Ex.148A) (Ex.81).	25 days	None	No/None	
● Hepatitis A (virus)(Ex.94) (Ex. 20) (Ex. 81)(.	(?)	None	No/None		
Bacteria:					
● Shigella species	(Ex.141) (Ex. 2-253) (Ex.11-018, pp 344-345).	1 Month	None	No/None	●Potable Water Supply. ●Handwashing. ●Health Education. ●Provision of Toilets.
● Pathogenic Escherichia coli.	(Tr., 01,1440) (Ex. 11-031)	3 months	None	No/None	
● Salmonella species	(Ex.11-018, pp344-345) (Tr., 02, p.1655).	2-3 months	None	No/Yes	
Roundworms, Pathogenic:					
● Hookworm	(Ex.11-03) (Ex. 81) (Ex. 13-418).	3 months	7 days	No/None	●Provision of Toilets.
● Ascaris	(Ex.11-031) (Ex. 13-418) (Ex. 148A).	1 year	10 days	No/None	
● Trichuris	(Ex.81) (Ex. 44) (Ex. 11-031) (Ex. 13-418) (Ex. 148A).	9 months	20 days	No/None	
● Strongyloides	(Ex. 44) (Ex. 11-031) (Ex. 148A).	3 weeks to years (Free living).	3 days	No/None	

Class-one pathogens like viruses and single-celled protozoal parasites, which are immediately infective upon excretion (no latency period) and require only a small number of pathogens to produce an infection, cause diseases among farmworkers such as amebiasis, giardiasis and infectious hepatitis. These diseases are usually transmitted by ingestion of the pathogens from unwashed hands that have been contaminated with infected feces, by drinking polluted water or by eating unwashed and unheated food, such as a salad that is contaminated. Transmission of these diseases is reduced, therefore, primarily by provision of potable drinking water and potable handwashing water. Drinking only potable water eliminates a major entry route for these pathogens into the intestines, from which they can attack the colon, liver and brain. Handwashing breaks the chain of transmission by mechanically removing or diluting the number of organisms on the hands to a concentration below the infective dose. Secondarily, provision of toilets, by containing, isolating and disinfecting feces that carry these infections, will reduce excreta-related ground water pollution, thereby reducing the number of such pathogens in the workplace.

Transmission of class-two diseases is best reduced by a combination of methods. Screened toilets with spring loaded or self-closing doors will isolate the organisms from the workplace and toilets charged with germicidal solutions will kill the pathogens. Potable drinking water will protect the intestine from invasion and infestation. And potable handwashing water can be used to clean soiled hands that may carry a large infective dose to the mouth.

Medical care to treat existing disease is another intervention, used independently or together with sanitation facilities, to improve occupational health. Medical care for these diseases generally can be effective. However, for employees like migrant farmworkers, identification of the type of infection, medical treatment, and clinical follow-up are difficult and expensive. These workers are very mobile; they follow available jobs, from one temporary work location to another, often far from medical care (Ex. 200, p. 91). Consequently, in actual practice the delivery of medical care to migrant farmworkers has not been an effective method of disease control.

Infected farmworkers without available sanitation facilities and a

source of potable drinking water can easily transmit the class-one, infectious agents that cause amebiasis (Ex., 81 148A, 11–010, p. 340), viral gastroenteritis (Ex. 11–010, p. 138; Tr., T1, p. 142–217), infectious hepatitis (A) (Ex. 11–010, p. 175; Ex. 81); and giardiasis (Ex. 11–010, p. 352; 11–031; Ex. 14). These diseases can be transmitted between coworkers by direct contact with "dirty hands" or "dirty water," or with workers' tools or work products. Lack of potable water and sanitation facilities also enhance the transmission of class-two excerted, pathogenic bacteria, which are able to multiply in the environment to achieve the infective dose, causing shigellosis (Ex. 11–010, p. 37; Ex. 141), salmonellosis (Ex. 81) and typhoid colitis (Ex. 81).

The third class of these communicable diseases is parasitic roundworms, which are the only multi-celled pathogens listed in Table I. The four types of roundworms shown in Table I—Ascaris, Trichuris, hookworm and Strongyloides—are not immediately infective and require 3 to 20 days incubation in the warm moist soil of a field to become infective. With more complex life-cycles, Ascaris and Trichuris develop infective eggs that can be ingested to produce disease. Hookworm and Strongyloides produce infective larvae that can penetrate the skin of the foot, ankle, or hand in contact with infested soil. The soil may have been polluted weeks, months, or in some cases, even years ago, since roundworms can survive in warm moist soil for months to years (Table I). Toilets are the only effective permanent intervention against roundworms, because they cannot survive to become infective in isolation from the soil.

Medical care for these parasitic infections is difficult. For example, no special drugs are available to prevent hookworm (Ex. 11–010, p. 364). Some common drugs given in mass therapy will rapidly reduce prevalence of infection with hookworm or other nematodes for a time, but such a reduction may be short lived in the absence of improvements in sanitation and education (Ex. 11–010, p 365).

When there are excreted deposits of the soil-transmitted, class-three parasites, these pathogens pollute the farm field for a longer period. Excreted deposits of strongyloid parasites can be infective for three weeks or longer after excretion (Ex. 11–010, p. 459; 11–031; 148A); hookworm parasites can be infective for three months (Ex. 11–010, p. 38; 11–031; 81); trichuriasis can be infectie for nine months (Ex. 11–010, p. 38; 13–418; 44); and ascariasis eggs can be infective for a year or more (Ex. 11–010, p. 38; 148A). All of these communicable diseases have been reported as affecting farmworkers and are not prevalent among other occupations (Tr., O1. p. 1441).

Of all the communicable diseases farmworkers suffer as a result of the inadequate provision of potable water and sanitation facilities at the worksite, diseases caused by parasites are the best documented. Parasites can be ingested or can penetrate the skin. Once inside the human host, these parasites can produce a variety of severe and debilitating conditions, depending upon the type and number of invading parasites and the general health of the host. These diseases, while normally not in themselves life threatening, can in some circumstances result in a loss of functional capacity (Ex. 11–010, p. 3). Typically, common parasitic infestation can cause diarrhea, anemia, a reduction in immunity to other diseases and a reduction in general nutrition. Parasitic worms like ascaris, hookworm, trichurius and stronglyloides can infect the heart, liver, and lungs, as well as the intestines (Ex. 11–010, pp. 362, 376, 458). A severe infestation of parasitic worms can also cause blockage of the intestine and attendant loss of nutrition. Such blockage can necessitate major surgery, which is a serious intervention and may result in a life threatening risk (Tr., O2, p. 1677).

A number of the diseases caused by such worms can, in combination with other circumstances, present very serious medical problems. Anemia is a good example. The severity of parasitic amenia depends on the extent and duration of the infestation. But the disease is more serious in women and is particularly serious in pregnant women. While statistics on the number of pregnant women engaged in field work are unavailable, most female field workers are in their childbearing years; large families are fairly common; and women generally continue working in the fields into the late months of pregnancy (Tr., O1, pp. 1467–8).

For pregnant women and their fetuses, expert testimony suggests, the clinical problem of eliminating parasites may be as serious as the problems resulting from witholding medical treatment. The typical treatment to eliminate parasites is to administer toxic drugs (e.g., a vermifuge or anhelminthic drug). This treatment of choice, unfortunately, may be very toxic to a developing fetus, since the drugs may pass through the placenta to the fetus and affect normal development. On the other hand, allowing a pregnant woman to continue to be infested, aggravates the potential problem of anemia for her and the fetus, which draws its oxygen and nourishment from her body. During the early months of pregnancy, when the fetus is developing very quickly, both the treatment to eliminate parasites and the anemia caused by their existence can be especially serious for the woman and the fetus (Tr., O1, pp. 1434–5, 1458–9).

The parasitosis caused by inadequate field sanitation is likely to be spread to the entire family. (Ex. 200, pp. 86, 89, 93). Children are particularly vulnerable to the ravages of parasites and may serve as a source of reinfection within the family (e.g., vertical transmission described by Drs. Gangarosa and Leon) and infection to those beyond the home, for example, in a nursery or day school (Tr., O2, p. 1680).

Since parasitic roundworms, to become infective to humans, require a period of incubation in moist soil and since these roundworms can remain infective for long periods of time in the field (i.e., they are persistent, in some cases for a year or more). Depositing excreta in fields through which farmworkers make repeated trips to plant, tend or harvest crops allows the roundworm to become infective and to infect workers who thereafter are exposed, often after all evidence of contamination is lost. Conversely, containment and isolation of human excreta that carry these parasites interrupts their life cycle by preventing them from incubating in the soil of the fields, which effectively precludes transmission of the disease. Therefore, provision of toilets is the primary intervention against roundworms.

Thus, an epidemiological explanation and classification of the relevant pathogens, including an understanding of their characteristics and lifecycles, forms the scientific basis for controlling pathogen transmission in the field by provision of adequate potable drinking water and sanitation facilities (Ex. 13–010, pp. 37–39) Since pathogens of various sorts may simultaneously contaminate fields, tools or other fomites (inanimate objects), and also may infect a single or many workers, all three facilities and minimal public health information for employees are required in each workplace to adequately reduce and control the transmission of these diseases.

Prevalence rates that form the basis of OSHA's risk assessment for parasitosis among farmworker populations range from 20 to 78 percent in the seven studies of rural clinics widely dispersed across the country. (Ex. 11–031; 19, 83;

70; 44; 148A; Tr. F2, 2124–7; 13–418; 13–473) These rates commonly fall in the 30%–48% range. This contrasts with parasitosis rates for the general population of the United States, variously estimated by expert witnesses to range between 1% to 3% (Tr., F2, p. 227; Ex. 224, 225).

If, conservatively, the lowest disease rates (20%) were applied to the relevant farmworker population, more than 90,000 field workers would be expected to be infested with parasitic worms during the growing season. Of these, a number can be expected to have multiple infections, which can complicate treatment and public health control. Professor Ortiz in an earlier publication, for example, found that 1% of the population he studied simultaneously had 5 or more different kinds of parasites and another 6 to 7% simultaneously had 3 or more. (Ex. 11–031).

Based on these seven studies, Professor Gangarosa in his risk assessment (Ex. 225, P. 8) found excess risk to farmworkers of contracting parasitosis to be 7 to 26 times the estimated risk to the general population, for an average excess risk of 16.5 times. Professor Ortiz found the risks to be 11.3 to 59 times, with a "best" risk of 20.1 times the estimated risk to the general population.

Farmworkers also experience elevated risks of contracting class-one and class-two communicable diseases. For example, for gastroenteritis and infectious diarrhea (Ex. 141), Professor Gangarosa found the excess risk to farmworkers to be about 10 times the risk to the comparable urban population (Ex. 225, p.13), while Professor Ortiz found the same risk to be 11 times the risk to the general population (Ex. 224, P. 9). Professor Ortiz also concluded that the excess risk to farmworkers of contracting Viral hepatitis is 33 to 533 times higher than the risk to the general population, with a "best" estimate of 331 times.

4. Urinary Tract Infection (UTI)

Although the data showing excess risk to farmworkers from UTI are not as strong as that for heat stress and communicable diseases, the scientific literature and record evidence indicate that holding urine in the bladder for more than an hour after experiencing the urge to urinate leads to a higher incidence of UTI. The causal relation is simple. Urine retention leads to distention of the bladder wall. Prolonged distention leads to a disturbance of the elastic components of the wall, causing flaccidity and consequently weakening the evacuation power of the bladder. When the bladder is unable to empty completely, residual urine remains. Urine, it has long been known, is a good culture medium for bacteria, and when the bacteria are allowed to remain for a prolonged period of time in the bladder, bacterial overgrowth can overwhelm the the tissue and cause infection. Frequent, complete voiding of the bladder greatly reduces the concentration of bacteria. (Tr., W2, pp. 296–274).

Persons with UTI display a wide variety of symptoms of varying degrees of severity and may well be at increased risk of even more serious diseases. Typical symptoms include urgency, urinary frequency, burning and pain on urination, suprapublic pain, bloody urine and, at times, fever (Ex. 23). Chronic UTI also can lead to chronic pyelonephritis, a serious inflammation of the lining of the kidney that is characterized by flank pain, fever and chills. This kidney infection can lead to renal failure that would require dialysis treatment and transplantation to preserve life (Tr., T3, pp. 7,17;L1, pp. 2323–5). In these cases, capacity to work is usually lost.

Dr. Ananias C. Diokno, OSHA's expert witness on UTI, testified that his own and his colleagues' research showed a higher incidence of UTI in females who retained their urine (61%) than in control subjects (11%) (Tr., W2, pp. 276–279). In a 1968 study by Lapides, *et al.* which reached similar conclusions, the reasons given by women for voluntarily retaining urine were: lack of toilet facilities, poor access, aversion to filthy toilets, strict working rules, tight or complicated garments, and incorrect beliefs about voiding habits.

Testimony at the field sanitation hearings indicated that toilet facilities were frequently absent from the fields, were not readily accessible, or were filthy. Many field workers, especially women, testified that they retained their urine rather than urinate in the presence of other workers (Ex. 11–042; 11–418; 13–303; Tr., W4, p. 1108; T3, pp. 283–4). Some testified that their chronic UTI had led to kidney failure, dialysis and even surgical removal of a kidney (e.g., Tr., T3, p. 7).

Health professionals testified at the field sanitation hearings that UTI is a major problem for field workers, particularly female workers. In one of the few quantitative studies, Drs. Olsen and Weidner conservatively found a 4.1% rate for UTI among migrant worker clinic users and a 1.4% rate among urban poor clinic users. Olsen and Weidner believe the migrant data understate the true comparison, in part because the most susceptible group, women, constituted a considerably smaller proportion of the migrant population (49%) than the urban poor (64%). Nonetheless, the data still show that migrant field workers have about three times higher risk of contracting UTI than the urban poor (Ex. 141, p. 4 and Table 1). Expert witnesses estimated the prevalence rate of UTI among field workers who used migrant clinics at between 1.3 to 6.7%, with most the estimates above 4% (Ex. 224, Table, p. 18). By contrast, a non-farmworker clinic population was estimated to have a 1% prevalence rate for UTI (Tr., T1, p. 154). Statistics for the general population show a prevalence rate of 1.5% for UTI. (Ex. 195, Table 126).

Based on their analyses of the record, Dr. Gangarosa therefore estimates the prevelence of UTI among farmworkers to be from 3 to 10 times higher than the general population, while Professor Ortiz estimates the excess risk at 3.5 times the risk for the general population.

5. *Agrichemical-related Illnesses*

Agrichemicals, including fertilizers, soil conditioners and pesticides, are commonly used in the U.S. on virtually all labor-intensive crops at various times during the growing season (Ex., 11–028, pp. 143–145). As a result, farmworkers are exposed to a wide range of chemicals (Ex. 11–028, pp, 136–143). Although the record contains specific reports of toxic exposures to sprayed fertilizers resulting in lost work time (e.g., Tr., T3, p. 218) and several cases of eye disease thought to be induced by contact with ammonia from a drifting cloud beside the field (e.g., Tr., L1, p. 2249), most toxic chemical exposures in the field are reported to be from pesticide use. The exposures ordinarily occur during application, at initial re-entry to the treated field and for as long thereafter as the chemical residue remains toxic. Excessive human exposures can occur by accidental spill or splash, direct spray, drift and by skin contact with the residues of the toxic agents. According to Bureau of Labor Statistics data for occupational illness, the incidence rate in agriculture for illnesses caused by exposure to chemicals was the highest of all industries, at 5.5 per 1,000 full-time workers in the last reported year (1977) (48 FR 53285).

Farmworkers' exposures are either acute or chronic. Acute exposures are most common among applicators, mixers and loaders of agrichemicals and among field workers who come into contact with high doses of the chemicals during or immediately after a spill, overdrift, or spray. Occasionally, field workers drink contaminated ground or irrigation water to relieve their thirst

and ingest toxic chemicals (Tr. W2, p. 366E). This can produce acute or chronic health effects, depending on the chemical agent, the concentration and the amount consumed. Acute exposures can cause symptoms such as dizziness, stomach pains, heart palpatations and respiratory illnesses, requiring hospitalization and even resulting in sudden death in some instances.

Chronic exposures usually occur when farm workers have reentered a field following the application of a persistent agrichemical, toxic residues of which may remain. Residues usually accumulate on soil or fruits and leaves of plants with large leaf surfaces (Ex. 11–047), such as citrus fruits, peaches, grapes, and tobacco. Chronic exposure to agrichemicals occurs by contact between unprotected skin and the toxic, dried residues on crops that workers are tending or harvesting (e.g., Tr. L2, pp. 219–220, 223–225).

Exposures to agrichemicals vary, depending upon the task performed by the field worker and the remaining toxicity of the residue. For example, in order to cut a cluster of grapes, or pick an orange or peach, it is usually necessary to penetrate the leaf curtain. The worker, reaching for fruit among the leaves of the plant, may be subjected to higher exposures through dermal absorption than cultivators or pickers of, say celery.

Weather also influences the residual toxicity of plant residues. Hot, clear days can decrease the toxicity of the agrichemical through chemical degradation in sunlight. Rain also may dilute the hazard and wash the residue into the soil to decrease worker exposure. However, some toxic residues, such as the widely used pesticide azinphos-methyl, may persist for weeks after application and continue to produce symptoms from exposure (Ex. 11–047).

As much as 98 to 99 percent of chronic exposure by field workers to agrichemical residues is by the dermal route, across the skin of arms and hands (Tr., W2. p. 368). These chronic exposures can result in very serious and debilitating illness, which include general influenza-type illness, characterized by headache, fatigue, drowsiness, insomnia, and sleep disturbances; painful skin diseases; eye diseases such as conjunctivitis; neurological effects, such as deficiencies in concentration and memory and anxiety; miscarriages; and even cancer (Tr., W2, p. 363; W4, p. 1100; Fl, p. 228; L1, p. 2269; W2, p. 367; Exs. 62; 115; 175; 179B). One Florida study, for example, shows that citrus workers, in general, experienced significantly more prolonged weakness or paralysis; harvest season field workers, in partricular, suffered significantly more slurred speech; and women field workers suffered a significantly higher rate of miscarriage than the general population. Harvest-season field workers, according to the same study, also experienced significantly more muscle weakness, conjunctivitis, excessive thirst, excessive sweating, and excitability, compared to spray season workers, who might be expected to exhibit more symptoms of pesticide poisoning (Tr., W5, p. 1132).

Skin diseases, in particular, occur frequently among farmworkers and can be very severe. Symptoms reported by farmworkers testifying at the hearings include "rashes and welts," "sores on arms and underarms," "swelling of the face," and tremendous itching or rashes all over [the] body" (Tr., F2, p. 263, 264; 03, p. 1998; W2, p. 509, 510; F1, p. 312).

The environmental impact and human health effects of pesticide application and field reentry problems have long been regulated by the Environmental Protection Agency (EPA) (see discussion below under "Significance and Reduction of Risk"). Nonetheless, at the very least, farmworkers need handwashing water to protect them from agrichemicals not regulated by EPA. Moreover, even in the case of pesticides, current reentry intervals alone appear to provide inadequate protection for field laborers (Tr., W5, p. 1160; L1, p. 2284; T1, p. 210; L1, p. 2284; F1, p. 50). Reentry levels have been established for selected toxic pesticides to allow time for the toxicity to diminish to a tolerable concentration as a result of compound degradation or dilution by rain water. Reentry times for the most toxic pesticides have reduced the risk of severe intoxication (Tr., W2, 362). However, as several commenters pointed out, reentry times have been established for less than one percent of the pesticides on the market (Tr. W5., 1167; W2, pp. 444–5). Furthermore, some compounds for which reentry times have been set have proven to be so persistent in the fields that they have remained toxic for weeks beyond their reentry intervals (e.g., Ex. 11–047).

The current lack of clean handwashing water is a serious problem, because most chronic agrichemical exposure is due to absorption of toxic substances through the skin, much of which can be prevented by regularly washing the skin thoroughly with soap and water. The availability of clean handwashing water in adequate amounts in the fields, thus, can substantially reduce the amount of chronic agrichemical exposure. However, the data presented by Centaur Associates show that fewer than 50% of the workplaces had adequate handwashing facilities in the field at the time of their study (Ex. 16). In fields without facilities, the sources of available water for washing are limited to irrigation ditches or pipes, ponds and streams, which often are themselves contaminated with pesticides or other chemicals (Tr., L1, p. 2133; Tr., F3, p. 170; Tr., 03, p. 1999).

Handwashing water is essential to remove agrichemical residues from the hands and forearms of farmworkers. An adequate supply of readily available washing water is also needed to remove harmful chemicals from the thin, sensitive mucous membranes and from skin in the genital area, with which the hands have made contact. These surfaces more rapidly absorb contamination than the skin of the hand, arm, or back (Tr., T1, p. 133). Clinic reports of chronic conjunctivitis caused by farmworkers rubbing their eyes with pesticide-contaminated hands also show the need for readily accessible supplies of clean water for flushing irritating chemicals from the eyes, thereby decreasing the risk of disability (Tr., W4, p. 1100).

Several experts testified that the water must be available immediately. Dr. Augusto Ortiz of the University of Arizona Medical School stated that no more than a five (5)-minute delay should occur between pesticide exposures to delicate tissue and the application of clean washing water (Tr., 03, p. 1844). Dr. Gangarosa confirmed that it is important to wash agrichemicals off as soon as possible by reference to research showing that removal of parathion by washing is approximately 20 to 40 percent more effective (up to 92% effective) when accomplished within 30 minutes of exposure than after 5 hours of exposure (Ex. 225. p. 23).

The substitution of pre-moistened towelettes for hand washing water was recommended by several growers and their trade associations and was discussed at the hearings by several expert witnesses and participants. This recommendation has been rejected by OSHA for reasons discussed below, under "Provision of Handwashing Facilities.".

Numerous studies submitted to OSHA and testimony from workers and their representatives show farmworkers face an excess risk of illnesses caused by exposures to agrichemicals. Both Drs. Ortiz and Gangarosa, independently analyzing the record, found farmworkers at increased risk compared with workers in other occupations and with

the general population. Dr. Ortiz found agricultural workers were a statistically significant 24.76 times more likely to report pesticide-related illnesses than workers in all other occupations. Dr. Gangarosa's estimates were lower, but still showed substantial excess risk.

Provision and use of the required handwashing facilities will significantly reduce the risks to farmworkers. Dr. Ortiz conservatively estimated a resulting 65% reduction in all pesticide-related illness, while Dr. Gangarosa estimated the risk of pesticide-related skin rashes would be decreased between 35% and 97% (see "Significance and Reduction of Risk," below).

B. Significance and Reduction of Risk

1. Introduction

Section 6(b)(5) of the OSH Act vests authority in the Secretary of Labor to issue health standards. This section provides, in part, that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

OSHA is required to make two threshold findings before it can issue a health standard under section 6(b)(5) of the Act. In accordance with the U.S. Supreme Court's decision in the benzene case (*Industrial Union Department (I.U.D.), AFL–CIO* v. *American Petroleum Institute (A.P.I.)*. 448 U.S. 601, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (1980), OSHA may promulgate a standard only if it finds that it is at least more likely than not that the risk OSHA seeks to regulate is a "significant" one and that change in practices contemplated in the issuance of a standard would reduce or eliminate that risk.

OSHA's analytical approach to making a determination that a significant risk of material impairment exists from exposure to hazardous materials or physical agents in the workplace takes into consideration a number of factors that are consistent with recent court interpretations of the OSH Act and with rational, objective policy formulation. As prescribed by section 6(b)(5) of the Act, OSHA examines the body of the "best available evidence" on the adverse effects of the toxic materials or harmful physical agents to determine the nature and extent of possible health consequences resulting from exposure to the hazard in question. Quantitative risk assessments are conducted, where possible, and the results are considered along with other relevant information, such as the nature and severity of the health consequences, as well as other qualitative evidence and expert opinion, to determine whether a hazard poses a significant risk to workers at the current permissible exposure limit, or, in this case, under current conditions of exposure.

The court gave some general guidance to the Agency for determining significant risk. Illustrating how OSHA might determine from quantitative data whether a health risk is significant, the Court said:

> Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink or chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odd's are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it (*Id.* at 655).

Where possible, the Court indicated, the determination of significant risk should be based upon a quantitative risk assessment. However, recognizing the uncertainties involved, the Court qualified its predilection for quantitative risk assessments, saying:

> . . . the requirement that a "significant" risk be identified is not a mathematical straitjacket. It is OSHA's responsibility to determine, in the first instance, what it considers to be a "significant' risk (*Id.* at 655).

And it further pointed out that

> OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty . . . Thus, so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data . . . risking error on the side of over-protection rather than under-protection (*Id.* at 656).

In fact, the Court noted, OSHA's "determination that a particular level of risk is 'significant' will be based largely on policy consideration" (*Id.* at 656).

Quantification of risk, the Court understood, cannot be achieved for every hazard. The four-judge plurality, speaking for the Court in the benzene decision, did not intend to require OSHA to do what cannot be done. The concurring opinion of Mr. Justice Powell and the dissenting opinion of Mr. Justice Marshall, speaking for four other members of the Court, confirm this. Mr. Justice Powell stated:

> The statutory preferences for the "best available evidence," . . . implies that OSHA must use the best known techniques for the accurate estimation of risks and benefits when such techniques are available. But neither the statute nor the legislative history suggests that OSHA's hands are tied when reasonable quantification cannot be accomplished by any known methods. . . . In this litigation, OSHA found that "it is impossible to precisely quantify the anticipated benefits. . . ." If this finding is supported by substantial evidence, the statute does not prevent the Secretary from finding a significant health hazard on the basis of the weight of expert testimony and opinion. I do not understand the plurality to hold otherwise (*Id.* at 666–67).

Similarly, Mr. Justice Marshall, in dissent, concluded, ". . . the Court appears willing not to require quantification when it is not fairly possible" (*Id.* at 666–67).

OSHA has followed these guidelines in making a determination that the risk of material impairment of health or functional capacity arising from occupational exposure to the relevant hazards in the field is significant. Although precise, quantitative and scientific analyses concerning farmworkers are limited by the seasonal and migratory nature of the workforce, the nature of the relevant adverse health effects and the socio-economic condition of migrant workers, OSHA has sought repeatedly to collect and develop quantitative data. The Agency, for example, had its contractor, Centaur Associates, Inc., collect, develop and analyze quantitative data on population at risk. OSHA also, in the preamble to the 1984 proposed standard, expressly requested the public and interested parties to submit quantifiable (and other) data concerning significance of risk and reduction of risk. Then, after the public hearing and post-hearing comments, OSHA contracted with two of its expert witnesses, Drs. Ortiz and Gangarosa, to perform independent quantitative risk assessments based upon the quantitative data in the rulemaking record.

OSHA relies for its determination of significant risk and reduction of risk first upon quantitative risk assessment, which are based upon the best available quantitative evidence. In addition, because OSHA recognizes that these risk assessments are based necessarily upon imperfect and incomplete data, the Agency secondarily relies for its determination upon the abundant, essentially unanimous and uncontroverted expert testimony and opinion in the record. The significance of these risks is further confirmed by the history and universally accepted principles of public health and substantiated by numerous studies in the record of rural America and

underdeveloped countries, which establish beyond doubt that poor sanitation and inadequate provision of water create widespread and serious disease and, conversely, that good sanitation and adequate provision of potable water substantially reduce disease.

Dr. Eugene J. Gangarosa, in his epidemiological and statistical review of the record, relies primarily on quantitative data to perform his risk assessment. From that data he concludes:

> Most of the quantitative data reviewed here underscore the need for the proposed standard. There are a few gaps, i.e., we do not have quantifiable data to scientifically prove every point, but when considered in the context of expert testimony in this record and widely accepted public health tenets, the weight of evidence is so compelling as to leave no doubt whatsoever that (1) there is an urgent need for the proposed standard because of the vast risk differences and (2) substantial benefit will accrue when the standard is adopted.

2. Heat-Related Illnesses

More specifically, with regard to heat stress, Dr. Gangarosa found "no gap in the data. . . ." Based upon his analysis of a study of workers' compensation claims, he found a statistically significant greater risk of heat illness among farmworkers compared to firemen, construction workers and miners, all of whom routinely work at high risk in hot environments. Farmworkers, in fact, had the highest claim rate of all industry groups, 9.2 claims per 100,000 employees, followed by construction (6.4) and mining (5.0). Similarly, Dr. Jesse S. Ortiz, in his risk assessment, based upon data on heat-related problems reported in California, found that the rate for heat-related illness among farmworkers was 11.06 per 100,000. This means that in California farmworkers have a relative risk 4.11 times higher than the average for all other occupational populations of contracting a heat-related illness.

The reported claim rates in these two studies are nearly identical, approximately 1 per 10,000 employees. If these rates are converted into rates per working lifetime (45 years), an estimated 4.5 workers per 1,000 farmworkers would be expected to claim workers' compensation for heat-related illnesses over a working lifetime.

For a number of reasons, OSHA believes this estimate grossly underestimates the extent of the problem. First, the underlying workers' compensation data for the Gangarosa estimates are statistics gathered by the Bureau of Labor Statistics (BLS), which do not include most of the hottest, often humid states of the south and southwest. Of these states, prior to 1985 only three required employers to provide field workers with water, and voluntary provision of water was reported to be low (Ex. 16; 13–14; 13–70; Tr., Fl, p. 325). Second, in many states farmworkers are excluded from workers' compensation, and in all states they are without easy access to the compensation system and, therefore, are likely to report many fewer claims than workers in other occupations. Finally, less serious incidents, which do not result in substantial lost worktime, are likely to be underreported or not reported at all.

This means that the 4.5 workers per 1000 farmworkers who take the effort to report heat stress are very likely to be suffering from the most serious heat-related illness, heat stroke, which is the only such illness likely to cause a worker to lose substantial worktime. Accepting the 4.5 rate as a very conservative reflection of actual incidents, and further assuming, conservatively, that only two-thirds of those claimants were suffering from heatstroke over their working lives, approximately 3 farmworkers per 1000 could be expected to suffer from heatstroke over half their working lives.

Heatstroke is a very serious medical problem. At best, it leaves a victim highly sensitive to heat for the rest of his life, which effectively means a farmworker can no longer work in the fields (Ex. 199). At worst, more than 10 percent of the afflicted heatstroke cases die (Tr. W2, p. 323). Among farmworkers who are obese, fatigued, unaclimatized, have diarrhea, are alcoholics, are old, have chronic diseases or are in poor physical condition, the risks are higher still. (Ex. 24) For an undetermined number of farmworkers who survive heatstroke, the illness produces varying degrees of brain damage. Thus, more than 3 farmworkers in 10,000 would die from heatstroke, more would suffer brain damage, and the rest would not be able to resume their occupations because of material impairment to their functional capacity to withstand heat.

Based upon this conservative projection that 3 workers per 10,000 would die from heatstroke over their working lives, with an estimated population at risk of approximately 471,600 agricultural workers, 3.1 farmworkers would be expected to die annually from heatstroke. In fact, in the 1984–85 growing season, 3 field workers are known to have died from heatstroke in California alone (Ex. 137a, 137b and 160).

OSHA has concluded from this evidence (see Table II) that heat-related illness, especially heat stroke, presents a significant risk to field workers and necessitates the requirements in the standard that employers provide suitably cool, readily accessible water in sufficient amounts to workers at all times during the workday and that employers provide simple information to workers about the heat hazard and what farmworkers should do to protect themselves from that hazard (e.g., regularly drink plenty of water while working in the fields, even if not thirsty).

TABLE II.—EXCESS RISK: SUMMARY OF DATA IN THE RECORD

Occupational illness	Excess risk	Excess risk
	Dr. Gangarosa	Dr. Ortiz
Heat Stress....	2 to 4X (3 deaths attributed to heat stress in California record, 1984).	4X
Parasitic Infections.	7 to 26X.....	11 to 59X
Agrichemical-related Illnesses.	2.5 to 10X [1] (Est. 80,000 ill annually).	24X [2]
Urinary Tract Infection [3].	3–10X.....	3.5 [4]

[1] Depending on control group.
[2] As compared with the rate for the general population.
[3] Based on case data.
[4] As compared to the rate for urban poor.

Dr. Gangarosa's best estimate of the reduction in risk that might conservatively be expected to be achieved by this provision of water is 90–95% (see Table III). Dr. Ortiz's estimate of that reduction in risk also is 95%. While no quantitative estimates were made for the reduction in risk attributable to employees being informed about the nature of the hazard and how to protect themselves, both Drs. Gangarosa and Ortiz, as well as most other experts in the rulemaking, have stated that such information is needed if the full potential for reduction in risk is to be realized (Ex. 11–010, p. 126; 224, p. 36).

TABLE III.—EXPECTED REDUCTIONS OF RISK (EX. 224; 225)

	Expected reduction [1]	Expected reduction [2]	Expected reduction [1]
	Dr. Gangarosa (percent	Dr. Gangarosa (percent	Dr. Ortiz (percent)
Parasitic (and other infectious diseases)	95–97	50–60	67
Heat Stress	90–95	80–90	95
UTI	60–90	40–60	85
Agrichemical-related Illnesses	35–55	30–50	65

[1] Assuming availability of suitable water and sanitation facilities in home and at workplace.
[2] Assuming adequate water and sanitation facilities are not available in the home.

3. Parasitism

With regard to communicable, intestinal disease, parasitism is a serious and widespread disease among farmworkers. A number of studies in the record show parasite rates among farmworkers in the U.S. ranged from 20% to 78%. Since the best available studies of parasitism in the general population show levels of about 3% (some experts believe it is lower), farmworker infestation rates were 7 to 25 times higher than levels prevailing in the U.S. population in the 1980s. These levels, Dr. Gangarosa points out, are as high as those found in the poorest communities in the developing world, where sanitation facilities are absent or inadequate and water supplies are unprotected. No other occupational group in the U.S., he points out, has such high levels of parasitism. Similarly, Dr. Ortiz in his independent risk assessment finds the farmworker is at a risk 11.3 to 59 times higher than the general population of contracting a parasitic infection, with a "best" risk of 20.1 times. (Whatever differences exist between Dr. Ortiz and Dr. Gangarosa's estimates are largely due to Dr. Ortiz using estimates of from 1% to 3% as the rate of parasitism in the general population).

If the lowest reported rate of parasitic disease, 20%, prevailed among the farmworker population, with a population at risk of 471,600, more than 90,000 field workers would be expected to be infested with parasitic worms during the year. At the highest rate of 78%, approximately 360,000 farmworkers would be infected with parasites.

Whichever number one adopts, OSHA finds the number unacceptably high, magnitudes greater than would be required quantitatively to constitute a significant risk. As discussed above in the health effects section, parasitic diseases normally are not life threatening in themselves, but they can be very serious and debilitating and can result in a loss of functional capacity. Typically, the common parasites cause diarrhea, anemia, and a reduction in immunity to other diseases and in general nutrition. However, a severe infestation of parasitic worms can also cause blockage of the intestine, which can necessitate major surgery, an intervention that can result in a life-threatening risk.

Parasitism is especially of concern in pregnant women, many of whom work as field workers. As discussed above, for pregnant women and their fetuses, the anemia caused by parasites, on the one hand, and the toxic drugs used to eliminate parasites, on the other, both constitute serious problems. Farmworkers, generally also may suffer from simultaneous, multiple infections of different parasites, both protozoa and roundworms, which compounds the health problem. Professor Ortiz in an earlier study found that 6 to 7% of the population he studied simultaneously had 3 or more different kinds of parasites. Based upon the record evidence, OSHA therefore finds that parasitic infections pose a significant risk of impairment of health or functional capacity to field workers.

Provision of toilets is the primary intervention against parasitic roundworms. Such worms, to become infective to humans, require a period of incubation in moist soil for a number of days (latency). Thus, depositing human excreta in fields allows the roundworms to become infective, and subsequent work by farmworkers in those fields exposes workers to infestation through the skin and by hand-to-mouth transmission. Conversely, containment and isolation of the human excreta that carries these parasites interrupts their life cycle before they can become infective, which effectively prevents transmission of parasitic roundworms.

Dr. Ortiz estimates that the provision of potable handwashing water, potable drinking water and toilets, as required by OSHA's proposed 1984 standards, would reduce parasitic diseases by 65%. (see Table III). Dr. Gangarosa, who does not break out parasitic diseases for separate treatment, projects a 95–97% reduction in infectious diseases if the three items are provided in the field.

In reaching this estimate, Dr. Gangarosa assumes that comparable water and sanitation facilities are available and are used in the farmworkers' housing. This is not an unreasonable assumption. For migrants who are housed in temporary labor camps, comparable provision of water and sanitation is required by federal law. For most non-migrant seasonal workers, who live year round at home, comparable facilities also are likely to be required under local law. However, even if comparable facilities and potable water were not available in the farmworkers' housing, Dr. Gangarosa in a second estimate concludes that compliance with the proposal's requirements would reduce infectious disease by 50–60%

Of this 50–60%, 5–10 percentage points of the reduction are attributable to the provision of potable drinking water alone, 40% to the provision of drinking and handwashing facilities and 5–10% to the provision of toilets. The contribution of each of these facilities to reduction in risk varies depending upon the epidemiology of the particular infectious disease; e.g., toilets would be more important in dealing with parasitic roundworms than in dealing with diarrheal diseases, which are primarily controlled by handwashing.

In discussing the expected reduction in disease, both Drs. Gangarosa and Ortiz stress the need for health education. For example, Gangarosa, refers to the "classical literature" and expert observations in the record, saying "the strong message . . . is that what is needed, to minimize fecal contamination of farm fields, are toilets that are maintained and used, and education to encourage behavioral changes vis-a-vis personal hygiene" (Ex. 225, p. 15; 224, p. 36).

4. Other Communicable Diseases

Farmworkers also suffer from other types of communicable, intestinal diseases associated with inadequate sanitation in the field. Based upon studies in the record, Dr. Ortiz concludes that between 2.1% to 6.6%, for a mean of 4.4% of farmworkers suffer from so-called "diarrheal diseases." This compares to an estimated risk in the general population of approximately .4%, which means the farmworker is approximately at 11 times greater risk than the general population of contracting such infections. Gangarosa finds that migrant farmworkers are 10 times as likely to contact diarrheal

diseases as the urban poor, whose risk is higher than the general population.

Both Gangarosa and Ortiz rely heavily in their risk assessments on a very recent, just published study by Drs. Olsen and Weidner comparing the occurrence of water-and-sanitation-related diseases in migrant farmworker patients and urban-poor patients served by Utah clinics (Ex. 141). Aggregating what he calls the "startling statistics" relating to the incidence rates for these intestinal diseases, Ortiz finds that migrant farmworkers suffered a rate of 245 cases per 1000 workers compared to 18 per 1000 for the urban poor. This confirms the existence of clinically diagnosed diarrheal disease in epidemic proportions among migrant farmworkers.

The Olsen/Weidner study is characterized by Gangarosa as "the most impressive and persuasive" in the record on this issue, and the study's estimates of the magnitude of illness among migrant farmworkers are characterized by him as "extremely conservative." Gangarosa's statistical analysis of the comparative data reveals that the difference in incidence between the two groups are "astronomical" (except for UTI) and "could not be expected by chance." These differences, Gangarosa continues, "are real and they reflect a marked difference in health status of farmworkers. Those differences are the result of sanitation and water-related illnesses . . . [and] speak eloquently and persuasively for the proposed standard." (Ex. 225 p. 13)

Diarrheal diseases frequently can be debilitating, painful and extremely disruptive of normal life routines, including work. Repeated or chronic diarrhea leaves the sufferer more susceptible to other diseases. Moreover, since diarrhea is likely to involve between five to twenty excretions per day (Tr., L2, p. 272), in the absence of adequate toilet facilities in the field, the probability of transmission of diarrheal diseases in the field is likely to be high. OSHA believes this is one of the reasons why diarrheal diseases appear to exist in epidemic proportions among migrant farmworkers. OSHA therefore finds that the risk of diarrheal disease to farmworkers is significant.

These diseases are caused by a variety of pathogens, including viruses, bacteria and protozoal parasites. The classes of pathogens have different characteristics and lifecycles, an understanding of which forms the scientific basis for controlling transmission in the field by provision of adequate potable drinking water and sanitation facilities (Ex. 13–010). Thus, for example, as discussed above, easily transmitted diseases like amebiasis, giardiasis and infectious hepatitis are reduced primarily by provision of both potable drinking water and potable handwashing water.

By contrast, enteric bacterial pathogens like Shigella and Salmonella require larger numbers of pathogens to produce infections and are capable of mutiplying in the environment to achieve infective levels (see communicable disease section). A combination of methods also is needed to reduce and prevent transmission of these diseases. Toilets will isolate the pathogen from the workplace. Potable drinking water will protect the intestine from water-borne invasion, and potable handwashing water can be used to wash away pathogens in infective doses that might otherwise be ingested. Basic public health knowledge of these hazards also enhances disease control (Table 1).

If sanitation facilities and potable drinking water are provided in accordance with the proposed standard and if the workers have flush toilets and running water in their housing, Dr. Ortiz anticipates a reduction of 65% in diarrheal disease. Gangarosa, who, as indicated earlier, does not segregate out the individual components of "infectious diseases", anticipates a 95–97% reduction. As discussed at greater length above, he predicts a 50–60% reduction in disease even if comparable provision of sanitation facilities and potable drinking water are not available in farmworker housing.

The risk assessments also discussed other diseases. Dr. Ortiz analyzed data in the record on viral hepatitis, a very contagious disease, transmitted both by fecally-contaminated water and from person to person through poor personal hygiene (Ex. 224. p. 14). Relying on prevalence figures submitted by physicians, Dr. Ortiz estimated that farmworkers were between 33 and 533, with a best estimate of 331 times more likely to contract viral hepatitis than the general population. However, because viral hepatitis is transmitted in a variety of ways, some of which are clearly independent of inadequate drinking water and sanitation facilities at the worksite, OSHA does not rely upon Dr. Ortiz's estimate to quantitatively support its finding of significant risk. Nevertheless, if, as is highly probable, even 10 percent of the cases of viral hepatitis found among farmworkers is due to inadequate potable water and sanitation facilities in the field, that number of cases would represent a substantial risk to farmworkers.

In addition, although he was unable to perform a quantitative risk assessment on the risk to farmworkers of respiratory, eye and skin infections, Dr. Gangarosa states that the record makes clear that farmworkers experience more of these infections than comparable groups, that these infections are related to personal hygiene and that these diseases can be controlled by handwashing.

5. Urinary Tract Infections

With regard to urinary tract infections (UTI), the quantitative data are less than for heat-related illnesses and communicable, intestinal diseases. The Olsen and Weidner study (Ex. 141) comparing the health status of migrant farmworkers and urban poor clinic users in Utah found, as Gangarosa and Ortiz indicate in their risk assessments, a rate of 4.1% for migrants farmworkers compared to 1.4% for the urban poor. Based upon this data and other data and testimony submitted by medical doctors and health professionals associated with migrant health clinics, Ortiz concluded that migrant farmworkers are 3.5 times more at risk of getting a urinary tract infection than the general population, to which he assigns a prevalence rate of 1.5%. Concerning the quality of the record evidence on UTI, Dr. Gangarosa writes:

> There was such consistency in the professional opinions expressed in the record that there can be no doubt of the importance of UTI in farmworker women. One may conclude that UTI is more common in farmworker women and that prevalence ratios for this problem may be anywhere from 3 to 10 times higher than in the general population. The weight of these opinions makes this estimate of risk seem conservative in spite of the paucity of quantitative studies in the record (Ex. 225, p. 17)

Applying the estimate that 4.1% of farmworkers suffer from UTI to the estimated population at risk of 471,600 means that over 18,000 farmworkers suffer from UTI in a single year. Over a working lifetime, this amounts to more than 800,000 cases of UTI among farmworkers.

As discussed above, a primary cause of UTI in farmworker women is the prolonged retention of urine. The main reasons women in one study gave why they retained their urine included lack of toilet facilities, poor access to toilets, aversion to filthy toilets and incorrect beliefs about voiding habits. Repeated testimony at the field sanitation hearings indicates that toilet facilities frequently were absent from the fields, not readily accessible or filthy. Many field workers, especially women, testified that they retained their urine rather than urinate in front of other

workers (Tr., W4, p. 1108; T3, pp. 283–4). Some testified that their chronic UTI had led to kidney failure, dialysis and even surgical removal of a kidney (e.g., Tr., T3, p. 7).

Consequently, although symptoms of UTI are urgency, urinary frequency, burning and pain on urination, suprapubic pain, bloody urine and, at times, fever, chronic UTI can lead to more serious kidney infection and renal failure. OSHA therefore finds that the risk of UTI to farmworker women is significant.

Provision of toilets and drinking water, Ortiz finds, would reduce the risk of contracting UTI by 85%. For Gangarosa, the reduction is projected to be between 60–90% if comparable facilities are available in farmworker housing or between 40–60% even if comparable facilities are not available in farmworker housing. (Table III).

6. Agrichemical-related Diseases

Farmworkers' exposures to agricultural chemicals also constitute a significant risk that can be reduced by the provision of handwashing facilities, and, to a much lesser extent, toilets and drinking water. Dr. Jesse Ortiz, for example, found farmworkers at a statistically significant 24.76 times greater risk of suffering pesticide-related illnesses than workers in all other occupations. Dr. Eugene Gangarosa agreed that farmworkers were at a much greater risk of contracting such illnesses than other populations. As to skin diseases, for example, Dr. Ortiz stated that farmworkers faced a 3.75 times greater risk than other workers, while Dr. Gangarosa believed farmworkers' risk was even higher, 5 times greater. OSHA believes these numbers leave no doubt that the excess risks farmworkers suffer due to exposure to agrichemicals are significant.

Studies looking at plasma cholinesterase levels, which, when lowered, indicate exposure to organophosphorous insecticides, confirm high levels of farmworker exposures. One study found significant lower plasma cholinesterase levels in migrant workers, none of whom had experienced an acute exposure to insecticides, than in a control population (Tr., W2, p. 359). Another found farmworkers' cholinesterase levels significantly lower than those for a non-agricultural population, but expectably higher than levels for pesticide applicators (Tr., W2, p. 360).

Dr. Gangarosa, using California Department of Food and Agriculture estimates on injury rates due to toxic chemicals, which show 11.7 reports of injury per thousand agricultural workers versus an average of 4.7 per thousand for workers in all other industries, concluded that farmworkers were between 2.5 and 15 times more likely to suffer injuries from toxic chemicals than other workers (Ex. 225, Table 4). From another California study showing farmworkers lost 5.25 hours per 1000 man hours due to pesticide-related illnesses compared to 4.9 for the construction industry and 2.49 for the mining industry, Gangarosa concluded that farmworkers were 1.07 and 2.11 times more likely to suffer injuries from toxic chemicals than workers in construction and mining, respectively (Ex. 225, Table 4). Using U.S. Food and Drug Administration data indicating that nationally 80,000 to 90,000 field workers become sick and 800–1000 die annually from exposure to agricultural pesticides, Dr. Gangarosa concluded farmworkers were 5 times more likely to suffer pesticide-related illness than other populations (Ex. 225, Table 4).

Dr. Ortiz, independently analyzing the data, found agricultural workers were 24.76 times more likely to report pesticide-related illnesses than all other occupations (Ex. 224. pp. 33, 34). He reached this conclusion by comparing the number of reports of pesticide-related illness for agricultural workers with the number of reports for the working population as a whole in California in 1973. Although agricultural workers numbered only 323,979 compared with 8,126,187 workers for all other occupations combined, 721 reports were made by agriculture workers, while 730 reports were made by workers in all other occupations.

More specifically, farmworkers are much more likely than other workers to suffer from skin diseases, according to Drs. Gangarosa and Ortiz. In California, where farmworkers constitute only 3% of the population, they account for more than 13% of all reported cases of occupational skin diseases. Dr. Gangarosa found that farmworkers are 5 times more likely to contract skin diseases than workers in other occupations (Ex. 225, Table 4). Similarly, Dr. Ortiz, comparing the farmworkers' reported instances of skin diseases with reported instances by other occupations, found farmworkers 3.75 times more likely to suffer skin disease (Ex. 224, p. 33).

OSHA recognizes that there are methodological problems with some of the data and studies used in risk analyses. For example, throughout the record, the term "pesticides" is used to describe many chemicals employed in agriculture, including not only chemicals designed to destroy pests, properly called "pesticides," but also those used for other purposes. Studies rarely separate data on adverse health effects due to true "pesticide" exposures from those due to other, often similar, agricultural chemicals, like fertilizers. Therefore, the risk analyses consistently refer to "pesticides," while the risks arise more generally from agricultural chemicals.

Moreover, some of these data mix cases of acute exposures, which often are associated with pesticide applicators, with cases of chronic exposures, which usually involve hand laborers in the field. However, hand laborers in the field also suffer acute exposures and in fact, being much more numerous, probably account for the vast majority of cases of acute exposures. For example, according to an MLAP survey in Florida, 48.4% of the 445 responding farmworkers reported being sprayed with pesticides while working in the field over the past year (1978) (Ex. 225, pp. 25, 26). From this data, Dr. Gangarosa concluded farmworkers are 5 to 10 times more likely to suffer pesticide-related diseases than the general popualtion, which he assumed only rarely suffered exposures of this sort (Ex. 225, Table 4).

Whatever the flaws in the data, they constitute the best available evidence. Furthermore, the flaws are more than compensated for by the manifest gross underreporting of cases of agrichemical-related illnesses. Thus, the data give only the most minimal indication of the numbers of farmworkers actually affected by agrichemical poisoning. This likely understatement of risk exists for several reasons. First, the illnesses often are not reported because of the farmworkers' reluctance to see a doctor or the cost, inconvenience or unavailability of medical care (e.g., Tr., F3 p. 214). Second, because the symptoms of such chemical poisoning can resemble many other diseases, cases frequently are misdiagnosed, resulting in inappropriate treatment and underreporting (Tr., W2, p. 359, 361; L2, p. 205). For these and other reasons, health experts, including Dr. Ephraim Kahn, Professor at the School of Public Health, University of California at Berkeley, estimate that reported cases represent as little as 1–2% of pesticide-related illnesses (Tr., O3, p. 1870; W2, pp. 363, 364; Ex. 224, p. 24)). This suggests that risks of staggering proportions associated with excess exposure to agrichemicals now exist in the farm workplace.

Pesticide exposures, particularly the chronic exposures most frequently encountered by field workers, can result in very serious and debilitating illness.

comment makes the same criticisms made by the American Farm Bureau and responded to above by OSHA. In addition, the National Council reasserts that the vast majority of farmworkers are currently covered under state standards. OSHA, as discussed above, has determined that 22 states currently have field sanitation standards of some sort, which cover approximately 77% of field workers on farms with 11 or more employees. However, for the variety of reasons elaborated above, only 14 states, covering approximately 44% of field workers on farms with 11 or more employees, have standards that provide adequate protection. Thus, 56% of these field workers, in more than 30 states are not adequately protected by state standards.

V. The Regulatory Environment

A. State Regulation

All states have employers that hire temporary farm labor (Table VIII (Part VI)). However, at the time of publication of the notice of proposed rulemaking (March 1, 1984), only twelve states had any rule requiring sanitation facilities in the farm field. Of the twelve, Colorado's, which appeared to regulate field sanitation (Ex 11-072), now is deemed by Colorado officials to have been "unenforceable" in this regard (Ex. 226-8). So, only eleven states actually had enforceable rules in March 1984.

Table IV displays the specific provisions of the 22 State standards currently in place, and presents a comparison to the federal standard. As described in greater detail in the Background section of this notice, OSHA, in its March 11, 1987 **Federal Register** document (52 FR 7451), found that 13 of the 22 states had standards that could be considered basically equivalent to the federal proposal of 1984. The Farmworker Justice Fund (Ex. 228-20) and the Migrant Legal Action Program, Inc. (Ex. 22-33), in their responses to that document, dispute this finding. The Fund asserts that, for various reasons (e.g., allowing moist towelettes, allowing transportation in lieu of facilities in the field, lower minimum ratios of facilities to employees, and longer distance maximums), only four of the 22 state standards should be considered adequate. OSHA agrees that it erred in judging Oregon's standards adequate and in not including Oregon among the states that allow moist towelettes, but the Agency does not necessarily agree with the Fund's other assertions. In any event, since the Secretary of Labor preliminarily determined that the state response to his October 1985 **Federal Register** document was insufficient (52 FR 7451; March 11, 1987) and since, with the publication of this field sanitation standard, the Secretary gives notice that that determination has been made final, OSHA sees no need at this time to further consider the matter.

TABLE IV.—COMPARISON OF STATE FIELD SANITATION STANDARDS

*State plan State	Standards effective dates	Toilet facilities		Handwashing facilities		Distance to facilities	Drinking H_2O required	Minimum No. of workers for coverage
		Required	Ratio	Required	Moist towelettes/ waterless handcleaner			
OSHA Standard State.	.....	Yes.....	1:20	Yes.....	Not Permitted.....	Within ¼ mile.....	Yes.....	11 employees.
Alaska* (0).	Dec. 1986.....	Yes.....	1:1-15; 2:16-35; 3:36-55; 4:56-80.	Yes.....	No.....	"Readily Accessible" Transportation to facilities allowed.	Yes.....	Zero employees.
Arizona* (26, 200).	May 1986.....	Yes.....	1:40	Yes.....	No.....	Within ¼ Mile.....	Yes.....	5 employees.
California* (Food) (408,000).	1965.....	Yes.....	1:40	Yes.....	No.....	Within a 5 min. walk, or at point of closest vehicular access.	Yes.....	5 employees.
California* (Non Food) (408,000).	1965.....	Yes.....	1:15	No.....	No.....	Within 200 feet.....	Yes.....	5 employees.
Connecticut* (1,000).	1940s.....	Yes.....	1:20 Male; 1:15 Female.	Yes.....	No.....	"Readily Accessible".	Yes.....	1 employee.
Delaware: (700).	March 1986.....	Yes.....	1:20	Yes.....	No.....	Within ¼ Mile.....	Yes.....	11 employees.

TABLE IV.—COMPARISON OF STATE FIELD SANITATION STANDARDS—Continued

*State plan State	Standards effective dates	Toilet facilities		Handwashing facilities		Distance to facilities	Drinking H_2O required	Minimum No. of workers for coverage
		Required	Ratio	Required	Moist towelettes/ waterless handcleaner			
Florida (195,500)	1977	Yes	1:40	Yes	Yes	If fewer than 10 workers, "available"; if more then 9 workers, at location", or at point of closest vehicular access.	Yes	1 employee.
Hawaii* (63,100).	Nov. 1986	No	Not applicable.	Yes	No	Within ¼ mile, or at point of closest vehicular access.	Yes	11 employees.
Idaho (45,100).	1981	Yes	1:40	No	No	Within ¼ mile, or at point of closest vehicular access.	No	8 employees.
Illinois (2,200).	April 1986	Yes	1:35	Yes	Yes	Within ⅛ mile; if fewer then 10 workers, ½ mile or 5 min..	Yes	10 employees.
Maine (500).	1984	Yes	1:30	Yes	Yes	"Reasonably accessible"; within ¼ mile.	Yes	11 employees (applies only to blueberry pickers).
Maryland* (7,100).	Dec. 1986	Yes	1:20	Yes	No	Within ½ mile or 10 min. travel time.	Yes	11 employees.
New Jersey (4,300).	1971	Yes	"Suitable Numbers".	Yes	No	Not more then 5 min. travel time, walking or riding.	Yes	6 employees.
New Mexico* (2,700).	June 1986	Yes	1:20	Yes	No	Within ¼ mile	Yes	11 employees.
New York* (1,500).	1973	No	Not Applicable.	No	No	"Reasonably accessible".	Yes	5 employees.
North Carolina* (110,700)	1983	No	Not Applicable.	Yes	Yes	Within 5 min. walk, or at closest point of vehicular access.	Yes	11 employees.
Oregon* (14,900).	1975	Yes	1:25; 1:40, if employment is less than 5 hrs. per day.	Yes	Yes	"Readily Accessible" no more than 3 min. travel time.	Yes	0 employees.
Pennsylvania (10,600).	1978	Yes	1:10 (within 1,000 feet); 1:11–15 (within 500 feet); 1:16–plus (within 500 feet).	Yes	No	"Reasonable distance" Transportation to facilities allowed.	Yes	0 employees.

These include general influenza-type illness, characterized by headache, fatigue, drowsiness, insomnia, and sleep disturbances; painful skin diseases; conjunctivitis; neurological effects, such as deficiencies in concentration and memory and anxiety; miscarriages; and even cancer (TR., W2, p. 362). A Florida study, cited by Dr. Gangarosa, for example, shows that citrus workers, in general, experienced significantly more prolonged weakness or paralysis; harvest season field workers, in particular, suffered significantly more slurred speech; and women field workers suffered a significantly higher rate of miscarriage than the general population. Harvest-season field workers, according to the same study, also experienced significantly more muscle weakness, conjunctivitis, excessive thirst, excessive sweating, and excitability when compared to spray season workers, who might be expected to exhibit more symptoms of pesticide poisoning (Ex. 225, pp. 19–20).

Skin diseases can be very severe. California data, for example, show that in one-fourth of the reported cases of skin disease, farmworkers lost 4 or more days of work (Ex. 225, p. 23). Consequently, given the extent and severity of the risk, OSHA finds the risk to field workers from excess exposures to agrichemicals is significant.

OSHA also finds that provisions of the facilities, particularly handwashing facilities, will substantially reduce those risks. Drs. Ortiz and Gangarosa agree. Dr. Ortiz, estimating that 90% of farmworkers' pesticide exposure is due to dermal absorption, which occurs at the rate of 6–10% per hour, calculated that workers who washed their hands every 2½ hours (4 times per day) would be able to remove 75% of the pesticide residues. By multiplying the proportion of exposure attributable to dermal exposure (90%) by the amount removed (75%), a reduction of 67.5% is achieved. Dr. Ortiz conservatively estimated a 65% reduction in pesticide-related illness (Ex. 224, pp. 36, 37).

Dr. Gangarosa estimated the risk of pesticide-related skin rashes would be decreased between 35% and 45%, assuming water and sanitation facilities were not available in the farmworkers' homes, and between 95 and 97% if water and facilities were provided in the home as well. He further estimated that acute exposures would be reduced from 30% to 53%, largely regardless of the availability of sanitation facilities in the home.

OSHA believes the reductions in risk predicted by Drs. Gangarosa and Ortiz are accurate and reasonable estimates of what is likely to occur. By requiring employers to provide sanitation facilities, primarily handwashing facilities, OSHA believes the serious agrichemical-related illnesses among farmworkers can be reduced by at least 35% and perhaps by as much as 95%.

7. Section 4(b)(1) of the OSH Act

Despite strong and convincing evidence of the unacceptable risks incurred by farmworkers due to excess exposures to agricultural chemicals, it has been argued that OSHA may not rely on these illnesses to support its finding of significant risk, because EPA allegedly has preempted OSHA from regulating in this regard (e.g., Ex. 13–105; Tr., W4, pp. 981 and 984). OSHA disagrees.

Under Section 4(b)(1) of the OSH Act, the Agency is not allowed to regulate:

> . . . working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

EPA is responsible under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 et seq., for protecting farmworkers from adverse health effects due to pesticides by regulating their application and use. However, EPA has no authority under FIFRA to regulate other agrichemicals in the worksite, such as fertilizers, plant foods and soil conditioners. Moreover, although EPA regulates the application and spraying of pesticides, sets up reentry times and prohibits the use of pesticides in a manner inconsistent with the requirements on their labels, EPA has not exercised its authority to regulate most other "working conditions." Furthermore, OSHA understands that EPA's forthcoming proposed standard for Worker Protection, which specifically refers to OSHA's field sanitation standard, expressly states that EPA does not intend to preempt general sanitation requirements for agricultural workers.

OSHA therefore believes it has jurisdiction to require water and sanitation facilities to protect farmworkers from illnesses caused by agrichemical residues in the field. This belief is supported by testimony and coments by EPA officials in the field sanitation rulemaking.

At the hearing, Dr. James D. Adams, representing the EPA Office of Pesticide Programs, testified that EPA believes that OSHA has jurisdiction over sanitation for farmworkers, that only one agency should issue these rules, that EPA supports OSHA's proposal, that there would be no conflict with EPA's jurisdiction to issue regulations on the application and use of pesticides and that EPA does not plan to issue sanitation rules for farmworkers (Tr., W2, p. 430). Dr. Edwin L. Johnson, Director of EPA's Office of Pesticide Programs wrote in a prehearing comment (Ex. 13–445) that EPA supported OSHA's proposal, because it would assist in reducing exposure to pesticide and pesticide residues by requiring the availability of handwashing water and potable drinking water.

In any event, even if OSHA cannot regulate the field worksite in this regard because of section 4(b)(1), OSHA believes that the independent bases for regulation discussed above are sufficient to justify the requirements of the standard.

Based upon all the above and the record in the rulemaking, OSHA has concluded that the final field sanitation standard is required to be promulgated at this time, because there is a significant risk of disease to hand laborers in the field, and because compliance with the standard will reduce or eliminate that risk. OSHA further concludes that the provisions of this standard are all necessary and appropriate to control the risk. OSHA believes this determination is supported by two independent risk assessments, a body of reputable scientific thought and the weight of expert testimony and opinion. OSHA agrees with Dr. Gangarosa's conclusion to his risk assessment:

> The record provides strong evidence for the excess risks farmworkers experience and of the compelling need for: (1) Abundant, readily accessible potable water for physiological needs, for the prevention of heat stress and to assist body mechanisms of dilute, detoxify and eliminate toxic chemicals to which farmworkers are frequently exposed; (2) handwashing facilities to eliminate pathogens from hands and thereby interrupt transmission of pathogens responsible for intestinal, respiratory, skin and eye diseases; enable sanitary cleansing after defecation; and to eliminate toxic chemicals from hands and other body surfaces, and (3) toilets to contain feces so as to protect farmworkers, farmers and nearby communities from pathogens which commonly infect farmworkers; and to encourage timely evacuation of bladders to prevent UTI.

8. Public Comment

These risk assessments were placed in the rulemaking record in October 1985, when the record was reopened and public comment was sought by OSHA (50 FR 42660; October 21, 1985). Few comments were received. Only two, from the American Farm Bureau

Federation and the National Council of Agricultural Employers, both trade associations representing growers/employers, were critical of the risk assessments.

The comment submitted by John C. Datt for the American Farm Bureau Federation (AFBF) makes the following six main criticisms of the risk assessment: (1) There are admitted gaps in the quantifiable data to scientifically prove the conclusions reached and where such gaps exist the two experts rely upon their professional judgment to an extent that is "extreme." (2) Dr. Gangarosa points to the absence of expert testimony in opposition to the proposed standard as persuasive, but the burden of proving the need for the standard is on the proponents. (3) Nothing in either of the assessments indicates whether the source of the perceived higher incidence of disease is the place of employment or field worker housing. (4) The risk assessments do not provide comparative risks for farms that provide facilities and those that do not. (5) There is considerable confusion in the assessments about the number of farmworkers that are at risk and whether the population at risk is migrant farmworkers, who are said to constitute only about 10% of seasonal workers, or all hired farmworkers. (6) No facts are available on the number of field hand laborers employed on farms that employ more than 10 workers. (7) No risk assessment can be valid unless it is related to the number of workers at risk and unless a reasonable estimate can be made of the number of workers who would benefit from a standard.

As to first and second points, although according to the U.S. Supreme Court OSHA is not required to support its finding of signficant risk "with anything approaching scientific certainty," the record shows that is is virtually a scientific certainty that poor sanitation and impure or inadequate water cause serious and widespread disease and that provision and use of adequate sanitation and water substantially reduce disease. These scientific certainties have been documented quantitatively innumerable times in the classical and more recent literature. No reputable health scientist or medical expert disputes these facts. Notwithstanding this reality, OSHA did everything within reason to collect, develop and analyze quantitative data specifically indicating the health risks to farmworkers in the U.S. arising from inadequate provision of sanitation facilities and potable water in the field and the reduction in risk that could be expected if those facilities were provided. OSHA now supports its findings of significant risk with two risk assessments it contracted to be performed.

The gaps in the record data exist because reasonable quantification cannot be accomplished. In such situations, the Secretary can rely for a finding of significant risk upon "the weight of expert testimony and opinion." This is the "best available evidence," which section 6(b)(5) of the OSH Act expressly authorizes OSHA to rely upon for promulgating health standards. While proponents of a standard may bear some burden of proving the need for the standard, ultimately the Agency itself bears that burden. Nonetheless, the fact that opponents of a standard are under no obligation to disprove need does not make the unanimity of medical and scientific opinion supporting the need for a field sanitation standard less striking and relevant.

Concerning the third point, that the risk assessments fail to indicate whether the source of disease is the place of employment or field worker housing, it is not always feasible to make such distinctions. Nonetheless, one of the risk assessment does confront part of this problem. Dr. Gangarosa in his assessment projects two sets of expected reductions in risk for each diseases. One set assumes comparable provision of facilities and water in farmworker housing; the other assumes no such provision. In all cases, the expected reduction in risk remains very substantial, never lower than 30% and usually considerably higher. This means that, whatever the relevant conditions in field worker housing, provision of these facilities and water in the field alone with have a major impact in reducing disease.

Moreover, as indicated above, these facilities and potable water are required by law to be present in the housing/homes of most farmworkers. For migrant workers who live in temporary labor camps, for example, an OSHA standard requires comparable provision (29 CFR 1910.142). For most seasonal workers who live year-round at home, local sanitation ordinances and laws require comparable provision. Consequently, unless these laws are widely ignored, most field workers enjoy comparable facilities and water in their housing. OSHA, therefore, concludes that the excess risk to farmworkers is attributable to the lack, or inadequacy of worksite facilities and potable water.

In any event, certain of the main diseases, like heat stroke when it occurs in the field, and ascariasis, hook worm and stronglyloidiasis, are extremely unlikely to have been contracted by field workers away from the field worksite. Ascariasis, hook worm and stronglyloidiasis are caused by round worms (parasites), which require incubation periods in soil to become infective. Hadden, Tr. 03., pp. 2009–23). Finally, even if a portion of the disease described in the risk assessments were attributable to sources outside the field worksite, much of the transmission of disease occurs at the worksite, and OSHA is mandated to protect employees against hazards at the worksite even if employees face the same hazards outside the worksite (*Forging Industry Assn.* v. *Secretary of Labor*, 773 F. 2d 1436 (4th Cir. 1985).

As to the fourth point, it is true that the risk assessments do not provide specific comparative risks for farms that provide facilities and those that do not. No such data exists and in practical terms it would be nearly impossible to develop such data for purposes of a rulemaking. But extensive and uncontroverted data and studies on the comparative incidence of the relevant diseases with and without the provision of sanitation facilities and water have been available for decades and are in record. There is no persuasive evidence suggesting that the specific risk and expected reduction of risk to field workers on farms in the U.S. would be any different.

Concerning the Farm Bureau's fifth, sixth, and seventh points, there is no confusion about the population at risk, which includes seasonal and migrant farmworkers. However, there is much imprecision in the estimates of the number of hired farmworkers, migrant farmworkers and field hand laborers employed on farms that employ more than 10 workers. This imprecision is inherent in the task of trying to collect statistics on populations that are extremely difficult to count. OSHA's contractor relied for its estimates of population at risk upon data compiled by the Department of Agriculture, which admittedly is an estimate. U.S. Census data also is imprecise. Nonetheless, the data OSHA has relied upon is the best evidence available. In addition, even if the population at risk, the number of migrant workers, or the number of field handlaborers were decreased or increased by 10%, 20%, or even 30%, it would not have a conclusive effect on OSHA's determination of risk.

The other critical comment on the risk assessments was prepared by Elizabeth D. Whitley, Executive Vice President, on behalf of the National Council of Agricultural Employers. In the main, this

TABLE IV.—COMPARISON OF STATE FIELD SANITATION STANDARDS—Continued

*State plan State	Standards effective dates	Toilet facilities		Handwashing facilities		Distance to facilities	Drinking H_2O required	Minimum No. of workers for coverage
		Required	Ratio	Required	Moist towelettes/ waterless handcleaner			
So. Carolina* (23,700).	July 1987	Yes	1:20	Yes	No	If facilities not located within ¼ mile must provide transportation; distance may not exceed 4 miles.	Yes	11 employees.
Texas (60,200).	1983	Yes	1:15	Yes	Yes, only where a sufficient supply of potable water is unavailable.	Within ¼ mile walk, or no more than 5 min. travel time, if transportation provided.	Yes	11 employees.
Utah* (1,000).	July 1986	Yes	1:30	Yes	No	Within ¼ mile	Yes	11 employees.
Wisconsin (12,500).	January 1986	Yes	1:20	Yes	Yes, when necessary to prevent a practical difficulty or unnecessary hardship.	Within ¼ mile	Yes	6 employees (limited to migrant workers).
Wyoming* (11,800).	April 1986	Yes	1:20	Yes	No	Within ¼ mile	Yes	0 employees.

B. Federal Regulation

Established federal standards and national consensus standards regulating sanitation that were in existence before 1970 were adopted in 1971 as OSHA standards under section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act). At that time rules were adopted for general industry (29 CFR 1910.141), temporary (migrant) labor camps (29 CFR 1910.142), construction (29 CFR 1926.51), shipyard employment (29 CFR 1915.97) and longshoring (29 CFR 1918.94).

Since then, sanitation provisions in standards for other industries, not including agriculture, have been adopted. OSHA has promulgated a standard for marine terminals (29 CFR Part 1917.127) under the rulemaking authority of section 6(b) of the OSH Act. Most recently, as specifically mandated by Congress, OSHA, on December 19, 1986, published an interim final standard to protect workers in hazardous waste operations (29 CFR 1910.120). OSHA's current sanitation regulations are summarized in Table V, below. The Table shows that OSHA has established work place sanitation rules, which with few exceptions, are consistent in requiring toilet and handwashing facilities and potable drinking water. The ratios in these standards also are quite similar to the ratio in the field sanitation standard.

Nevertheless, a representative of the American Farm Bureau Federation (AFBF), in a letter of March 23, 1987 (Ex. 228–2), argues that there is a discrepancy between the sanitation requirements in the proposed field sanitation standard and the sanitation requirements in the standards for the construction industry and hazardous waste operations. He asserts that, if those requirements are deemed adequate, then requiring more of agricultural employers in the final field sanitation standard would constitute "discrimination." However, a brief inspection of Table V shows that the basic elements of the final field sanitation standard are essentially the same as those in the other two standards, with the exception of a difference in the ratios of toilet facilities to employees (Since the construction and hazardous waste standards are the same in this regard, OSHA will focus this discussion only on the more recent standard for hazardous waste operations.)

TABLE V.—A COMPARISON OF OSHA'S SANITATION PROVISIONS

Industry/federal code number	Source of standard	Ratio: Number toilets/ number of employees	Toilets required	Drinking water required	Handwashing facilities required
General Industry 29 CFR Part 1910.141.	OSH Act 6(a), ANSI Z4.1–1968.	1/1 to 15, 2/16 to 35, 3/36 to 55, 4/56 to 80, 5/81 to 110, 1/111 to 150, 1/40 over 150.	Yes (c)	Yes (b)	Yes (d) except Mobile crews.

TABLE V.—A COMPARISON OF OSHA'S SANITATION PROVISIONS—Continued

Industry/federal code number	Source of standard	Ratio: Number toilets/ number of employees	Toilets required	Drinking water required	Handwashing facilities required
Temporary Labor Camps, 29 CFR Part 1910.142.	OSH Act 6(a), ANSI Z4.4-1968, ANSI Z4.2-1942 (Drinking fountains).	1/1 to 15, 2/shared units	Yes (d)	Yes (c)	Yes (f)(i) 1/1 to 60.
Marine Terminals:					
29 CFR Part 1917.95	OSH Act 6(a)				Yes (c).
29 CFR Part 1917.127			Yes (a)(1)(iv)	Yes (b)(1)(2)(3)	Yes (a)(1)(i)(ii)(iii).
Shipyard Employ., 29 CFR Part 1915.97.	OSH Act 6(a), P.L. 85-742 (1958).				Yes (f).
Longshoring, 29 CFR Part 1918.94.	OSHA Act 6(a), P.L. 85-742 (1958).			Yes (b)	
Construction, 29 CFR Part 1926.51.	OSH Act 6(a), (ANSI Z4.1-1968), ILO Hygiene & Commerce & Offices—1964.	1/1-20, 1+1 urinal/20 to 199 for each additional 40 employees, 1+1 urinal/ 200 or more for each additional 50 employees.	Yes (c)(1-4)	Yes (a)(1-5)	Yes (f).
Hazardous Waste Operations & Emergency Response; Interim Final Rule 29 CFR Part 1910.120.	Public Law 99-499, Oct. 17, 1986 (100 STAT. 1692).	1/1-20, 1+1 urinal/20 to 199 for each additional 40 employees, 1+1 urinal/ 200 or more for each additional 50 employees.	Yes (n)(3)(i-iii)	Yes n(i)(i-iv)	Yes n(6).
Field Sanitation, 29 CFR Part 1928.110 thereof.	OSH Act 6(b)	1/20 or fraction thereof	Yes (c)(2)	Yes (c)(1)(i)(ii)(iii).	Yes (c)(2) 1/20 or fraction thereof.

With regard to the differences in ratios between standards for field sanitation and the hazardous waste operations, two points need to be made. First, the hazardous waste operations interim final rule is not a final rule and is still subject to public comment, which may require a change in the proposed provisions on the basis of the record evidence developed. By contrast, OSHA's field sanitation standard is based upon the evidence in the record of this completed rulemaking. Second, the similarities in the ratios are greater than the differences, and the differences that do exist are due to the differing compositions of the respective workforces. Both rules require employers in operations with 20 or fewer employees to provide one toilet. The only difference in the ratios relates to the number of facilities required for operations with 21 or more employees. For operations with between 21 and 199 employees, the interim final rule for hazardous waste operations requires a minimum of 1 toilet and 1 urinal for each 40 employees. The ratio is, thus, maintained at 1 to 20 employees, but a urinal may be substituted for a toilet. This substitution may be appropriate for the hazardous waste (and construction industries), where the vast majority of employees are male. But in the farm field approximately twenty-five percent of the employees are females (Ex. 16, p.2), who cannot use urinals as a adequate substitute for toilets. For this reason and others discussed below under "Provision of Toilets," OSHA has retained the proposed ratio of 1 toilet to 20 hand laborers in the field in the final santitation standard.

On another matter, under Section 4(b)(1) of the OSH Act, OSHA authority to regulate occupational health and safety may be preempted by the exercise of statutory authority by other federal agencies to prescribe or enforce standards or regulations affecting occupational safety and health (see discussion under "Significance and Reduction of Risk," above). EPA has long regulated the environmental impact and human health effects of pesticide application and field reentry under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1970 (7 U.S.C. 135, et seq.), as amended by the Federal Environmental Pesticide Control Act (FEPCA)(7 U.S.C.A., 136 et seq. (Supp. 1973).

OSHA in this standard is not regulating the application or use of pesticides. Rather, OSHA seeks to protect hand laborers in the field from, among other things, the adverse health effects caused by toxic residues and dusts from all agrichemicals that have dried and settled on plants and soil after their application. OSHA seeks to reduce such occupational exposures by requiring the availability of handwashing facilities to cleanse the skin and flush the eyes of such substances. For these reasons and those discussed under "Significance and Reduction of Risk," OSHA believes it is not preempted in this regard by EPA.

Finally, Congress has passed a variety of other federal laws addressing other farm labor problems, such as the Migrant Health Act (Pub. L. 87-692), the Fair Labor Standards Act (29 U.S.C. 201 et seq.). The Farm Labor Contractor Registration Act (7.U.S.C. 2041-2053), and the Migrant and Seasonal Agricultural Worker Protection Act of 1982 (29 U.S.C. 1801). However, none of these laws address the public health concerns related to field sanitation.

VI. Summary of the Regulatory Impact and Regulatory Flexibility Assessment

A. Introduction

Executive Order 12291 (46 FR 13197, February 19, 1987) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. Similarly, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the regulation on small entities.

Consistent with these requirements, OSHA has prepared a Regulatory Impact and Regulatory Flexibility Analysis for the field sanitation standard. This analysis describes the

industry affected by the standard, some of the potential benefits that will accrue to farm workers engaged in hand labor, the costs of compliance and the technological and economic feasibility of the provisions.

B. Profiles of the Industry and Affected Worker Population

The field sanitation standard applies "to any agricultural establishment where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field." In order to estimate the potential number of establishments and workers covered by this standard, OSHA consulted several sources. According to the U.S. Department of Commerce's *1978 Census of Agriculture*, there were approximately 2.5 million total farms, and 1.9 million farms with sales of $2,500 or more in operation in 1978. This Census, which was the most recent available at the time OSHA published the field sanitation proposal, also reported that approximately 5.6 million hired workers were employed during some period in 1978. In addition to the problem of multiple counting of some hired farmworkers, the Census figures did not include contract labor and did not have a separate category for hired workers engaged in "hand-labor in the field". Although it did report that approximately 116,000 farms employed at least 10 hired workers for some period during the year. Problems with the Census data were recognized by participants in the rulemaking, including Centaur Associates [Exhibit 16]. The American Farm Bureau Federation (Exhibit 226–1) and the Migrant Legal Action Program (MLAP) [Exhibit D.C., Ref. 15–18].

Another source of data was the U.S. Department of Agriculture (USDA). According to the USDA's *1981 Hired Farm Work Force Survey*, there were approximately 2.5 million hired farm workers employed on approximately 960,000 farms in 1981. This USDA source, however, did not provide estimates of the numbers of farms employing more than 10 hired hand laborers. In addition, according to the MLAP, the USDA data underreported the number of migrants in the work force. "As with the Agricultural Census, estimates published by the ERS [Economic Research Service] on contract or crew labor (those migrants traveling with a crew leader or boss) are extremely soft and do not lend themselves to conclusions on numbers. . ." [Exhibit D.C., Ref. 15–18, p. 21].

The MLAP estimated that there were approximately 3.4 million seasonal and migrant farm workers employed in 1976 for a total of about 6.1 million person-months [Exhibit D.C., Ref. 15–18]. The MLAP estimates, however, are outdated and do not apply to the scope of the OSHA standard because all migrants and seasonals are included (e.g., those engaged in packing instructures and livestock operations) rather than just those engaged in hand labor in the field.

Since none of the sources available to OSHA at the time of its proposal contained complete estimates of the number of farms and workers potentially covered by the field sanitation standard, OSHA hired Centaur Associates to help fill the information gaps. Centaur reviewed the literature and consulted with agriculture experts to determine the types of agricultural products that would most likely be affected by OSHA's field sanitation standard. Centaur's findings are summarized in Table VI.

According to the 1978 Census of Agriculture, there were approximately 565,000 farms producing the crops noted in Table VI in 1978, and according to the USDA, there were approximately 1.5 million workers hired sometime during 1981 to produce these crops. In order to further refine these estimates, Centaur conducted extensive surveys of farm counties throughout the country where these labor-intensive crops are grown to determine the portion of farms and farm workers likely to be covered by OSHA's standard. Based on its surveys, and on additional data in the 1978 Census of Agriculture, Centaur determined that in 1981, approximately 52,000 farms and 560,000 hired farm workers would have been covered under the scope of the field sanitation standard (i.e., farms that hire of 11 or more hand laborers in the field) [Exhibit 16, Tables 3–5, 3–6].

Since Centaur completed its analysis more recent data has been received by OSHA. In a 1986 study entitled, *Methodology for Designating High Impact Migrant and Seasonal Agricultural Areas*, conducted by HCR for the U.S. Department of Health and Human Services (HHS), estimates were made on the number of seasonal and migrant farm workers employed in each county in the country on the basis of crop and acreage data. HCR determined the labor necessary to harvest each acre of each type of "labor-intensive" crop and used the number of acres of each type of "labor-intensive" crop in each county to estimate the number of workers necessary to harvest the crops. HCR used this approach because ". . . it is estimated that more than 90% of migrants and seasonal farm workers are used only to do harvesting" [p.27]. Summing the estimates for each crop gives the total number of farm workers needed to harvest all of the crops in a county. Unfortunately, because different crops have different seasons, this procedure leads to multiple counting of workers (i.e., the same workers can harvest different crops at different times of the year).

Three points are worth noting about the HCR report, however, in the context of OSHA's standard. First, the "labor-intensive" crops identified by HCR [pp. II–3 and II–4] were virtually the same as those examined by Centaur [see Table VI]. Second, HCR's methods for estimating the labor requirements by the of crop and the acreage planted was similar to that used by Centaur in determining the number of farms employing 11 or more hand laborers. And, finally, if one were to total the number of workers needed across all of the counties in the nation (something HCR did not do because of the multiple counting problem), an estimated 1.67 million farm workers would be needed to harvest all labor-intensive crops. According to Centaur estimates, each migrant works in three separate counties during the year [Exhibit 16, p. 34], and if one assumes that the seasonal workers also work in three counties, then the actual number of farm workers needed would be about one-third of the HCR estimate, or about 557,000 workers, which approximates Centaur's estimate of 529,000 farm workers potentially covered by the OSHA standard. Reasons that may account for these numerical differences are the two studies used different base years (i.e., Centaur used average estimates from the 1978 Census of Agriculture while HCR used the 1982 Census) and the different minimum farm sizes (i.e., Centaur excluded farms with 10 or fewer employees, and HCR excluded farms with 5 or fewer hand laborers). Thus, the HCR study appears to confirm both the appropriateness of the methodology used by Centaur and the actual Centaur estimates.

TABLE VI.—HAND LABOR ACTIVITIES ASSOCIATED WITH LABOR-INTENSIVE CROPS

Crop	Hand-labor activities performed under field conditions	Comments
Tomatoes	Hoe, harvest, transplant	Both fresh and process tomatoes currently require extensive hand labor, but mechanical harvesting of process tomatoes can be utilized.
Other Vegetables and Melons.	Thin, weed, harvest, hoe, transplant, turn vines.	Both fresh and process vegetables and melons require extensive hand labor.
Citrus Fruits	Prune, harvest	Extensive hand labor is required for citrus fruits.
Other Fruits, Nuts, and Berries.	Prune, thin, harvest	Extensive hand labor is required for these crops.
Tkbacco	Bed preparation, transplant, hoe, top and sucker, harvest.	Some tobacco operations are mechanized, but extensive hand labor is required.
Cotton	Weed, hoe	Almost all cotton is mechanized, but a few farms still utilize hand labor.
Sugar Cane	Harvest, spray, cut seed	Only sugar cane produced in Florida and Hawaii utilize extensive hand labor operations.
Sugar Beets	Hoe, thin	Mechanical . . . alternatives exist for these hand-labor operations, but hand labor is still used at many sugar beet farms.
Hops	Cultivate, turn vines, harvest.	Extensive hand labor is required for this crop.

Source: Centaur Associates, Inc. [Exhibit 16, Table 3-1].

Another recent study is the 1987 draft report by P. Martin and J. Holt entitled, "Migrant Farmworkers: Number and Distribution." This report was critical of the migrant worker estimates derived in the previous studies, including those by Centaur and HCR. For example, the authors note that migrants are not exclusively engaged in the harvest of "labor intensive crops" [p. 58], and the use of this assumption by HCR and Centaur [p. 66] leads to an underestimate of the migrant population. Martin and Holt then estimated the migrant worker activity on the basis of data obtained from the Census of Agriculture and the USDA's 1981 report, *Hired Farm Working Force* (HFWF), and a weighting (preferred) formula. While the estimates derived by the authors are not applicable to the OSHA standard, which covers hand labor rather than migrant labor, it is important to note that Martin and Holt based their estimate on the same data sources that Centaur used (i.e., the Census of Agriculture and the HFWF).

Based on an examination of these and other comments, OSHA concludes that the Centaur study was the best available source of estimates for the number of farms and farm workers potentially covered by an OSHA field sanitation standard. Since the Centaur study was completed in 1984, OSHA has updated the Centaur estimates to take advantage of more recent data. Specifically, OSHA used unpublished data from USDA's 1985 HFWF survey to update the Centaur estimates of the number of hired farm workers employed in hand-labor intensive crops (Centaur had used the 1981 HFWF survey). These estimates are presented in Table VII.

TABLE VII.—ESTIMATED NUMBER OF AFFECTED WORKERS

[1985]

Type of crop or activity	Hired workers (1,000) [a]	Estimated percentage covered by standard (percent) [b]	Estimated number of covered workers (1,000) [c]
Cotton	86	[d] 10	9
Tobacco	208	47	98
Other Field Crops (Includes Sugar)	365	[d] 9	33
Vegetables and Melons	196	70	137
Fruit and Tree Nuts	261	67	175
Others (Includes Hops)	94	[d] 10	10
Subtotal	1,210		461
Mushrooms [e]	11	100	11
All Other	1,301	0	0
Total	2,522		472

[a] Obtained from unpublished data from the USDA's Economic Research Service Survey on the "Hired Farm Working Force 1985."

[b] Obtained from the Centuar study [Exhibit 16, Table 3-6].
[c] Number of hired workers times percent covered.
[d] Calculated by OSHA from Centuar estimates.
[e] Estimated by OSHA.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

OSHA also used data from the 1982 Census of Agriculture (Centaur used the 1978 Census), and in the case of fruits and vegetables where the Census did not report total production estimates for 1982, the USDA's *Economic Indicators of the Farm Sector, State Financial Summary, 1985,* to apportion these workers by state. Based on these data, OSHA estimates that the field sanitation standard will cover approximately 461,000 farm workers. Since mushroom pickers were excluded from the proposal because they work in "permanent structures," Centaur did not develop employment estimates for this group. Thus OSHA was also unable to use the HFWF report as the basis for its estimates, because the Agency was unable to determine the percentage of workers in the "Other" category comprised by mushroom pickers. As an alternative, OSHA based its estimate on a statement by the Friends of Farmworkers, Inc. that approxiamtely 6,000 mushroom workers are employed in southeastern Pennsylvania and that two counties in this region accounts for most of the states' mushroom production [Tr. W2, p. 492], and on the assumption that mushroom pickers typically work in groups of 11 or more. Specifically, OSHA estimated the number of mushroom pickers in the nation by extrapolating from the 6,000 workers in Pennsylvania, based upon Pennsylvania's share of the nation's total 1985 receipts from mushrooms (obtained from the Economic Indicates of the Farm Sector). Since Pennsylvania accounted for approximately 57 percent of mushroom receipts in 1982 (i.e., 186 million/324 million), OSHA estimates that a total of 10,500 mushroom workers were employes in the nation in 1985 (i.e., 6,000/57%). In addition, using the same methodology, which was used for the other crops, OSHA apportioned these workers to each state according to the state's share of total 1985 mushroom receipts. The distribution of affected farm workers by state is presented in Table VIII. OSHA also estimates that approximately 54,000 agricultural establishments will be covered by the federal field sanitation standard.

TABLE VIII.—ESTIMATED NUMBER OF WORKERS COVERED

[By State]

State	Total No. of covered workers	Percent distribution by State
Alabama	2,300	0.5
Alaska	0	0.0
Arizona	6,800	1.4
Arkansas	900	0.2
California	137,800	29.2
Colorado	3,800	0.8
Connecticut	700	0.1
Delaware	800	0.2
Florida	63,800	13.5
Georgia	9,900	2.1
Hawaii	14,400	3.1
Idaho	10,400	2.2
Illinois	1,000	0.2
Indiana	2,300	0.5
Iowa	200	0.0
Kansas	500	0.1
Kentucky	28,700	6.1
Louisiana	1,600	0.3
Maine	2,000	0.4
Maryland	2,900	0.6
Massachusetts	3,300	0.7
Michigan	11,600	2.5
Minnesota	5,100	1.1
Mississippi	1,900	0.4
Missouri	900	0.2
Montana	700	0.1
Nebraska	1,700	0.4
Nevada	300	0.1
New Hampshire	400	0.1
New Jersey	4,300	0.9
New Mexico	2,000	0.4
New York	7,400	1.6
North Carolina	39,600	8.4
North Dakota	3,200	0.7
Ohio	4,200	0.9
Oklahoma	1,000	0.2
Oregon	9,800	2.1
Pennsylvania	10,700	2.3
Rhode Island	200	0.0
South Carolina	8,400	1.8
South Dakota	200	0.0
Tennessee	9,400	2.0
Texas	10,000	2.1
Utah	800	0.2
Vermont	300	0.1
Virginia	8,400	1.8
Washington	26,300	5.6
West Virginia	800	0.2
Wisconsin	7,300	1.5
Wyoming	600	0.1
Total	471,600	100.0

Source: U.S. Department of Labor, OSHA Office of Regulatory Analysis.

C. Technological Feasibility and Unit Costs

OSHA has determined that compliance with the Field Sanitation Standard is technologically feasible. When the Agency published its proposal, 12 states already had similar standards, and since March 1984, 10 additional states have promulgated field sanitation standards. In addition, as discussed below, each of the requirements of the OSHA standard can be met by using commercially avaliable products.

1. *Toilets*—The standard requires that sanitary toilet facilities be located within 1/4 mile of each employee whenever 11 or more employees are engaged in hand labor in the field. There are several ways for the employer to comply with this requirement. For example, the employer can construct a fixed facility in the field. Centaur estimated that the initial construction cost for a "privy pit" would be about $324 plus about $40 per year in maintenance and supplies [Exhibit 16, p. 64]. This estimate was similar to those of Fred Leitz ($300) [Hearing Transcript of Toledo, Ohio, p. 304]; Sharon Steffers ($400) [Exhibit 123, p. 4]; and John Moody ($500) [Exhibit 46, p. 1]. Alternatively, an employer could comply by renting a portable chemical unit. Centaur estimated the rental cost of a single trailer-mounted chemical toilet, including servicing, to be $75 per month [Exhibit 16, p. 64]. This is slightly higher than the estimates presented by Kristine Poplawski of the MLAP ($60 per month) the Portable Sanitation Association ($55 to $65 per month) [Exhibit 13-416] Johns Chemical Toilets ($65 per month) [Exhibit 13-103] Barnes Farming ($40 per month) [Exhibit 13-240] and Hoffman Seeds ($55 per month) [Exhibit 13-40].

No comments questioned the technological feasibility of meeting this requirement, and there was general acceptance on the unit cost estimates used by Centaur. However, some commenters noted special circumstances that would complicate the implementation of this provision [Exhibits 13-18; 13-240; 13-40]. For example, the American Seed Trade Association (ASTA) stated.

> Employees in seed production activities move through a field at a rapid pace. In many cases, employees ride on vehicles with platforms and perform jobs from this location. They spend very little time in any one area of a field. . . . There are serious problems involved in set-up, servicing and pickup of these facilities. Most fields are not easily accessed by vehicles. Fences pose entrance and exit barriers and there are other

crops grown contiguous to these fileds [Exhibit 13–375, p. 2–3].

OSHA has addressed this concern by incorporating language into the standard that permits the facilities to be placed at the "closest point of vehicular access" when it is infeasible to comply with the 1/4 mile requirement. For example, although it is theoretically technologically feasible to meet the 1/4 requirement for employees working on mobile platforms or trailer beds (e.g., by mounting the toilet on the platform, by placing toilets every 1/4 mile in the field, or by towing the toilet along with the platform), the practical solution is to place the toilet at the point of vehicular entry to the field. Thus, as the employees are transported within the field, they will frequently have access to the toilet. It must be noted, however, that if the field is large and has multiple access points, it may be appropriate to provide more than one facility. OSHA has determined that compliance with this provision is technologically feasible.

2. *Handwashing Facilities*—The standard requires the employer to provide hand washing facilities with an adequate supply of water, soap, and single-use towels within 1/4 mile of each employee. Towelettes are not permitted as an alternative. Centaur determined that employers could comply with this provision by purchasing a 55-gallon water drum with a spigot for $35, plus an additional cost of about $2 per day for supplying the unit [Exhibit 16, p. 64]. Although the Virginia Farm Bureau Federation questioned the need for handwashing facilities in the field, it stated that "most pickup trucks you see have the [water] containers attached or sitting in the body of the truck" [Exhibit 46, p. 3].

Due to the problems associated with the 1/4 mile requirement (see the discussion under toilets), some commenters suggested that moist towelettes be permitted as an alternative means of compliance. For example, the Natural Council of Agricultural Employees (NCAE) stated.

> Employers should be allowed to provide prepackaged moist towelettes, waterless detergents, or equivalent cleansing compounds as a means of alternative compliance. Of the ten states with existing handwashing requirements, seven permit moist towelettes and an eighth permits their temporary use [Exhibit 28, p. 3].

This position was also supported by the North Carolina Apple Growers Association which stated, "There are no poisonous residues on crops at harvest time as per Food & Drug Administrative requirements. Large quantities of water for flushing are not necessary and pre-moistened towelettes are sufficient" [Exhibit 13–281, p. 3].

As discussed elsewhere in the preamble, OSHA does not agree that all crops are free of hazards. Farm workers have a high incidence of pesticide poisoning. The MLAP noted that "The EPA and many reputable scientists agree that soap and water are the best means to remove pesticide and other pathogenic substances. Some ingredients, such as alcohol in moist towelettes, may aggravate irritation caused by these substances" [Exhibit 13–57, p. 4]. Thus, OSHA has determined that moist towelettes are not an acceptable alternative to soap and water for handwashing.

3. *Drinking Water*—The standard requires employers to provide suitably cool, potable water and single-use drinking cups. Centaur determined that employers could comply with this provision by purchasing a 15-gallon cooler at a cost of $60, plus an additional $2 per day to service the cooler with fresh water, ice, and cups. There were no comments questioning the feasibility of this requirement and it received support from groups such as MLAP [Exhibit 13–57, p. 3] and the NCAE [Exhibit 28, p. 4].

Some parties, however, did object to the provision. For example, John Moody of the Virginia Farm Bureau Federation stated, "I protest this portion of the regulation because I love this country in which I live and I hate to think that there are people here that see the need for a law to make one provide the other a cool drink of water" [Exhibit 46, p. 3]. The North Carolina Apple Growers Association (NCAGA) suggested that employers be allowed to comply by allowing the "worker to keep his personal water with him" because otherwise "hired help will be required to keep it readily accessible" [Exhibit 13–28]. While OSHA recognizes the concerns expressed by these comments, the Agency still believes that the drinking water provision is necessary. Some commenters and workers have stated that workers are not always provided with sufficient quantities of drinking water [Exhibit 13–221, 13–70; Exhibit 218, p. 53]. In addition, some employers provide water that is unfit for consumption and do not provide individual drinking cups [Exhibit 218, pp. 55–56].

OSHA has attempted to minimize the burden to employers by drafting the requirement in performance-oriented language. Thus, OSHA has determined that compliance with this provision is feasible.

D. Benefits

1. Introduction

The benefits of a field sanitation standard would be achieved by the mitigation of adverse health effects arising from the lack of water for drinking, the lack of water for washing, and the lack of adequate toilet facilities for farm workers engaged in hand labor in the field. A lack of sufficient drinking water increases a field worker's risk of heat stress. Also, a worker who does not have access to potable water would be more likely to drink from a contaminated source, if such a source were the only one available. Lack of water for washing increases a worker's risk of illnesses caused by fomites and fecal-oral transmission of disease-causing organisms. Lack of water for washing also puts a worker at higher risk for pesticide-related illnesses, due to the increased length of contact of the chemical on the skin. The lack of toilet facilities is a factor in urinary tract infection due to urine retention and is also responsible for increasing the field worker's exposure to disease-causing organisms found in feces-contaminated soil.

2. Potential Hazards

The following section describes some of the potential health hazards arising from improper field sanitation.

Heat-Related Illness: Heat-related illness occurs when the temperature of the body reaches approximately 5 degrees centigrade above normal body temperature (i.e., about 37 degrees C). For the body to cool itself, evaporation of perspiration is essential [Exhibit 13–378]. Dehydration is a primary cause of heat stress, as it reduces the body's capacity to perspire [Tr., W1, p. 195; Exhibit 145B].

The most serious heat-related illness is heat stroke, which can occur under conditions of water deprivation [Exhibit 199]. This illness, along with heat cramps and heat exhaustion, can be largely prevented by making available an ample supply of cool drinking water [Exhibit 24].

Statistics gathered by the Bureau of Labor Statistics (BLS) show that the incidence of Workers' Compensation claims for heat disorders among farm laborers was the highest of any occupation at 9.2 claims per 100,000 employees. The extent of the problem may be underestimated, however, as some states do not report to BLS, and farm workers are not covered or are only partially covered by some State Workmens' Compensation systems, and many health problems go unreported.

Communicable and Infectious Diseases: Infected farm workers without available sanitation facilities (see Table I) and a source of drinking water can easily transmit the infectious agents that cause amebiasis [Exhibit 81; 148A; 11–010, p. 340], viral gastroenteritis [Exhibit 11–010, p. 138], infectious hepatitis (A) [Exhibit 11–010, p. 175; Exhibit 8], and giardiasis [Exhibits 11–031; 14; 11–010, p. 352]. Transmission occurs through direct contact with contaminated skin, water, tools, or work products. Other disease-causing agents of concern are the excreted, pathogenic bacteria that cause shigellosis [Exhibit 141; 11–010, p. 37], salmonellosis [Exhibit 81; 11–010, p. 37], and typhoid colitis [Exhibit 81; 11–010, p. 37]. Also, the following soil-transmitted pathogens (excreted) contribute to the long-term pollution of the farm field: strongyloid parasites [Exhibit 11–031; 148A; 11–010, p. 459], hookworm parasites [Exhibit 81D; 11–031; 11–010 p. 38], trichuriasis [Exhibit 13–418; 44; 11–010, p. 38], and ascariasis eggs [Exhibit 143A; 11–010 p. 38]. These pathogens can survive and continue to be infectious from 3 weeks to 1 year after excretion. All of these noted communicable diseases have been documented in the record as affecting farm workers but are not prevalent among other occupational groups.

Urinary Tract Infection (UTI): Various symptoms are associated with UTI including urgency, urinary frequency, burning and pain upon urination, suprapubic pain, bloody urine, and, at times, fever [Exhibit 226–10–B, p. 159]. Chronic UTI can lead to chronic pylonephritis, a serious inflammation of the lining of the kidney. Renal failure can be the ultimate result.

UTI can arise from urine retention, which is more common among females, or when female farm workers use unsanitary materials (e.g., leaves) to effect personal hygiene in the field.

Pesticide Illness: Exposure to pesticides appears to be associated with a higher risk of contracting a variety of diseases including conjunctivitis, dermatitis, chronic respiratory problems, poisoning, miscarriages, birth defects, and certain types of cancer. Exposure can be the result of an accident (usually a much higher, possibly fatal, dose) or can occur through contact with pesticide-coated leaves, fruits, or vegetables during routine harvesting.

Farm workers suffer from a disproportionately large number of skin diseases that are pesticide related.

3. Hazard Abatement

OSHA's field sanitation standard includes provisions that, upon implementation, will provide protection of field laborers from the hazards described above.

Heat-related illness can be reduced by providing cool drinking water in a location readily accessible to all field workers. Workers who have drinking water available are less likely to become dehydrated since they can replace water that is lost through perspiration. Farm workers working in a hot environment need at least 2–3 gallons of water per day. Also, workers will be less likely to drink from a contaminated water source if potable water is readily available.

Providing handwashing facilities will allow field workers to remove or dilute pathogens and/or toxic chemicals from the skin. The availability of adequate handwashing water has been shown to reduce "dirty hands" infections by tenfold [Myers, Tr., W4, pp. 1022–1046]. In addition, since 98–99 percent of field worker exposure to pesticide residues is from skin contact [Coye, Tr., p. 366 E, D.C., May 23], pesticide-related illnesses could also be expected to decline. Evidence in the record indicates overwhelmingly that moist towelettes are an ineffective substitute for handwashing facilities.

Although handwashing is effective in reducing the risk of contracting communicable and infectious diseases, toilet facilities are also necessary. The use of toilets helps control parasitic roundworms, and containment and isolation of these parasites can prevent their infestation of the soil [MacLeod, Tr., 20, pp. 1555–1559]. Also, the availability of toilets will help reduce the incidence of UTI.

4. Population at Risk

OSHA's population-at-risk estimates appear in Table VIII. One source (Martin and Holt) criticized OSHA for not covering migrant workers engaged in irrigation, livestock or sod work. Other commenters have suggested excluding from coverage non-migrant hard laborers. For example, the Hawaiian Sugar Planters Association has requested exemption from the rule citing the unique nature of their industry and the use of union workers [Exhibit 13–439]. Similarily, the Washington State Farm Bureau has stated that it feels that the standard should not apply to year-round workers [Exhibit 13–95].

While acknowledging these disagreements, it is important to emphasize that the provisions of the standard are to apply to all establishments where 11 or more workers are engaged in hand labor in the field. Thus, seasonal workers who are not migrants will be covered. This is OSHA's intent because the potential health hazards to which each field worker is exposed are the same regardless of whether or not the worker is a migrant. A field worker does not have to be a migrant in order to contribute to or suffer from the pollution of the field environment. The United States Army-Air Force field manual *Field Hygiene and Sanitation* stresses the importance of proper disposal of human wastes [Exhibit 56, p. 37] as well as the need for adequate amounts of potable water when servicemen are working in hot environments [Ex. 56, p. 82]. In addition, testimony by the United States Environmental Protection Agency [Ex. 27] lends support to OSHA's position that no distinction be made between migrant and non-migrant field workers with respect to pesticide safety.

5. Quantification of Risk Reduction

While the migrant worker is by no means the only beneficiary of the field sanitation standard, two quantitative risk assessments have been prepared that draw strongly upon data gathered at migrant health clinics. Unfortunately, the use of such data presents certain problems when attempting to quantify the benefits of the standard. For example, there is no question that improved field sanitation is necessary if the health of the migrant worker is to be improved; however, the personal habits and general lifestyle and living conditions of migrant workers complicate efforts to determine the extent to which the field environment is responsible for the health problems experienced.

OSHA has used the quantitative risk assessment (QRA) submitted into the record by Dr. Jesse S. Ortiz [Exhibit 224] to estimate the range of potential benefits resulting from compliance with this standard. The Ortiz ORA was chosen because Dr. Ortiz made corrections to account for the confounding factors cited above (see also the discussion of the significance of risk.)

OSHA used the Ortiz QRA in conjunction with the population-at-risk estimates to develop a matrix of expected illness. In the matrix, the number of workers expected to become ill were tabulated by malady and by state. The study considered parastic diseases, gastrointestinal disorders, viral hepatitis, urinary tract infections, heat-related illness, dermatitis, and pesticide-related illnesses. The illnesses listed were all assigned a "risk factor," which is simply the percentage of field workers expected to become ill with each respective malady. The matrix was then generated by multiplying the risk

factor for each illness by the population at risk in each state. The estimated total workers expected to become ill nationwide was and found to be about 276,400.

The next step was to estimate the number of cases of illness avoided by implementing field sanitation practices. This was accomplished by totaling the numbers of workers for all states expected to contract each illness and multiplying these totals by specific illness "reduction factors." These factors were obtained from the QRA and are given as the estimated percentage of cases of illness avoided due to the provision of water and toilets. The resulting table provides the total benefit estimates for each of the two provision categories, by illness. These values were simply summed for the two categories and were related to all illnesses, resulting in an overall total of benefits. The estimated number of diseases prevented is about 182,800. Based upon the distribution of additional costs, OSHA estimates that approximately 59 percent of the benefits are attributable to the federal rule, and the remainder is attributable to state standards. The majority of these benefits would be realized as a reduction in parasitic infections. (No effort was made to factor out those states with field sanitation rules in effort. Compliance and enforcement levels in many of these states are low and it is expected that benefits will be realized through effective enforcement of the proposal federal standard).

A summary of these benefits, tabulated by illness and representing the midpoint of the range of risk, appears in Table IX.

Attempts have been made to monetize the benefits of the field sanitation standard. Although OSHA does not endorse any one method for monetizing the avoidance of occupational illness, such an analysis can foster a better appreciation of the expected benefits. Some analyses were submitted to the record on this issue. For example. Levenstein [Exhibit 35] uses a 35-percent risk factor for parasite infection and cites two values for the annual loss in productivity expected from an infected worker which give rise to the associated annual monetary losses of $585 and $890. If these figures are applied to OSHA's estimate of the yearly number of cases of parasite infection avoided (i.e., 142,541), the approximate benefits would fall within the range of $83 million to $127 million per year, with the federal portion of these being between $49 million and $74 million. Since this estimate is for parasite infection only, it is clear that substantial monetary benefits will be achieved upon implementation of the standard.

TABLE IX.—SUMMARY OF THE EXPECTED BENEFITS OF FIELD SANITATION

Disease	Number of workers expected to become ill	Estimated cases avoided		
		State	Federal	Total
Intestinal:				
Parasitic	219,292	59,022	83,519	142,541
Gastrointestinal	20,750	5,413	7,660	13,073
Viral Hepatitis	4,244	439	622	1,061
Urinary	18,864	6,639	9,395	16,034
Other:				
Heat-Related	47	19	26	44
Skin	2,830	293	414	691
Pesticide	10,375	3,867	5,471	9,338
Totals	276,404	75,692	107,107	182,799

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

6. Conclusion

In this section, the basic health hazards associated with the lack of field sanitation facilities were presented. They include heat-related illness, communicable and infectious diseases, urinary tract infection, and exposure to pesticides and pesticide residues. These hazards can be reduced by providing water for drinking, water for washing, and toilet facilities in the fields.

OSHA has estimated the population at risk to be 471,600 workers and believes that between approximately 107,000 cases of occupationally related illnesses can be avoided with the implementation of a federal field sanitation standard. When these estimates of illnesses avoided are considered in concert with estimates of monetary savings of at least $49 million, it is clear that substantial benefits are to be realized from the standard.

E. Estimated Costs and Economic Impacts for the Agricultural Employer

Based on its unit cost estimates, Centaur estimated the costs per worker per day of complying with the field sanitation standard for various sizes of agricultural employers. The following assumptions were used in deriving these costs.

- A workweek is 6 days;
- Handwashing water will be supplied in the quantity of 2 gallons per worker per day,
- Drinking water will be supplied in the quantity of 2 gallons per worker per day,
- Each worker will use 5 single-use cups and 16 paper towels per day,
- Water cooler capacity will equal one-half the total drinking water demand and each cooler will be refilled once per day, and
- Capital costs are amortized over 5 years but allocated to a period of use of 13 weeks [Exhibit 16, pp. 72–74].

Centaur estimated that to provide toilets would cost from 13¢ to 26¢ per worker per day, to provide facilities for handwashing would cost from 20¢ to 27¢ per worker per day, and to provide cool drinking water would cost from 23¢ to 37¢ per worker per day. In addition, for an average crew of 23 workers, Centaur estimated the total cost for these provisions to be about 72¢ per worker per day [Exhibit 16, pp. 76–80]. While Centaur unit cost estimates were generally accepted (see previous discussion), several commenters stated that Centaur underestimated the costs per worker. Two basic deficiencies with the Centaur methodology were cited: the failure to account for the dispersion of employees and the cost of moving portable toilets.

1. *Dispersion of Workers*—Centaur implicitly assumed that the workers are generally working in one concentrated area in the field. Thus, Centaur's per worker compliance costs generally decreased as crew size increased due to economies of scale (e.g., two toilets on a single mount cost less than two toilets on separate mounts). Several commenters stated, however, that the assumption that a work crew would be

concentrated in one area was unrealistic for their type of farming activity [see Exhibits D.C., Ref. 15–7, 123, 13–363, 13–240, 13–9, 13–85, and 13–88]. Thus, the costs based on an average crew size of 23 were underestimated. For example, according to the American Association of Nurserymen,

> Many operations consist of disjointed small lot sites scattered over a given area. Unlike the traditional midwest farm, nurseries generally do not consist of square after square of land which place field workers in large crews at one location. As a consequence of the typical configuration of our operations, our crews tend to be more mobile and the typical crew size consists of 5–7 workers [Exhibit 13–363, p. 2].

Similar comments were also received from other groups such as the seed, fruit, and vegetable producers.

Even if their employees were working in one field, some commenters questioned the use of cost estimates based upon the provision of services at a centrally located point. These groups stated that since their employees are typically dispersed throughout a "large field," they would have to provide services at several points in order to comply with the ¼ mile requirement [see Exhibits 13–40, 46, 13–9, and 13–85].

Based upon these comments, OSHA reestimated the costs per worker based upon an average crew size of 10 workers (as opposed to the 23 used by Centaur). OSHA believes that this is a reasonable approach toward determining the impact of the standard but realizes that the costs to farms employing crews of more than 10 employees will be somewhat overestimated. Based upon the Centaur unit cost estimates and the assumptions stated above, OSHA estimated that it will cost an agricultural employer with a typical crew of 10 employees approximately 29¢ per worker per day to rent and service a toilet, 29¢ per worker per day to provide handwashing facilities, and 31¢ per worker per day to provide cool drinking water.

2. *Cost to Transport Portable Toilets*—Because farm workers are mobile, Centaur assumed that the toilets (and water for handwashing) would be mounted on portable skids. Because Centaur assumed that workers were concentrated in one location each day, no cost was estimated for moving the skids from location to location. This assumption, however, was criticized. The Pennsylvania Farmer's Association, stated as follows:

> Although harvesting a particular tract can be done in a relatively short time (two or three hours), the work force needs to be relocated numerous times each day to accomplish the harvesting required to prevent spoilage. Often, the employees must travel a considerable distance from the harvested tract to the tract to be harvested. To comply with the rigid requirements of the proposed rule in these operations, toilet and handwashing facilities would need to be transported several times during the course of a single day, resulting in the utilization of considerable work time to perform such duties. In many instances, this time can be critical, as changing weather conditions can speed up the ripening process and cause an immediate need of harvesting more produce than expected. Furthermore, where large numbers of employees are needed for harvesting, these farm employers may be forced to invest in additional trucks and other vehicles merely to transport the additional toilet and handwashing facilities required under the proposed rule [Exhibit D.C. Ref. 15–7].

Other commenters expressed similar concerns [see Exhibits 13–226, 13–281, 13–296, 13–9 and 13–85]. To account for these costs, OSHA assumes that one-half of the crews will be required to move the skids each day and that each crew will require one-half hour per day in labor to move the portable sanitation facilities. At an average hourly wage of $4.59 [Exhibit 16, p. 69], this will result in an added labor cost of 23¢ per worker per day for an average crew of 10 workers. In addition, OSHA assumes that the skid will have to be moved an average of 5 miles per day. At an average cost of 21¢ per mile (for operating expenses and depreciation), this will add another 10¢ per worker per day.

3. *Reasonable Use*—The final standard contains an expanded reasonable use provision. OSHA estimates that it will take each employer 30 minutes per crew per season to comply with the employee notification requirements of this provision. At an average hourly wage rate of $4.59, this will cost about $25.25 (i.e., [10 workers to be notified & 1 person to notify them] × ½ × $4.59). Distributing these costs over an average season of 13 weeks results in an average cost per worker per day of about 3¢.

4. *Total Cost per Worker per Day*—By summing the estimate for all provisions, OSHA calculated that it will cost an agricultural employer approximately $.92 per worker per day to comply with the standard if the sanitation facilities do not have to be moved and $1.26 per worker per day if the sanitation facilities must be moved. Based upon an average crew size of 10 workers, therefore, it will cost a typical agricultural employer about $1.09 per worker per day (i.e., [$0.92 + $1.26]/2) to comply with the standards. (Compliance for crews with fewer than 10 workers will cost slightly more, and compliance for crews with more than 10 workers will cost slightly less). Based on an average farm worker who works about 10 hours per day at an hourly labor cost of $4.59, the average worker costs the employer about $36.72 per day. Thus, the $1.09 in compliance costs represents an increase to the employer of about 3.0 percent in hand-labor costs.

5. *Economic Feasibility and Regulatory Flexibility*—In order to put these costs into perspective, OSHA consulted the USDA's *Economic Indicators of the Farm Sector.* According to this report, "Contract and hired labor expenses" represented approximately $10.3 billion of the $136.1 billion (about 7.6 percent) in total production expenses" of the farm sector in 1985. Based on the assumption that labor expenses for an average farm are also about 7.5 percent of total production expenses, OSHA estimates that the field sanitation standard will increase total production expenses for an average farm by about two-tenths of one percent. OSHA has determined that cost increases of this magnitude are not significant.

OSHA recognizes, however, that the impact on some farms may be greater than the average. This is true since the crops covered by OSHA are hand-labor intensive, and this could result in greater than average labor costs for the producers of such crops. According to the NCAE, ". . .a 2 percent labor cost increase in labor-intensive agriculture . . . should not be dismissed lightly. Labor costs today constitute an increasingly large portion of the farmers harvesting and production costs" [Exhibit 28, p.4]. In addition, according to the National Fruit Products Company, "Fifty percent or more of the cost of harvesting apples and peaches, for example, is for wages of seasonal field workers" [Exhibit 13–88]. If this 50 percent estimate were used, the OSHA standard would only increase harvesting costs by about 1.5 percent). It should be noted, however, that the harvesting costs are only part of total costs, which include the purchase of fertilizers and pesticides, interest payments, equipment purchase, operation, and repair, etc. If these other expenses are considered, the total costs will increase by less than 1 percent. Thus, OSHA has determined that production cost increases associated with compliance with the field sanitation standard are affordable for the typical farm engaged in labor-intensive crops.

Some commenters disagree with OSHA's position. They argue that since they are operating at a net loss, no

increases are affordable. One farmer stated, for example:

> Enclosed you will find the Income & Expense Account of Julius O. and Iris E. Parker for the year 1983. Please note that we suffered a $62,184.28 net loss. . . .
>
> If you will examine the statement closely, you will see how very expensive it is to use migrant workers and why we farmers feel that we just cannot afford to take on any more rules and regulations concerning migrant workers. We feel that Governmental Agencies should see just how the farmers are suffering from the bout with bad weather for the last three years and also the poor prices we are receiving for our products [Exhibit 173].

Similarly, the Hawaiian Sugar Planters' Association stated:

> In recent years Hawaii's sugar, like other segments of the domestic sugar industry, has been in competition with subsidized foreign sugar and has incurred substantial operating losses (a total of $91 million in 1981 and 1982). More than half of the plantations in Hawaii operated at a loss in 1983. Adding an operating expense, such as that caused by the proposed regulations, without meeting a true need would be an added onerous and unnecessary burden for Hawaii's sugar farmers, further jeopardizing the long-term survival of plantations [Exhibit 13–421, p. 4].

In response to these comments, OSHA stresses that the field sanitation standard is necessary to protect the health of workers engaged in hand labor in the field. (Evidence in support of this determinitation has been presented previously in this preamble.) Thus, there is a "true need" for the regulation. Next, OSHA asserts that the compliance cost of $1.09 per worker per day is not "onerous". While it is true that some farms may have difficulty meeting even this cost increase because of their current financial position, OSHA has determined that the field sanitation standard will not have a significant impact on the viability of these entities. (That is, a production cost increase of less than 1 percent is unlikely to affect the viability of otherwise profitable farms or to noticeably worsen the viability of unprofitable farms.)

In addition, as was noted by the MLAP, the methodology used by OSHA will tend to overestimate the actual compliance costs to the farmer:

> Costs may be considerably less for many reasons: After the initial purchase of the facilities further capital costs would not be required. Subsequent costs should be limited to maintenance and purchase of consumables. Used portable facilities could lower initial purchase costs. Overall labor costs may be reduced because of higher worker productivity, improved morale, lower medical and hospital costs, and ultimately lower worker compensation and other insurance costs [Exhibit 13–57, p. 4].

Finally, Washington State's Commission on Mexican American Affairs, pointed out that based on both the value of agricultural crop production and the farm proprietors income reports, ". . . the agricultural industry appears to be able to afford upgrading drinking water and toilet facilities for farmworkers as figures show there is ample capital in the industry to fulfill the requirements of a field sanitation standard" [Exhibit 13–109].

As a result, OSHA has determined that compliance with the field sanitation standard is economically feasible. In addition, since small agricultural establishments (i.e., those with fewer than 11 employees engaged in hand labor) are specifically excluded from the scope of the standard, OSHA has determined that the field sanitation standard will not have an adverse impact on small entities.

F. Estimated Total Compliance Costs and Economic Impacts by State

OSHA estimates that the total annual costs of complying with the field sanitation standard will be approximately $50 million of which approximately $24 million is attributable to compliance with the federal standard. This estimate is based on 471,600 workers (see Table VIII), each working approximately 98 days per year [see Exhibit 16, p. 23] at an average cost of $1.09 per worker per day. OSHA distributed these costs among the states in proportion to each state's share of the total work force covered by the standard (obtained from Table VIII). The result of this procedure is presented in Table X.

TABLE X—ESTIMATED NUMBER OF WORKERS, COMPLIANCE COSTS AND RECEIPTS OF THE FARMS COVERED BY THE FIELD SANITATION STANDARD

[BY STATE]

State	Number of workers	Compliance costs ($1,000)	Receipts from crops covered by federal rule ($1,000)	Costs as a percentage of receipts
Alabama	2,300	246	84,442	0.3
Alaska	0	N/A	2,100	N/A
Arizona	6,800	726	224,830	0.3
Arkansas	900	96	26,460	0.4
California	137,800	14,720	4,430,871	0.3
Colorado	3,800	406	150,091	0.3
Connecticut	700	75	28,436	0.3
Delaware	800	85	32,407	0.3
Florida	63,800	6,815	1,979,926	0.3
Georgia	9,900	1,058	231,360	0.5
Hawaii	14,400	1,538	350,160	0.4
Idaho	10,400	1,111	403,256	0.3
Illinois	1,000	107	38,810	0.3
Indiana	2,300	246	67,122	0.4
Iowa	200	21	6,940	0.3
Kansas	500	53	15,831	0.3
Kentucky	28,700	3,066	423,606	0.7
Louisiana	1,600	171	47,460	0.4
Maine	2,000	214	74,120	0.3
Maryland	2,900	310	63,252	0.5
Massachusetts	3,300	353	95,492	0.4
Michigan	11,600	1,239	398,965	0.3
Minnesota	5,100	545	188,619	0.3
Mississippi	1,900	203	42,780	0.5
Missouri	900	96	20,452	0.5
Montana	700	75	26,699	0.3
Nebraska	1,700	182	68,014	0.3
Nevada	300	32	13,300	0.2
New Hampshire	400	43	11,540	0.4
New Jersey	4,300	459	147,160	0.3
New Mexico	2,000	214	75,270	0.3
New York	7,400	790	259,590	0.3
North Carolina	39,600	4,230	578,372	0.7
North Dakota	3,200	342	123,634	0.3
Ohio	4,200	449	130,252	0.3
Oklahoma	1,000	107	33,450	0.3
Oregon	9,800	1,047	294,236	0.4
Pennsylvania	10,700	1,143	309,900	0.4

TABLE X—ESTIMATED NUMBER OF WORKERS, COMPLIANCE COSTS AND RECEIPTS OF THE FARMS COVERED BY THE FIELD SANITATION STANDARD—Continued

[BY STATE]

State	Number of workers	Compliance costs ($1,000)	Receipts from crops covered by federal rule ($1,000)	Costs as a percentage of receipts
Rhode Island	200	21	6,910	0.3
South Carolina	8,400	897	149,384	0.6
South Dakota	200	21	7,700	0.3
Tennessee	9,400	1,004	150,924	0.7
Texas	10,000	1,068	358,636	0.3
Utah	800	85	25,300	0.3
Vermont	300	32	7,460	0.4
Virginia	8,400	897	152,668	0.6
Washington	26,300	2,809	683,160	0.4
West Virginia	800	85	21,454	0.4
Wisconsin	7,300	780	244,294	0.3
Wyoming	600	64	18,554	0.3
Total	471,600	50,376	13,325,648	0.4

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

As was suggested by Washington State, one way to put these costs into perspective is to compare them with revenues. [Exhibit 13–109]. Following this suggestion, OSHA estimated the receipts generated in each state by farms employing 11 or more hand laborers in the field. The procedure used was to first obtain each state's 1985 [1] receipts for the labor-intensive crops (i.e., fruit, vegetables, sugar, hops, tobacco, and cotton) shown in Table 5 of the 1985 USDA report entitled, *Economic Indicators of the Farm Sector.* Next, the percentage of total production of each crop produced by farms with 11 or more workers was obtained either from the Centaur surveys [Exhibit 16, p. 20] or from the *1982 Census of Agriculture* [Vol. 51, Table 41]. Finally, total production receipts were multiplied by the percentage produced by 11 or more hand laborers. For example, one of the hand-labor intensive crops is sugar beets. According to Centaur's surveys, a farm with 250 acres or more in sugar-beet production will have 11 or more workers, and according to the Census of Agriculture, approximately 47.1 percent of sugar beet production comes from farms with 250 or more acres. Thus, OSHA multiplied the receipts of each state for sugar beets (from Table 5 of the USDA report) by 47.1 percent. This procedure was followed for all hand labor intensive crops. Table XI presents OSHA's estimates of the portion of the total production of each type of crop produced by establishments with 11 or more employees engaged in hand labor in the field. The total receipts from all crops produced using 11 or more hand laborers are presented by state in Table X. OSHA estimates that the costs of providing workers with field sanitation services will, on average, equal about 0.4 percent of the receipts. A state-by-state breakdown of these effects is also printed in Table X. A provision-by-provision breakdown of these costs is presented in Table XII.

OSHA believes that the impacts presented in Table X represent a worst-case scenario. Many states already have field sanitation standards and many farms voluntarily provide their workers with sanitation facilities. Since both of these costs are included in the OSHA compliance cost estimates, the impacts presented in Table X represent the total impact of providing sanitation services which is greater than the impact of the OSHA standard alone.

[1] Data for 1985 were used because that was the same base year as the employment estimate.

TABLE XI—PERCENTAGE OF CROP HARVESTED BY ELEVEN OR MORE HAND LABORERS

Type of crop	Total receipts ($ millions)[a]	Percentage harvested by 11 or more hand laborers (percent)	Receipts harvested by 11 or more hand laborers ($ millions)
Cotton	$3,801	[b] 4.0	$152
Tobacco	2,721	[b] 47.2	1,284
Sugar Beets	766	[c] 41.7	319
Sugar Cane	731	[d] N/A	588
Vegetables	8,576	[e] 70.0	6,003
Fruits and Nuts	6,809	[e] 67.0	4,562
Hops	103	[b] 90.0	93
Mushrooms	324	100.0	324
Total	23,831		13,326

[a] Table 5 of the 1985 USDA report entitled, *Economic Indicators of the Farm Sector.*
[b] Centaur [Exhibit 16, Table 3-5].
[c] Portion of total production from establishments with 250 or more acres [*1982 Census of Agriculture*].
[d] According to Centaur [Exhibit 16, Table 3-5], sugar cane from Florida and Hawaii are harvested by hand by 11 or more workers. Therefore, in the following analysis, only receipts from Florida and Hawaii are counted.
[e] Centaur [Exhibit 16, Table 3-6].
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE XII—ESTIMATED COSTS BY PROVISION

Provision	Costs per worker per day ($1.00)	Percentage of costs	Total compliance costs ($1,000)
Drinking Water	$0.31	28.4	$14,327.1
Toilets	0.29	26.6	13,402.8
Hand Washing	0.29	26.6	13,402.8
Transportation	0.17	15.6	7,856.8
Reasonable Use	0.03	2.8	1,386.5
Total	1.09	100.0	50,376.0

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

OSHA used the following methodology to estimate the portion of total compliance costs attributed to the OSHA standard. First, based upon estimates presented in the Centaur report [Exhibit 16, p. 46], OSHA estimated that 20 percent of costs were being spent as part of current practice. Next, based upon an analysis of the existing state field sanitation standards, OSHA apportioned the remaining costs—those due to the requirements of state and federal standards. When an existing state standard was equivalent to or more stringent than the federal standard, all of the costs were attributed to the state standard. When a state did not have an existing standard, all of the costs were attributed to the federal standard. And when a state had an existing standard that was less stringent than the federal standard, costs were apportioned according to the stringency of the state standard. Based on this analysis, OSHA estimates that $10.1 million (or 20 percent) of the costs are attributable to voluntary compliance; $16.2 million (or 22 percent) of the costs are attributable to state standards; and $24.1 million (or 48 percent) of the costs are attributable to the Federal standard. A state-by-state breakdown of these costs is presented in Table XIII.

Centaur estimated that the total cost of providing field sanitation services would be $35.8 million of which $8.5 million (or 23.7 percent) was attributable to the federal standard [Exhibit 16, p. 6]. The difference between the Centaur and OSHA estimates is that OSHA used a higher average compliance cost per worker and attributed fewer of the costs to compliance with state standards than did Centaur.

TABLE XIII—ESTIMATED TOTAL COMPLIANCE COSTS, COST OFFSETS, STATE AND FEDERAL SHARE OF COSTS

[BY STATE]

State	Total costs ($1,000)	Cost offset of voluntary compliance ($1,000)	Cost offset of state standards (percent)*	Costs due to state standards ($1,000)	Costs due to federal standard ($1,000)
Alabama	246	49	0	0	197
Alaska	N/A	N/A	N/A	N/A	N/A
Arizona	726	145	75	436	145
Arkansas	96	19	0	0	77
California	14,720	2,944	75	8,832	2,944
Colorado	406	81	0	0	325
Connecticut	75	15	75	45	15
Delaware	85	17	100	68	0
Florida	6,815	1,363	50	2,726	2,726
Georgia	1,058	212	0	0	846
Hawaii	1,538	308	25	308	923
Idaho	1,111	222	25	222	667
Illinois	107	21	50	43	43
Indiana	246	49	0	0	197
Iowa	21	4	0	0	17
Kansas	53	11	0	0	42

TABLE XIII—ESTIMATED TOTAL COMPLIANCE COSTS, COST OFFSETS, STATE AND FEDERAL SHARE OF COSTS—Continued

[BY STATE]

State	Total costs ($1,000)	Cost offset of voluntary compliance ($1,000)	Cost offset of state standards (percent)*	Costs due to state standards ($1,000)	Costs due to federal standard ($1,000)
Kentucky	3,066	613	0	0	2,453
Louisiana	171	34	0	0	137
Maine	214	43	10	17	154
Maryland	310	62	75	186	62
Massachusetts	353	71	0	0	282
Michigan	1,239	248	0	0	991
Minnesota	545	109	0	0	436
Mississippi	203	41	0	0	162
Missouri	96	19	0	0	77
Montana	75	15	0	0	60
Nebraska	182	36	0	0	146
Nevada	32	6	0	0	26
New Hampshire	43	9	0	0	34
New Jersey	459	92	75	275	92
New Mexico	214	43	100	171	0
New York	790	158	20	126	506
North Carolina	4,230	846	20	677	2,707
North Dakota	342	68	0	0	274
Ohio	449	90	0	0	359
Oklahoma	107	21	0	0	86
Oregon	1,047	209	50	419	419
Pennsylvania	1,143	229	25	229	686
Rhode Island	21	4	70	0	17
South Carolina	897	179	75	539	180
South Dakota	21	4	0	0	17
Tennessee	1,004	201	0	0	803
Texas	1,068	214	75	641	214
Utah	85	17	75	51	17
Vermont	32	6	0	0	26
Virginia	897	179	0	0	718
Washington	2,809	562	0	0	2,247
West Virginia	85	17	0	0	68
Wisconsin	780	156	25	156	468
Wyoming	64	13	100	51	0
Total	50,376	10,074	40.2	16,217	24,085

*Based on Table IV.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

VII. Environmental Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the requirements of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and DOL/NEPA regulations (29 CFR Part 11), OSHA has reviewed the rule on field sanitation and has determined that no significant environmental effects are anticipated.

The standard, which requires employers to provide farm workers in the field with drinking water, handwashing facilities, and toilets, will have beneficial effects on worker health. These effects are discussed in the previous sections of this Notice.

A qualitative assessment of the environmental effects of the standard revealed no significant adverse impacts, although a minimal increase in capital costs and a small increase in operating expenses in certain areas are anticipated. The annual costs for implementing the standard would not be substantial in terms of the national economy or the general industry's overall market structure.

In most OSHA regulatory actions, two environments may be affected: the workplace environment and the environment external to the workplace, including impacts on air and water pollution, solid waste, and energy and land use. In the case of the field sanitation standard, the external environment and the workplace environment are usually one and the same. While OSHA does not anticipate any significant adverse environmental effects as a result of this rulemaking, there are some potential beneficial effects to the local environment. In general, the required facilities will improve worker effectiveness by reducing the incidence of diseases related to unsanitary conditions or to pesticide exposure.

Because a lack of toilet facilities may lead to fecal contamination of edible crops, soils, and surface waters, and eventually to sources of drinking water, the requirement to provide these facilities will likely reduce the probability of such contamination, thereby benefitting the local work environment. Although there are no substantive data available that quantify the extent of crop and soil contamination or water pollution, eliminating the source of such potential contamination will ultimately prove beneficial.

The requirement to provide drinking water to farm workers in and of itself has no adverse impact on the environment.

The requirement to provide handwashing facilities to farm workers is not anticipated to have a significant effect on the external environment. To the extent that wastewater from handwashing facilities is discharged on-site, however, there is some minor risk of redistributing pesticides and fecal contamination from the fields to the soil or surface waters. Pesticide contamination, in particular, is almost certainly trivial when compared with pesticide contamination resulting from the runoff of rain water.

Current field sanitation technology also encompasses handwashing facilities that discharge wastewater into holding tanks which are periodically discharged into municipal sewage systems. To the extent that the standard leads to a more widespread use of this technology, any potential negative effects resulting from on-site discharge of handwashing wastewater would also be eliminated.

In terms of solid waste disposal, the standard practice is to discharge waste material from portable toilets into municipal sewage systems. As the standard will probably result in a greater reliance on the use of portable toilets, there will also probably be a reduction in the use of privy pits. In this case, the use of portable toilets should further reduce any existing problems associated with the use of privy pits such as the leaching of waste materials into the water system.

In sum, OSHA believes that the standard will not cause or significantly contribute to any individual or cumulative environmental impact; and that under section 102(2)(c) of the NEPA of 1969, 42 U.S.C. section 4332(2)(C), promulgation of the standard for field sanitation is not a major federal action significantly affecting the quality of the human environment. Evidence supporting this conclusion centers on the fact that the proposed requirements for field sanitation facilities are in accordance with existing federal and state health regulations and with accepted public health practices for which substantive data indicate beneficial health effects. To the extent that employers are complying with existing state regulations, any potential environmental benefits in these states may have already been realized.

Based on this discussion and other information presented in this notice, OSHA concludes that there will be no significant adverse impact on the general quality of the human environment external to the workplace, particularly in terms of ambient air quality, water quality, or solid waste disposal.

VIII. Summary and Explanation of the Standard's Provision

A. Introduction and Summary

On March 1, 1984, OSHA published a notice of proposed rulemaking (49 FR 7589) to provide basic sanitation facilities and drinking water to reduce heat stress, communicable diseases, urinary tract infections and adverse health effects due to exposures to toxic agrichemicals among men and women working in the farm field.

The information added to the record since March 1, 1984, includes 487 pre-hearing comments, 4,418 pages of testimony by 243 witnesses, and 214 post-hearing exhibits and comments. The Agency has evaluated these submissions and finds that the record contains sufficient information to serve as a basis for a final decision.

The response to the NPRM contained 149 replies supporting the proposed field sanitation standard from groups like the American Medical Association (Ex. 13–286), the American Public Health Association (Ex. 13–451), the American Nurses Association (Ex. 13–470), numerous farm worker organizations (e.g., Ex. 13–57), physicians and clinics (Ex. 13–248, 13–260, 13–426), churches (Ex. 13–365, 13–278, 226–6) and numerous public health officials at the state and federal level (Ex. 13–52, 13–98, 13–106, 13–410, 13–445), as well as many individual farmworkers. Sixty-three respondents opposed a federal standard. Some, like the National Council of Agricultural Employers (Ex. 13–59, 28), do not oppose the provision of drinking water and sanitation facilities, but believe that employers should provide them on a voluntary basis as some now do. Others like the American Farm Bureau Federation (Ex. 13–71) oppose the standard, but, in light of the Secretary's initiative for state development of sanitation standards (50 FR 42660), now support state regulation instead of federal promulgation (Ex. 226–1). Other commenters, including many farmers and four physicians (e.g., Ex. 2–272; 118; 212), assert that a field sanitation standard is not necessary at all, since they do not associate any disease with work. Nevertheless, approximately 67 percent of the written comments endorsed the proposed standard.

Public participation in the development of the record was broadly based, as illustrated by an analysis of the affiliations and credentials of the witnesses at the hearings: 30 health experts, 11 state or federal government officials, 27 employers, 16 agricultural association representatives, 4 economists, 65 employees, 78 employee advocates, 12 sanitation facility providers and others. Among the witnesses, approximately 81 percent clearly supported promulgation of a federal standard, while 19 percent opposed it. A rare example of partial opposition was found in the statements of two Hawaiian union officials (Tr., F3, p. 14; F3, p. 64) who opposed the federal standard for Hawaii because of what they described as excellent working conditions there, but endorsed the standard for the continental United States.

Following the close of the record on August 31, 1984 and its reopening in October 1985, the Agency received 10 comments in response to the Secretary's October 21, 1985 notice (50 FR 42660). Of these, most dealt primarily with the issue of whether field sanitation should be regulated by the states or the federal government (e.g., Ex. 226–1; 226–6); some addressed specific provisions of OSHA's proposed standard (e.g., Ex. 226–7; 226–8); and several commented on the risk assessments OSHA had submitted to the record (e.g., Ex. 226–1; 226–3; and 226–9). Of the 10, 5 commenters favored the federal standard, while 5 were opposed.

Finally, 44 commenters responded to the Secretary's reopening of the record following his March 11, 1987 preliminary determination that a federal field sanitation standard would be issued on or about April 21, 1987 (52 FR 7451). A number of comments, including several from state farm bureaus and a petition signed by many Michigan farmers, opposed the federal standard (Ex. 228–15; 228–18; 228–22; 228–43; 228–44). Respondents in favor of the federal standard included farmworker representatives, several state officials, church groups and the Portable Sanitation Association (Ex. 228–10; 228–17; 228–20; 228–23; 228–24; 228–25; 228–1; 228–32; 228–38; 228–19; 228–27; 228–4).

These comments did not add significant new information and therefore did not materially affect the Secretary's determination that a federal field sanitation standard is needed.

The following provisions of the standard are included on the basis of the data and other evidence and the reasons discussed below.

B. Scope

The scope of the final standard remains the same as the proposal.

The standard applies to:

"any agricultural establishment where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field."

Small farms that hire fewer than eleven hand laborers, thus, are exempt. Family farms, where only members of the immediate family of the farmer work, also are not covered. Such family members are not counted, in any event, for the purpose of determining whether there are eleven hand laborers in the field. Any agricultural establishment that engages only in logging operations or livestock production is not covered, as well.

Comments and testimony at the hearings from farmworkers and their advocates and health professionals strongly urged OSHA to extend coverage to smaller farms, whose workers, they asserted, were required to be protected by the OSH Act (e.g., Tr. W. p. 1163). Farmworker advocates testified that the limitation proposed by OSHA would leave large numbers of workers unprotected. They frequently pointed to OSHA's own estimate that only 36% of all field workers would be covered by the proposed standard (Tr., O2, p. 1636; T2, p. 112; F1, p. 13; L2, p. 249; and O1, p. 1398). However, several farmworker organizations, recognizing the impracticality of covering farms with very few workers, recommended that OSHA compromise on an expanded scope by setting the minimum number of workers required for coverage as low as five or as high as eight (Tr., F1, p. 58; Ex. 13–70; 13–253).

Testimony from medical and health experts uniformly favored covering all employees on the basis of risk (e.g., Tr., W5, p. 1135; W5, p. 1163; F2, p. 153). Dr. Molly J. Coye, representing the American Public Health Association, testified: ". . . there is no basis in public health or medicine for restricting this to fields of 11 workers . . ." (Tr., W2, p. 366). Dr. Guzetta, like many clinicians, agreed with statements in the OSHA proposal that some health risks decrease with fewer people at a worksite, but he emphasized that "the transmission cycle is still the same from one person to the next . . ." (Tr., F2, p. 153).

Comments and testimony from growers and their trade associations varied. Some major trade associations supported the proposed coverage limitation as reasonable (e.g., Tr., W2, p. 466; Tr., F1, pp. 95–96; F2, pp. 77, 163, 179, 189–190; Ex. 13–105). Other commenters, mostly individual growers, advocated more limited coverage (e.g., Ex. 13–90; 13–280; 13–394; Tr., W4, p. 980). Growers made specific recommendations to further narrow the coverage: by excluding employees who travel to the field together in a private vehicle (Ex. 13–62); by applying the regulation only to seasonal employees or only to migrants working in larger groups (Ex. 13–88; 13–394); and by requiring a minimum number of employees to be working in a particular field (Ex. 13–263).

Agricultural trade associations were particularly concerned about work situations in which, for example, 11 hand laborers in the field might be scattered as individuals or small crews (split crews) over a large acreage or across separate plots (e.g., Ex. 13–88; 13–281, p. 4; 13–417), thereby requiring the employer to provide several toilets in order to comply with the one-quarter-mile-maximum distance requirement. To deal with this problem, some recommended raising the minimum number of field workers OSHA set for coverage (e.g., Tr., W4, p. 973; Ex. 13–90). Others, including the National Council of Agricultural Employers, suggested that OSHA authorize alternative methods of compliance for split crews, including transportation to facilities located outside the field (Ex. 13–417).

OSHA has considered all the evidence in the record and has concluded that the Agency lacks authority to expand the scope as health professionals and farmworkers and their advocates have suggested. The primary reason for not expanding the scope is the continuing Congressional rider to the OSHA appropriation bill, which broadly prohibits the Agency from expending any funds to ". . . prescribe, issue, administer, or enforce
any . . . regulation . . . applicable to any person . . . engaged in a farming operation which does not maintain a temporary labor camp and employs ten or fewer employees." (Ex. 11–009) OSHA believes that the Congressional prohibition from using any appropriated funds to "prescribe" or "issue" a regulation precludes the Agency from even considering the inclusion of small agricultural establishments in the field sanitation standard, despite persuasive comments and testimony in favor of the need for broader coverage.

A number of commenters, including farmworkers' representatives and the Region VIII office of OSHA, also objected to the Agency limiting a permanent rule on the basis of a temporary rider (e.g. Ex. 13–288; 13–380; 13–481; and 13–457). Other commenters emphasized that the application of the Congressional rider would leave vast numbers of workers unprotected by an OSHA standard (e.g., Tr., T3, p. 245). Some farmworker representatives recommended that OSHA either cover farms with fewer employees than proposed or treat the rider simply as a prohibition against enforcement on such small farms (e.g., Tr., L2, p. 249; Fl, pp. 35–37). But, no one explained how the Agency could do so when it was broadly prohibited from spending any monies to "prescribe, issue, administer, or enforce" such a regulation.

Commenters did not, but might have raised a question about why the definition of "scope" in the proposed standard (and the final) does not exactly follow the language of the Congressional rider. The general answer is that the standard was drafted to apply to those agricultural employees—hand laborers in the field—who need the protection from field hazards that the standards was designed to provide. Most state field sanitation standards also apply only to hand laborers in the fields. In addition, OSHA determined that the standard would not be applied under any circumstances if there were only a small number of hand laborers present in the field, because for some of the diseases (e.g., parasitism) the risk of exposure is directly related to the number of hand laborers in the field. If, for example, there are only a few hand laborers in the field, the risk of disease, all other things being equal, is substantially less than if there are 11 or more such laborers.

In any event, no objection was raised at the hearing or in the comments concerning any deviation in the proposed definition of "Scope" from the language of the Congressional rider. Furthermore, no alternative definition of "Scope" was proposed or costed out for purposes of the Regulatory Impact Analysis, and data currently in the record are inadequate to permit such costing. Further collection of data would take more time and necessitate a violation of the deadlines set by the Secretary of Labor and the Court of Appeals. Consequently, OSHA has concluded that the proposed scope cannot and should not be modified.

On the other hand, OSHA also believes that the clear record evidence of unacceptable risks to farmworkers' health requires that the Agency reject any further narrowing of scope of the regulation. The Agency understands the concerns of some growers who must divide their workforces of 11 or more field workers into smaller crews, but OSHA cannot justify more limited coverage based on a requirement for a minimun crew size in a particular field Moreover, to allow crew size to determine coverage could encourage some employers to restructure their workforce to avoid coming within the scope of the standard.

In addition, allowing the employer to deal with the problem of split crews by providing transportation to and from facilities located outside the field would be impractical, inevitably incapable of assuring adequate protection to fieldworkers and difficult to monitor for compliance. It is unlikely that an employer-provided vehicle, even under the best circumstances, could offer the certain access to facilities that locating them in the field within a one-quarter-mile walk would. How often, for example, would the vehicle leave for the facilities, how long would it take to complete the round trip, and what would happen to fieldworkers still in the field who needed to eliminate while the vehicle is en route? Furthermore, it also is unlikely that the total time required for the roundtrip via an employer-provided vehicle could be nearly as short as the five minutes typically needed to walk one-quarter of a mile. In an industry where employees usually are paid on a piece-rate basis, the added time could constitute a substantial disincentive for fieldworkers to use the facilities. Thus, for example, employees would be less likely to wash their hands when they needed to and women would be less likely to urinate when they needed to, thereby increasing the risk of exposure to toxic agrichemicals and parasites and to urinary tract infection, respectively. Finally, it would be much more difficult for a compliance officer to determine whether transportation provided by an employer in practice assured the employees adequate access to the facilities than to determine whether the facilities were within a quarter-mile walk of the employee's worksites.

C. Agricultural Employer and Establishment

In th 1984 proposed standard, "agricultural employer" is defined very broadly, to mean:

> Any person, corporation, association or other legal entity that owns or operates an agricultural establishment *or on whose premises or in whose interest* an agricultural establishment is operated and any person, corporation, association or other legal entity who is responsible for the management and condition of an agricultural establishment *or who acts directly or indirectly in the interest of an employer in relation to any employee.*(emphasis added)

An "agricultural establishment," in turn, is defined in the proposal as:

> "a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants or parts of plants."

In the preamble to the proposal, OSHA explained that the proposed definition of agricultural employer was so inclusive to reflect "the varied and complex arrangements developed among owners, crew leaders, lessees and agribusinesses to manage field workers." OSHA further stated that such inclusiveness was necessary because "reports show that these arrangements historically have resulted in an evasion of responsibility for the health and safety of field workers at the worksite" (49 FR 7600)." OSHA, therefore, sought to include all such parties within the definition of "employer", in an effort to assure employee protection.

Responses on the record to this broad definition are mixed. The majority favor a broad definition. Expectably, growers who testified on the issue favored a narrower definition or no liability for growers at all, while farmworkers and their representatives and supporters favored a very broad definition. Growers, for example, would exclude a mere lessor of land from the definition (W3, p. 776). They assert the proposed definition improperly goes beyond the definition of "employer," in the OSHA Act (Tr., O1, p. 1318). Growers also contend that harvesting companies and other intermediaries often are the "employer," and that in such cases growers should not be subject to the obligations of the standard (Tr., O1, p. 1359). Growers further claim that where, as in pickle farming in Ohio, Wisconsin and Michigan, the farmworker allegedly is a sharecropper, the farmworker legally is an independent contractor and there is no employment relationship. (Tr., T1, pp. 22–24; T2., pp. 57–59; T3., p. 153; and T3., pp. 167–68).

On the other side, most witnesses who commented on the proposed definition favored a broad definition to prevent avoidance by the grower of responsibility and to prevent the crew leader from being made into a straw man for what would then become effectively unenforceable requirements (Tr., W1, p. 64; W4, pp. 1075–76; 02, pp. 1638–39). Several witnesses pointed out that a two-fold trend to avoid grower-employer responsibility threatens the proposed standard. The trend involves: on the one hand (1) shaping the relationship between growers and farmworkers to make the latter appear to be independent contractors not entitled to protections afforded "employees" (Tr., T1, pp. 70–72 and 86–87); and T3., pp. 64–65); and on the other, (2) interposing intermediaries, like harvesting companies, between grower and farmworkers, ostensibly making the intermediary and independent contractor in relation to the grower and the sole employer in relation to farmworkers.

A persuasive legal memorandum (Ex. 221) argues that pickle pickers in the Midwest should be treated as "employees" for purposes of the proposed standard (as well as other protective legislation and regulations). It cites, among other precedents, U.S. Supreme Court decisions, Department of Labor and Internal Revenue Service practices and a formal written opinion by the Attorney General of Wisconsin. Recent cases appear to be in conflict on this issue. *Castillo* v. *Givens*, 704 F.2d 181 (5th Cir. 1983); *Donovan* v. *Brandel*, 736 F.2d 1114 (6th Cir. 1984).

Most of those testifying on the issue believe that the grower and the intermediaries (e.g., the crew chief) should be made responsible for provision of the facilities (Tr., 02, pp. 1758–60; W4, pp. 1075–76; W1, p. 64; and L2, p. 2117). Several witnesses indicated, in addition, that large processors, like Campbell Soup and Heinz Foods, dominate much of this segment of the agricultural economy and exercise substantial control over production, determining such matters as acreage, seed, soil, use of fertilizers and pesticides and prices. Such processors, these witnesses argue, also should be responsible for compliance with the standard (Tr., L1, pp. 2185–87; and T1, pp. 65–68, 70–72, 85–87 and 135–39). Obligating such corporate giants when they act effectively as "employers," these witnesses argue, would be the most efficient way to assure provision of facilities in the fields with minimum enforcement on the part of government (Tr., T3., p. 105; and F3, pp. 158–63). In Wisconsin, the Department of Industry Labor and Human Relations is reported to treat the processors as employers (Tr., T3, p. 105).

Based upon the evidence in the record, OSHA has modified the proposed definition of "agricultural employer" in the final standard. An "Agricultural employer" now is defined to mean:

> "any person, corporation, association or other legal entity that:
>
> (i) Owns or operates an agricultural establishment;
>
> (ii) Contracts with the owner or operator of an agricultural establishment in advance of production for the purchase of a crop and exercises substantial control over production; or
>
> (iii) Recruits and supervises employees or is reponsible for the management and condition of an agricultural establishment."

The definition of "agricultural establishment" is unchanged.

The revised definition of agricultural employer is somewhat narrower than the proposed definition but is intended by OSHA to include as employers all persons who could be considered "employers" under section 3(5) of the OSH Act. Now excluded from the definition are, on the one hand, mere absentee landlords, who as such, should not be considered employers and, on the other, employees like payroll clerks, who, in the language of the proposed definition, may act "directly or indirectly in the interest of an employer in relation to any employee" but also should not be treated as employers. Specified instead as employers are those who both recruit and supervise employees (e.g., many crew leaders and harvest companies), as well as those who are "responsible for the management and condition of an agricultural establishment" (same as proposal). In addition, the advance purchaser of a crop or a substantial part of crop who exercises substantial control over production is specified to be an "employer," while the broader reference from the proposal to those "in whose interest an agricultural establishment is operated" is deleted.

In establishing this definition of "agricultural employer," OSHA seeks to hold jointly and severally responsible for compliance those who are best able to assure that adequate sanitation facilities and potable water are provided to farmworkers in the fields. These elemental necessities must be provided to protect field workers. The history of field sanitation in the United States shows that large numbers of growers have not voluntarily provided such facilities; that many have not complied with state requirements that they be provided; and that some have even sought to evade such responsibilities. OSHA finds current efforts to shape the relationship between growers and field workers to absolve the employer of responsibility, by making the relationship appear to be something other than an employment relationship, unacceptable. Based upon the Agency's experience and expertise, OSHA believes it is imperative for effective enforcement of a federal field sanitation standard that owners and operators of agricultural establishments be responsible for compliance.

D. Hand labor

The definition of "hand labor" delimits the kind of employees covered by the field sanitation standard, based upon the types of activities they perform. The proposal defines "hand labor" narrowly, to include only employees who perform "agricultural activitites or operations performed by hand or with hand tools." The core group is comprised of field workers who hand-harvest, hand-weed or hand-plant vegetables, nuts, fruit, other crops and seedlings. Explicitly excluded from the proposed definition are those employees engaged in logging operations, the care of feeding of livestock and hand-labor operations in permanent structures. Implicitly excluded are other field workers, such as tractor drivers.

The justification provided in the preamble to the proposed standard for this focus is that hand laborers in the field "are the employees most in need of protection." Unlike tractor operators and cowboys," the preamble states, "hand laborers in the field are relatively immobile, and unlike cannery workers they are generally isolated from sanitation facilities and engaged in strenuous work directly exposed to the harsh elements." (49 FR 7599). Having so limited the proposed definition of "hand labor," the issue of whether in the final standard "agricultural employees other than field workers engaged in hand labor" should be protected, as well, is expressly identified in the proposal's preamble as one of the 6 main issues raised by the proposal.

Because of the response on the record to this issue, the final definition of "hand labor" in this standard has been clarified and somewhat broadened in several respects. "Hand labor" continues to be defined primarily in terms of the same core group, with field laborers engaged in "hand cultivation" added, and the verbs and nouns rearranged to clarify OSHA's original intent that coverage for these hand laborers is to be comprehensive (e.g., to include, but not be limited to, those who plant seedlings, weed crops and the like, by hand).

An additional example also has been inserted into the definition to further clarify that intent. Employees engaged in the "hand packing of produce into containers, whether done on the ground, on a moving machine or in a temporary packing shed located in the field" now also are expressly within the definition of "hand labor." OSHA believes that these employees would have been included in the proposed definition of hand labor but wishes to leave no doubt as to their intended inclusion. Testimony at the field sanitation hearings shows that field laborers during harvest season frequently pack the picked crop into containers in the field for direct shipment to wholesalers or retailers, as well as perform their traditional hand labor operations. The packers, who may be pickers on temporary rotation as packers, work under field conditions that are barely distinguishable from other hand laborers in the field.

Beyond these clarifications, the final definition of "hand labor" has somewhat broadened in two substantive respects, because it appears from testimony offered at the hearings that protection is needed for additional groups who are not significantly distinguishable from the main body of field workers covered by the proposal. First, "hand labor" has been extended to include "other activities or operations performed in conjunction with hand labor in the field." OSHA has made this modification because it appears from record evidence that these workers are at risk, their numbers are not insignificant (Horwitz, Tr., O1, p. 1305) and OSHA cannot justify their exclusion from protection by the standard.

OSHA excluded machine operators, like tractor drivers, for example, from the proposed definition of "hand labor" basically for three reasons. First, the Agency believed that these workers were not subject to as serious health hazards as other field workers. Second, it believed that machine operators had better access to facilities outside the fields. And third, since tractors move over large areas, OSHA did not see, in any event, how machine operators could be protected by a standard that set specifc limits on the distance employers could locate facilities from other, less mobile field employees.

However, the record shows that: (a) Tractor drivers are subjected to serious toxic exposures whenever they stir up residues in a field to which agricultural chemicals have recently been applied (Tr., W2, p. 377; Tr., W2 p. 433–34; Tr., W5 p. 1157 and 1174–76). (b) The line between machinery operators and hand laborers in the fields can shift and become blurred, depending on the particular agricultural context. Thus, tractor drivers in some areas work very closely with hand laborers; e.g., planting sugar cane in Louisiana (Tr. O2 pp. 1565–8; Tr. O2, P. 1574; Tr. O2, p. 1576; Tr., O2, p. 1581; and Tr., O2, pp. 1635–7). Some hand-laborers in the field work off of machines (Tr., O2, p. 1635–7). And in fact operators and those working off of machines become hand laborers on the ground at times, such as when they complete their mechanized tasks (Tr., O2, p. 1751). Thus, it would be senseless, proponents of inclusion argue, to deny protection to such field workers when they work in close relationship to other hand laborers. And (c) tractor drivers in practice, despite their apparent mobility, do not in actuality enjoy better access to facilities outside the field, because, as

one farmworker put it, "the boss man will not permit it." (Tr., O2, p. 1581; Tr., O2, pp. 1565–68; Tr., L2, p. 53; and F1 p. 13).

Growers and agricultural trade associations opposed the inclusion of machine operators, arguing that the employer can hardly be expected to provide sanitation facilities for a machine operator working alone in a field five miles from fieldworker crews (Tr., T2., p. 215; Tr., F2, p. 91). A Texas Health Department official also raised the practical problems of how to maintain facilities within the proposed one-quarter mile of an employee when the employee is operating moving equipment that ranges over a large territory (Tr., L2, pp. 52–53).

The response to this latter problem by proponents of inclusion was to suggest a graduated compliance requirement for machine operators and those who work off of machines in the fields, under which these employees would be assured access to sanitation facilities within a reasonable proximity to such employees, for example, at the point of entry to the field, or at the side of the field, rather than within one-quarter mile of the operator (Tr. W2, p. 377; and Tr., L2, p. 90). Representatives of the Texas Department of Health, while indicating that the Texas field sanitation standard did not then include workers who work off of or operate moving equipment in the fields, stated they believed the exclusion was going to be reconsidered and that the Texas standard might have to be changed (Tr., L2, p. 54; and Tr., L2, p. 54).

In light of this testimony, OSHA in its final definition has sought to achieve a compromise that would be both protective and feasible. Machine operators working entirely separately from crews of hand laborers in the field are not within the definition of hand labor and therefore will not be protected by the final standard. Thus, under this standard the operator of a large agricultural establishment engaged in extensive farming of grain, for example, with 11 working tractors in various fields will not have to provide field sanitation facilities for each of his tractor drivers. That would be infeasible and impractical. On the other hand, if an employer has a tractor effectively working as part of a crew in a field with, say, ten other field workers who are performing hand labor, the tractor operator is to be treated as a hand laborer for the purpose of calculating the number of hand laborers working in the field. Thus, for example, the operator in Louisiana of a slowly moving tractor loaded with sugar cane from which hand laborers following behind the tractor pull seedlings for planting is considered a hand laborer. The facilities provided in the field, however, need not be located "within a one-quarter mile walk" of such machine operators, as is required for other hand laborers in the field (see definition of "Hand Labor Operations" and paragraph (c)(2)(iii) in the standard).

Second, although the exclusion for "hand-labor operations in permanent structures (e.g., canning facilities or packing houses")] from the proposed definition of "hand labor" is retained in the final definition, hand labor operations in growing mushrooms, whether inside permanent structures or not, are expressly covered under the field sanitation standard. OSHA makes this modification for two reasons. Testimony at the hearings indicates that sanitation in the mushroom growing industry is unregulated under federal law (see Tr., W2, pp. 493 & 523–33; and Tr., W2, pp. 514–525). These operations appear to be excluded from sanitation standards for general industry because the tasks are agricultural in nature. But they also would not have been covered under the proposed field sanitation standard because the operations are performed inside permanent structures. Nevertheless, hand laborers in the mushroom growing industry appear to confront most of the same hazards arising from the inadequate provision of sanitation facilities or potable water as other agricultural hand laborers. OSHA, therefore, considers agricultural hand laborers in the mushroom industry to be "in the field," even though "the field" may be inside a permanent structure.

The modification is made to eliminate a gap in coverage of which OSHA was unware at the time it issued the proposed field sanitation standard (Tr., W1, p. 67). OSHA, at this time, does not have sufficient information about any other agricultural industry carried out in a permanent structure to justify their inclusion in this regulation.

As in the proposed standard, the final standard expressly excludes from the definition of "hand labor" employees engaged in "logging operations, [and] the care of feeding of livestock . . . ." Although there was some testimony that farmworkers in the poultry industry face occupational hazards from poor sanitation and inadequate availability of water at the worksite similar to field workers (Tr., F1 pp. 304–07; and Tr. L2, pp. 13–14), OSHA does not feel that it has sufficient information about these industries to regulate them at this time. OSHA also is hesitant to regulate under its field sanitation standard allied industries where factors like distances, population density, employee mobility and the like might be quite different from comparable working conditions for hand laborers in the agricultural field.

E. Provision of Drinking Water

The final standard in paragraph (c)(1) requires that potable drinking water be provided by the employer at no cost to the employee and be placed "in locations readily accessible to all employees." It also requires that the water be "suitably cool," be provided in sufficient amounts to meet the need of all employees and that it be dispensed either in single-use drinking cups or by water fountain. These requirements of the final standard remain the same as the proposal.

OSHA has used performance language to define how much water needs to be provided, where it must be provided, and at what temperature. Performance language allows for the wide variation in topographical features, temperature and humidity among the nation's agricultural establishments and the resulting differences in employee needs. However working conditions may vary, the water always must be available in amounts needed for satisfying thirst, cooling, waste elimination and metabolism. Its temperature must be low enough to encourage employees to drink it and to cool the core body temperature (Ex. 24).

Only the requirement for the sanitary dispensing of water has been stated with some specification, since public health standards prohibit the use of common cups or dippers to dispense potable drinking water and require fountains or single-use cups for this purpose (see ANSI Z4.2–1942 for specifications). This public health requirement was not challenged in the record and is supported by a recent clinical study of the transmission of aseptic meningitis among high school athletes who used common drinking cups during athletic competitions (Ex. 9).

In paragraph (b), OSHA defines "potable water" to mean water that meets the water quality standards for drinking purposes of either the state or local authority having jurisdiction over supplies of drinking water or the U.S. Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141. OSHA has required compliance with local, city, county, state or federal water quality standards for drinking water in order to decrease the risk of transmission of microbiological disease and chemical poisoning from contaminated groundwater (Tr., W2, p.

430; Ex. 11–036, pp. 57–71). Evidence in the record (Ex. 14) indicates that sources of drinking water, even under the best of conditions, are subject to contamination unless due care is taken. OSHA believes that all measurements for water quality should be made by the local public health authority having jurisdiction at the primary source of the water supply.

OSHA has required that employers furnish an adequate supply of potable water without cost to the employee. The record contains a number of cases in which: water was not available in the field at all times (Ex. 13–221; Tr., O2, p. 1577); water was provided only for the first day of a job and not for subsequent days (Tr. F3, p. 200); workers had to bring their own water, which was insufficient to meet their needs because the amount that would be adequate was far too heavy to carry (Tr., L2, p. 113) or because appropriate containers were unavailable (Tr., T2, p. 182). According to a number of farmworkers and public health specialists (e.g., Tr., F3 p. 203; L2, p. 176; O2, p. 1707), crew leaders routinely sell beer and carbonated drinks rather than provide drinking water free of charge to fieldworkers. Consumption of beer and soft drinks under hot and sometimes humid field conditions acts, physicians testified, to dehydrate rather than hydrate the body (Tr., WI., p. 291; L2, p.258). Diuretics like beer enhance urination, not perspiration, which is needed for evaporative cooling. Therefore, OSHA concludes that these products are inferior to water for cooling the human body in hot environments (Ex. 11–018, pp. 396–7).

How the water needed by farmworkers in the field should be provided was an issue in the hearings. Many farm employers concluded that farmworkers preferred to carry their own drinking water into the field and had been doing so "for years" (e.g., Tr., T1, p. 53; T2, p. 7). Field laborers, on the other hand, indicate that they are physically unable to carry into the field the amount of water they need each day, both because of the water's weight and volume (e.g., Tr., L2, p. 113).

Published data describing the minimum daily requirements of drinking water for this type of work support the contention that it would be very difficult for an individual employee to carry enough water for himself. (Ex. 11–063). Federal guidelines established for moderate and heavy work in hot or hot and humid environments recommend that men and women, while just walking on level ground (a measure of moderate activity), each require from 1¾ to 2¾ gallons of drinking water per workday and, while performing heavy work such as digging or cultivation, require between 2¼ to 3¼ gallons of drinking water (Ex. 56, p. 82). Water weighs 8.345 pounds per gallon. Therefore, under these guidelines, 14.6 to 27 pounds of water would need to be provided in the field for each worker daily. Both the weight and the practical difficulties of transporting such a volume of water on foot each day would constitute too great a burden on the individual worker.

OSHA's and NIOSH's data show that an employee can lose up to 3 gallons of perspiration on a hot workday (Ex. 11–063). OSHA therefore, recommends that at least 2–3 gallons of potable drinking water be provided per worker on a hot day (Tr., W2, p. 310). As indicated by the performance language at paragraph (c)(1)(i)(ii), an adequate supply of drinking water must be maintained during the entire workday.

In order to achieve the objective of preventing heat stress, potable water must be drunk whenever needed. Because of the nature of field work and the difficulties of leaving the job for any length of time, drinking water will be used appropriately only if it is located very close to each fieldworker at work, to facilitate rapid access. Sanitation facility vendors recommend that drinking water be located as close as possible to the work location (Tr., W3, p. 734; O2, p. 1608; F1. p. 140; and see NIOSH, Ex. 11–034). For this reason, the requirement for location stated in performance language at (c)(1)(i), indicates that potable water must be "readily accessible" to all field workers at their location of work.

Temperature of the drinking water also was an issue because of its direct relationship to worker health. According to one of OSHA's expert witnesses, Dr. H. B. William Howard (Tr., W2. pp. 305–6), water between the temperatures of 55 to 60 degrees Fahrenheit should be supplied, because cool water is more quickly absorbed into the blood to form perspiration for evaporative cooling and is more palatable, encouraging use.

Little disagreement was expressed among commenters as to need for reasonably cool drinking water. However, some employers preferred flexibility in complying with the temperature requirement (e.g., Tr., L2, pp. 8, 16–18). In an effort to assure such flexibility, OHSA has stated the requirement in performance language. Under section (c)(1)(ii), potable water must be maintained at a "suitably cool" temperature.

F. Provision of Toilet Facilities

In paragraph (c)(2), OSHA requires employers to provide toilet facilities for employees without cost. A "toilet facility" is defined in paragraph (b). The language in these provisions is essentially the same as the proposal.

"Toilet facility" is defined to give the employer maximum flexibility in selecting an adequate facility. Thus, a toilet facility may be constructed at a fixed location or in a portable configuration on skids or wheels, to move with a crew. Five types of toilets are approved, including biological, chemical, flush and combustion toilets and a fixed sanitary privy (as described in the record; Ex. 36 H). Each toilet facility must be supplied with toilet paper sufficient to meet employee needs. Employers are required, in paragraph (c)(2), to provide one toilet facility for each 20 workers. However, where a single-occupancy toilet room has more than one facility, such as a toilet and a urinal, the room counts as only one facility (Ex. 36 H. p. 8).

Construction requirements have been specified in paragraph (c)(2)(ii) by OSHA in response to needs recognized in state codes (Ex. 229). The requirement for adequate ventilation is to reduce heat and noxious odors inside the facility, so the facilities will be amenable to use. The requirements for appropriate screening is to exclude flies and other vermin, which are able to spread infectious material up to ½ mile or more (Tr., W1, p. 80). Self-closing doors also are required to exclude vermin when the facilities are not in use. Since toilets are to be used by both men and women, latches on the inside of the doors are required. Complete enclosure also is required to ensure privacy (Tr., 03, pp. 2009–10) and to provide some protection from adverse weather.

Toilets must be available if they are used regularly. Availability includes considerations of location, distance from the user and ratio of toilets to the number of employees. With regard to the appropriate ratio of toilets to employees, OSHA, with the exception provided in paragraph (c)(2)(i), requires an employer to provide one (1) toilet for every twenty (20) employees or fraction thereof. Alternative ratios, ranging at the extreme from 1:10 to 1:40, have been suggested, based on perceived health needs and costs in time and money. But most authorities recognize a ratio of 1:15 or 1:20 as the correct one.

For example, the current industry consensus standard for nonsewered waste-disposal systems (ANSI Z4.3–1979) recommends a ratio of 1:15 (Ex. 36H). This is consistent with OSHA's oldest sanitation standard applying to workers in general industry (29 CFR 1910.141). A new OSHA standard for hazardous waste sites requires a basic

ratio of 1:20 (29 CFR 1910.120, December 19, 1986).

Sanitation facility vendors, based on their extensive observations of facility use, supported OSHA's proposed ratio of 1:20, but preferred a ratio of 1:15. They contended that such a ratio would extend facility unit life and reduce unit cleaning problems (Tr., W3, p. 743; W4, p. 902; 02, p. 1611). In addition, a Florida citrus grower, who also owns a sanitation facility rental service, testified that a ratio of 1:40 "just does not work" (Tr., 02, p. 1605). Most employers in the construction industry, with similar work patterns and requirements, have units rented at ratios of 1:10 or fewer (based on data supplied by the University of Missouri) (Ex. 228–4).

Generally, farmworkers favor a ratio of 1:20 or fewer and farm employers favor a ratio of 1:30 or more. The American Farm Bureau Federation, for example, recently suggested a ratio of 1:31, based on an average crew size described by OSHA in its proposal as 23 (Ex. 226–1). However, according to OSHA's new estimate, which takes account of split crews, the average crew size is now estimated to be 10 (see discussion under section VI(E)(1), above).

Among State government regulations, two States have ratios of 1:40, while 16 have 1:20 or fewer (see Table V). Eight of the ten states that promulgated standards in response to the Secretary's October 1985 initiative have ratios of 1:20 or fewer.

OSHA questioned witnesses to determine whether an increase in servicing of facilities to, say, twice per week, would allow an increase in the required ratio from 1:20. (also see 50 FR 42662). The executive director of the Portable Sanitation Association testified that the trade-off of increased service for an increase in the ratio to 1:40 was feasible in terms of toilet capacity (Tr., W3, p. 755), but created other problems. Since average individual use time is fixed between 50 and 70 seconds, in the case of a 1:40 ratio, "a group of forty employees might stand in line to use facilities for 40 minutes" (Tr., W3, p. 755). Clearly, such delays would introduce economic stresses where the employee is on piece rate and where the crop being harvested is perishable. Some vendors also indicated that total costs of a second service per week include not only a cleaning fee of $13–15 but also the servicers' costs in mileage and time, which might increase total costs to such an extent as to make the option of renting a second facility more sensible economically, as well (e.g., Tr., W3, p. 755; L1, pp. 2200–2201).

Among sanitation unit vendors who have experience in determining best-use ratios, most agreed that a ratio of 1:15 to 1:20 was the proper ratio to use for field crews. Mr. Strickland of North Carolina testified in the Florida hearings that 1:20 was the preferred ratio (Tr., 02, p. 1918). Mr. Al Cook testifying for himself and for other members of the Portable Sanitation Association on the West Coast supported OSHA's proposal of 1:20 (Tr., F1, p. 138). On the other hand, Mr. Frank Ranson of Newport News, Virginia, stated that, while a use ratio of 1:25 was acceptable, such overloading would increase the risk of spillage and pollution and that a ratio of 1:20 was a better use ratio (Tr., W4, 904). Mr. Fred Edwards of Venice, Florida, prefers to keep the ratio of use between 1:15 to 1:25, but requires servicing of his units twice per week (Tr., 02, p. 1621). Mr. Ted Anderson of the ANSI Z4.4 committee for unsewered sewage and the PSA testified that the best use ratio was 1:15, as required by 29 CFR 1910.141 for general industry, but he could support the 1:20 ratio proposed by OSHA based on the volumetric capacity of the toilet.

The ratio of use is fundamentally limited by the capacity of the tank in the most frequently rented type of toilet facility, the portable chemical toilet. The average static capacity of the tank is 55 to 60 gallons (Tr., F1, p. 152), but the usable capacity is only 35 gallons, which includes a chemical disinfectant charge of 5 gallons or more, depending on the amount of waste collected (Tr., W3, p. 745). The usable capacity is defined by the need to maintain a reserve for non-human wastes, like toilet paper and sanitary napkins, to maintain cleanliness, and to prevent splash-back during use and spillage during relocation.

Based on a recent study of toilet usage during mass gatherings (Ex. 228–4c), researchers at the University of Missouri in St. Louis, Mo., made the following findings: the average person used portable facilities 2.6 times per 8 hours and twenty persons excreted an average of 665 oz. of waste per 8 hours. If the average farmworker acts in this respect like the average person in the study group and works the equivalent of 6 eight-hour days per week, the following data in Table XIV illustrates the capacity constraints that govern the selection of a use ratio.

TABLE XIV. PORTABLE TOILET FACILITY USE VS. VOLUMETRIC WASTE CAPACITY

Users/week/facility	Human waste collected		Chemical charge, gallons	Total, gallons [1]
	Oz.	Gallons		
20	3,990	31.17	5	36.17
25 [2]	4,992	39.00	5+	44.00+
30 [2]	5,990	46.80	5+	51.80+
40 [2]	7,987	62.40	5+	67.40+

[1] This does not include any wastes normally associated with toilet usage such as toilet paper, sanitary napkins and the like.
[2] At these ratios, the chemical charge must incease to as much as 10 gallons.

In Table XIV the total excreted waste, including the chemical charge, greatly exceeds the usable capacity of the tank in every case for ratios of 1/25 1/30, and 1/40. Use at ratios of 1/40 and greater, by these estimates, would even exceed the static capacity of the average chemical toilet tank by twice its volume, resulting in inevitable contamination and spills in the workplace. New data (Ex. 228–4) linked to World Bank studies on sanitation (Ex. 11–010) support these conclusions.

While the volume of waste even at a ratio of 1:20 exceeds the usable capacity slightly by 1-¼ gallons, this excess can be accommodated in the space of the 55 gallon tank held in reserve for paper and sanitary products. Moreover, the reserve space in practice will also have to accommodate usage by other persons in the field, including the grower and his family, supervisors, and farmworkers' families. OSHA has considered all the evidence in the record and has selected a use ratio of 1:20.

In paragraph (c)(2)(iii), OSHA requires that toilet and handwashing facilities shall be accessibly located and in close proximity to each other. In addition, the facilities shall be located within a one-quarter-mile walk of each hand laborer's place of work in the field. This final language is almost identical to the text of the proposed standard. "Accessibly" means easily reached without crossing an unbridged stream, a super highway or any natural or man-made barrier to reach the toilet and handwashing facilities. Toilet and handwashing facilities are required to be in close

proximity to each other in accordance with universally accepted public health and standard hygiene practices (see the discussion in the Health Effects section, above). Extensive exposure to agrichemicals makes the need for handwashing immediately before toilet use particularly critical for farmworkers. If these facilities are placed at a distance of more than a few feet from each other, the probability of use decreases and the risk of poisoning and infection markedly increases.

The requirement that the facilities be located within a one-quarter-mile walk of farmworkers' workplaces, OSHA believes, will encourage appropriate use of the facilities by minimizing time away from the job. This is a major concern of both employers, who often deal with perishable crops, and farmworkers, who ususally are paid on a piece-work basis.

Some of the farm employer representatives (Ex. 13–59) favored a time limit requirement rather than a distance requirement, because, they said, walking some ¼ mile distances might take longer than others due to terrain. Five or ten minutes by foot was suggested as a alternative maximum requirement (a five-minute walk at 3 mph = ¼ mile). In contrast, sanitation vendors felt that the units would not be used at all if the distance from the work area was greater than 200 yards. (e.g., Tr., 02, p. 1628). Others concurred that a one-quarter-mile walk to facilities is unreasonably far (Tr., 02, p. 1608; Fl, p. 140). Nonetheless, virtually all farmworker advocates supported either the ¼ mile or the five-minute maximum (Ex. 29; 87; 97; 13–233; 114A). The Western Growers Association stated that many employers do not object to either the 5-minute walk or ¼-mile-distance maximum (Tr. Fl, p. 99). OSHA has adopted the limiting distance of a one-quarter-mile walk between facilities and employee work areas as a maximum that both assures reasonable accessibility to affected workers and is enforceable.

In paragraph (c)(2)(iv), OSHA provides an exception to the requirement that facilities be located in the field by allowing facilities to be located at the point of closest vehicular access where, due to terrain, it is not feasible to locate them within a quarter-mile-walk of each employee. OSHA recognizes that there are some fields, located for example, on steep mountain sides, river deltas or wetlands and the like, into or on which portable facilities cannot be placed. In some of these locations, soil conditions may prevent, or local public health regulations may prohibit the use of an alternative to the portable facility, such as a sanitary privy. In addition, there may be rare occasions when the facilities temporarily cannot be placed or located in ordinary level fields as, for example, following unusually heavy rains that make the ground too soggy to support the vehicles that transport the facilities. Nevertheless, workers in these fields need the protection provided by sanitation facilities as much as workers in other fields.

Therefore, OSHA is requiring the facilities to be placed as near as physically possible to the workers, which under such circumstances would be at the point of closest vehicular access.

The requirement to provide toilets and handwashing facilities applies to all farmworkers covered under the scope of this standard, with one notable exception. The sanitation facilities need not be provided, under paragraph (c)(2)(v), to "employees who perform field work for a period of 3 hours or less (including transportation time to and from the field) during the workday." This exemption is limited to the provision of toilets and handwashing facilities and does not extend to drinking water. (Employers must provide drinking water, as specified in paragraph (c)(1), to all employees regardless of the length of their workday).

The Migrant Legal Action Program, asserting that workers can be seriously infected from human feces or poisoned by pesticide residues even if they work for only one or two hours per day, opposed the proposed, or any exemption based on the number of hours worked (Ex. 218, p. 129). Another farmworker representative pointed out that if an exemption based on time were allowed, it should include travel time to and from the fields, especially as the travel almost always is over rural, isolated roads that do not have rest stations (Ex. 13–395). Agricultural trade associations generally support this provision, arguing that requiring employers to provide toilet and handwashing facilities for part-time employees would be burdensome and unnecessary (Ex. 15–16). Moreover, OSHA's expert witness on urinary tract infections, Dr. Anemias C. Diokno testified that, from a medical point of view, 3 hours was about the average safe amount of time urine could be withheld before bacteria multiply and blood flow decreases due to pressure from the overstretched bladder (Tr., Wl, p. 295).

Consequently, OSHA has concluded that an exemption for part-time work is appropriate, because the risks are less to employees and because, under the circumstances, requiring provision of the facilities would be unnecessarily burdensome to employers. Nevertheless, the Agency believes that the time should be strictly limited in order to adequately protect farmworkers. OSHA's 1976 field sanitation proposal exempted field work of two hours or less (41 FR 17576). The 1984 proposal rasies the period to three hours per work day, but adds the requirement that travel time to and from the field be included in the total (49 FR 7605), which assures farmworkers that they will not be away from facilities for more than three hours.

G. Provision of Handwashing Water

Handwashing is a remarkably simple procedure performed by countless Americans, routinely everyday without awareness of the extensive protection it affords. Handwashing is one of the great, historic public health interventions against disease. By use of soap and adequate supplies of potable water in the workplace to remove pathogens from the face and hands, the chain of transmission of these diseases can be broken.

For the hand laborer, the technique removes harmful parasites, bacteria, and viruses that can populate the surface of the skin on "soiled" hands and thereby prevents their transfer to the intestine, from which these organisms may attach the liver, lung and brain. The scientific basis for requiring availability of handwashing water is based on the use of potable water to rinse away and remove organisms, so that the remaining pathogens are below the minimum number required for infective doses (see Table I, Ex. 11–010, pp. 33–35). Handwashing reduces the number of infectious bacteria so remarkably that a ten-fold reduction will occur in the number of contact diseases transferred, according to Dr. Meyers of the University of Maryland Medical School (Tr., W4, p. 1046).

The standard, in paragraph (b), defines "handwashing facility" to mean "a facility providing either a basin, container, or outlet with an adequate supply of potable water and supplied with soap and single-use towels." The basin, container or outlet, thus, must have its own adequate supply of potable water. For example, a 55-gallon drum supplied with adequate water could support, say, two outlets, each of which, in conjunction with soap and single-use towels, would constitute a facility. Similarly, two containers supplied with adequate water, which could be poured over the hands, with soap and towels, also would constitute two facilities. On

the other hand, a single outlet, in conjunction with one basin and soap and towels, would only constitute one facility.

Soap also is required, by definition, in order to make the water more effective in diluting and removing pathogens. Three types of soap are appropriate: common, commerical handwashing soap, soaps that are bacteriostatic (i.e. stop growth of bacteria) and soaps that are gemicidal. The use of common household soaps suffices, because it will lower the surface tension of the water and effectively prevent, by removal alone, the transfer of most infectious agents. So "soap," without further specification, is required in the definition of a handwashing facility. However, if a gemicidal or bacteriostatic soap is used, the risk of transfer of disease is lowered still further. The single-use towels are necessary for cleanliness and for drying the skin, which removes moisture in which pathogens flourish.

In the 1984 proposal OSHA did not authorize the use of moist towelettes as a substitute of handwashing facilities, but the Agency in the preamble to the proposal did request public comment on whether the employer should be allowed to provide prepackaged, moistened towelettes or equivalent materials in lieu of a handwashing facility (49 FR 7592). OSHA specifically sought information on the adequacy of alternatives to soap and water in reducing exposure to both pesticides and pathogenic organisms, since at the time of the proposal there was some question whether pre-moistened towelettes could be safely substituted for soap and water (49 FR 7599).

A number of commenters responded to OSHA's request for information. Testimony and comments from health professionals overwhelmingly supported OSHA's proposed requirement for a handwashing facility that includes water, soap and disposable towels. Many pointed out specific inadequacies of moist towelettes, and, though some stated towelettes might be better than nothing for some purposes, most were opposed to allowing them as an alternative to soap and water. OSHA's expert witness on communicable diseases, Dr. Gangarosa, testified that handwashing is best accomplished with soap and water (Tr., W1, p. 99). Dr. Carolyn MacLeod testified that towelettes do not give the same protection as soap and water, noting that "the handwashing facility is provided so that feces doesn't get under people's nails" (Tr., 02, p. 1660). Two physicians from the Indiana Health Centers commented that pre-packaged towelettes were not an adequate substitute for soap and water in preventing the spread of communicable diseases or pesticide poisoning (Ex. 13–248). Finally, Dr. Ortiz pointed out that moist towelettes, by dissolving the natural defensive layers of the skin, keratin and oils and by their abrasive effects, do things that are "detrimental in terms of preventing some of the problems, particularly from pesticides" (Tr., 03, p. 1939).

A number of physicians and health professionals presented evidence on the inherent problems of using moist towelettes to remove agricultural chemical residues from farmworkers' hands. Dr. Molly Coye testified that using moist towelettes might be worse than using nothing, since they remove only small portion of the pesticide, and the moist solvent in the towelette promotes absorption of the remaining residue (Tr., W2, p. 366). Dr. Adams of EPA, Dr. Mitchell representing NIOSH, and several physicians agreed that towelettes would be contraindicated for removing pesticide residues (Tr., W2, pp. 439; W2, pp. 242, 243; e.g., Tr., F1. p. 182). Dr. Sandoval further cautioned that, while running water would dilute a chemical, the solvent in a moist towelette could break down the chemical, possibly leaving by-products on the skin that are more toxic than the original compound (Tr., F1. pp.182, 203).

Other health professionals testified that towelettes would be useless for treating eye or skin injuries, which require continuous flushing with potable water (Tr., F2, p. 238; L1, p. 172; W5, p. 1131; 02, p. 1660). Dr. Sablan had seen several cases of eyes contaminated with pesticides from the field during the week before he give his testimony (Tr., F2, p. 229).

On the other side of the issue, a number of growers and their trade associations recommended OSHA consider allowing employers to furnish moist towelettes or waterless handcleaners in lieu of a handwashing facility (e.g., Tr., W2, p. 466; Ex 13–73; 13–88; 13–100; 13–381; 13–391; 13–409). Proponents of the use of these substitutes stated they were unaware of any evidence supporting OSHA's statements that moist towelettes could spread bacteria or pesticides across the skin (e.g., Ex. 13–469; 13–110).

Some were unconvinced by the expert testimony that moist towelettes may enhance absorption of pesticides, since they believed that combating pesticide-related poisoning is in the exclusive domain of EPA or they believed that the use of pesticides was already so well regulated by EPA that no danger of absorption existed for farmworkers (e.g., Ex. 13–105; 13–088; Tr., W.3, p. 678). The Workman's Compensation Department of Oregon, for example, noted that waterless hand cleaners were permitted in Oregon as sufficiently protective, because it was thought that workers would not be in the fields when pesticide residues could present health problems (Ex. 13–462).

A few growers were concerned that the waste water from the handwashing facilities and used paper towels would create a health hazard by drawing bees and other insects (e.g., Tr., T1, p. 55; T1, p. 256; Ex. 13–197). Other commenters, particularly Florida trade associations, pointed out that towelettes had been an effective substitute for soap and water in Florida and six other states which permitted their use (e.g., Ex. 13–88; 13–233; 13–29).

Farmworkers and their representatives were uniformly in favor of the proposed handwashing facilities (e.g., Tr., W2, p. 497; F1, p. 19; Ex. 13–380; 13–399). Some of the portable sanitation industry spokesmen commented that, though they preferred soap and water, in some instances treated hand towels might be appropriate (e.g. Ex. 13–75; 13–103; 13–249). One sanitarian from North Carolina recommended pre-moistened towelettes be provided by the migrant worker (Ex. 13–281).

On the basis of all evidence in the record, OSHA has decided to require handwashing facilities, as proposed. The Agency believes the evidence from health professionals is conclusive. The use of soap and water effectively reduces multiple hazards, while the use of soap-and-water substitutes could increase them. Farmworkers' hands accumulate plant and produce juices, agricultural chemical residues and pathogenic organisms that often are embedded in thick layers of dirt, resulting in a grimy substance, which cannot be removed by a few wipes of a tiny towel, regardless of the cleansing compound it may contain. There is evidence throughout the record that some of the residues of agrichemicals to which farmworkers are exposed in the fields are toxic (e.g., Tr., L1, p. 19). OSHA is aware that some states with field sanitation standards do permit the use of moist towelettes in lieu of a handwashing facility with water, soap and single-use towels. However, the majority of states, (15), have rejected this alternative. Of the states that do allow waterless cleaners of some type (including moist towelettes), two do so

only in an emergency, when water is unavailable (e.g., Tr. L1, p. 55).

There was general agreement that the water used in handwashing facilities should be potable to avoid contamination of field workers' hands by the very water they use to clean those hands. In addition, because of the probability that handwashing water might be drunk or used to flush eyes, OSHA believes it is important that the water not be polluted (Tr., T2, pp. 198–9 and 257).

The handwashing water is required to be provided in amounts adequate to satisfy needs. Since needs may vary, OSHA has not specified the minimum amount of water required, but the Agency recognizes that the volumes needed for washing vary from one to three gallons per worker, per day (Ex. 56; Tr., W2, p. 387).

In paragraph (c)(2) of the final field sanitation standard, OSHA also required that one handwashing facility be provided for each twenty employees, or fraction thereof, that the facilities be accessibly located and in close proximity to toilet facilities and that the facilities be located within a quarter-mile walk of each hand laborer's place of work. Handwashing facilities, thus, are required in paragraph (c)(2) to be provided in the same manner and ratios as toilets. The provisions for maximum distance, ratios and exemptions for part-time work are discussed under "Provision of Toilets," above.

H. Maintenance of Facilities

The maintenance requirements in paragraph (c)(3) of the final standard are very similar to those proposed in 1984. The general requirement in both is that the facilities and potable drinking water "be maintained in accordance with appropriate public health practices." Specifically, with regard to drinking water containers, both the proposal and the final (c)(3)(i), require that they be covered, cleaned and refilled, but the proposal would have required daily cleaning and refilling, while the final requires that they be "refilled daily or more often as necessary" and that the containers be "regularly cleaned." In addition, the final standard requires that the containers "be constructed of materials that maintain water quality." Concerning, toilet facilities, the maintenance requirement is the same in the proposal as in the final ((c)(3)(ii)): "Toilet facilities shall be operational and maintained in clean and sanitary condition." As to handwashing facilities, the proposed requirement that they be "maintained in clean and sanitary condition" is retained in the standard ((c)(3)(iii)) and supplemented by a requirement that they be "refilled with potable water as necessary to ensure an adequate supply. . . ." With regard to the disposal of wastes from the facilities, both the proposal and the final standard require that it shall "not cause unsanitary conditions" ((c)(3)(iv)).

Performance language is used to define most of the other maintenance requirements, as the frequency of need for and manner of cleaning and servicing will vary according to size of the workforce and other factors.

The one exception involves the daily refilling of drinking water containers. The original proposal specified both the daily refilling and cleaning of drinking water containers. This was done in an effort to prevent disease by ensuring fresh, uncontaminated water for the workers to drink.

Dr. Ortiz, an expert witness, testified in support of the requirement for daily refilling of water containers, stating that water left overnight in containers promotes the growth of bacteria, resulting in a stagnant water supply, which can endanger the health of those ingesting water the following day (Tr., 03, p. 1864). Another commenter supported daily cleaning, but preferred performance language such as, the facility should be maintained in a "reasonably clean and sanitary condition" (Ex. 13–431).

While not objecting to daily refilling, representatives of citrus and sugar growers opposed the proposed requirement for daily cleaning as overly rigorous and unnecessary. Alternatively, the grower groups suggested performance language simply requiring that drinking water containers be "kept clean" (Ex. 13–100; 13–290; 13–429).

In light of the range of views expressed on this issue, OSHA revised the final language of the standard, opting for a performance requirement that containers be "regularly cleaned," but retaining the specification that these vessels be refilled daily or more often as necessary," to retain the freshness of the water.

Section (c)(3)(i) requires that water containers be kept covered and constructed of materials that maintain water quality. This provision is intended to prevent contamination from either the container itself or from external agents entering the water container.

Containers constructed out of wood or other porous material, for example are less preferable than metal or even plastic containers. One employer suggested the use of stainless steel containers, preferably sealed to prevent contamination, to ensure a continuing supply of cool, fresh drinking water (Ex., 13–100).

Keeping drinking water containers tightly covered is vitally important not only to prevent contamination caused by such agents as flies, vermin, human waste, or pesticide residues, but also to discourage removal of water with a common dipper (Ex. 9; Tr., T2, p. 171; 02, p. 1727–9). This practice frequently occurs when water containers are left uncovered and single use drinking cups are unavailable. Though born of necessity, this method of obtaining drinking water promotes transmission of disease among workers and is therefore unacceptable.

Section (c)(3) (ii), (iii) and (iv), address the needs for proper maintenance of toilet and handwashing facilities, necessary to prevent disease and to encourage regular use.

While a few vendors recommended twice-weekly servicing of toilets (e.g., Tr., 02, p. 1606), most generally agreed that for single-unit facilities serving 20 or fewer users (the ratio specified in this standard), weekly servicing is adequate to ensure sanitary and operational condition (Tr., W3, p. 741; W4, p. 884). Vendors as well as some farmworker representatives, recommend supplementing professional weekly service with routine daily maintenance by one or more of the farmworker users (e.g., Tr., F1, p. 143; Ex. 13–229).

Farmworkers and their representatives were unanimous in their support for frequent cleaning and servicing, stating that poorly maintained toilet and handwashing facilities (characterized by dirt or overflowing toilets and noxious odors) would simply not be used (Ex., 13–229; Tr., 03, p. 1864; T2, p. 108; L1, p. 2135; L2, p. 110). Some farmworker groups supported strengthening the provision to require daily cleaning of toilets, stating, "Poorly maintained facilities discourage timely use . . . . Frequency of cleaning is the best assurance [of use]" (Ex., 13–380). Since conditions promoting disuse would seriously diminish the value of having the facilities, OSHA considered the need for regular servicing to be compelling.

The requirement set down in section (c)(3)(iii) that handwashing facilities be refilled with potable water simply repeats in the maintenance provision what was already required by the proposed and final definitions, of "handwashing facility." The requirement is consistent with long standing public health practice, designed to prevent illness in instances in which handwashing water is inadvertently ingested. Since the Agency would like to eliminate the use of signs in several languages to identify

different classes of water quality in the same workplace and the errors that occur when water supplies are confused, the requirement for potable handwashing water is considered both appropriate and necessary to maintain health in the agriculture worksetting. The need for an emergency eye wash capability in the field provides another compeling reason for the water available to be potable (Tr., F2, p. 229).

Proper disposal of waste from sanitation facilities is necessary for effective prevention of disease and maintenance of a sanitary environment. In paragraph (c)(3)(iv) OSHA requires that the "Disposal of wastes shall not cause unsanitary conditions." OSHA's use of performance language here acknowledges that the type of facilities and their placement in the field may vary considerably, affecting the kinds of disposal needed. For example, wastes from toilets, "black water," will in the case of portable toilets usually be pumped into county or city sewage systems, while in the case of flush toilets may be piped directly into septic tanks. Waste water from handwashing facilities and fountains or drinking cups, "gray water," can be disposed safely in the field, according to Mr. Ted Anderson, Executive Director to the Portable Sanitation Association (Tr., W2, p. 412, 413). However, the "gray water" must not be allowed to collect and stagnate on common-use areas, so as to create a hazard by attracting insects. In addition, discarded paper towels and paper and plastic cups must be collected and disposed of in a sanitary way.

I. Reasonable use.

In the 1984 proposal, paragraph (c)(4) required that:

"Employees shall be allowed reasonable opportunities during the workday to use the facilities."

For the standard to be effective, field workers must be afforded reasonable opportunities during the day to use the facilities that employers are required to provide. Consequently, the reasonable use requirement has been maintained in the final standard.

In addition, in order to assure reasonable use, the final standard imposes two other, minimal obligations on the employer. Paragraph (c)(4), "Reasonable use," in the final standard reads as follows:

The employer shall notify each employee of the location of the sanitation facilities and water and shall allow each employee reasonable opportunities during the workday to use them. The employer also shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine and agrichemical residues:

(i) Use the water and facilities provided for drinking, handwashing and elimination;

(ii) Drink water frequently and especially on hot days;

(iii) Urinate as frequently as necessary;

(iv) Wash hands both before and after using the toilet; and

(v) Wash hands before eating and smoking.

Thus, under the final standard, an employer must notify fieldworkers of the location of the facilities and water.

Facilities may be placed behind trees or high bushes, on the side of a field away from fieldworkers, where workers' vision is obstructed by tall crops, or in, under or behind topographical obstructions. Obviously, if a fieldworker cannot easily locate the facilities, the opportunity to use them may be seriously impaired. Since the facilities are periodically moved from place to place in the fields, the employer must advise workers of the current location to assure reasonable use if workers cannot see the facilities. In requiring the employer to provide employees with notice of location, OSHA does not intend that the employer give notice when the location of the facilities is manifest and notice would be superfluous.

Similarly, to assure that field workers understand what kind of use is needed to effectively minimize workers' exposure to the relevant field hazards, employers must communicate to workers the simple procedures to minimize such hazards. OSHA's inadequate attention to this problem in the proposal was noted at the hearings by a number of health professionals, farmworkers and farmworker advocates (e.g., Tr., W1, p. 261; F1, p. 26; F2, p. 28; W1, p. 312).

The issue was raised at the beginning of the public hearings, when Charles Horwitz, the attorney for MLAP, cross-examined the then Director of Health Standards. Dr. R. Leonard Vance, immediately after Dr. Vance's opening remarks in Washington, D.C. In response to Mr. Horwitz's question concerning the omission of such a requirement from the proposal, Dr. Vance granted that many OSHA health standards do have a training and education component and expressly urged MLAP to present any solid evidence and expert opinion in support of mandatory training and education. Dr. Vance assured MLAP that OSHA would give such evidence the "due and careful deliberation that we will give to all other testimony and evidence that is presented." (Tr., W1, p. 40–43, at 41) Thereafter, the issue of training and education was raised and discussed repeatedly throughout the hearing (e.g., Tr., O1, p. 1444; O1, p. 1428; L1, p. 2098; L2, p. 21; T1, pp. 212–214; T3, p. 157; F1, pp. 53–55). For example, Ms. Sandy Yagle, Organization Director for the Sandusky County Farm Bureau (Ohio), although opposed to a federal field sanitation standard, stated that OSHA must "determine to what extent lifestyle is a significant factor . . . and then . . . to what extent education of proper sanitary practices needs to be part of a program." She further stated. "It will do absolutely no good to impose a standard causing (sic) the farmer a great deal of money if the people don't know how or why to use what is then provided" (Tr. T3, p. 157). In the hearing in Fresno, California, Ms. Melissa Arnold, representing the California Grape and Tree Fruit League, questioned Mr. Donald Rosendahl, who represented the California Farm Bureau Federation, concerning how many different languages training would have to be conducted in if a training requirement were incorporated into the field sanitation standard (Tr., F2, p. 92).

Testimony at the hearings and comments in the record are virtually unanimous in supporting the need to provide field workers with sufficient information so that, conjunction with employer compliance with other provisions of the standard, field workers can effectively act to minimize their exposure to the relevant health hazards. For example, both outside experts OSHA hired to perform risk assessment of the record evidence (Ex. 224; 225), testified that some health education should be carried out if maximum reduction of risk is achieved (Tr., W1, pp. 111, 112; W1, p. 140). OSHA's outside expert on heat stress, Dr. William Howard, testified that farmworkers should be provided information on how to prevent heat-related injuries (Tr., We, pp. 322, 323). Similarly, OSHA's outside expert on urinary tract infection (UTI), Dr. Ananias C. Diokno, also supported providing information on the association between urine retention and UTI (Tr., W2, pp. 297, 298).

Dr. Molly Coye, a medical and public health expert testifying on behalf of the American Public Health Association, supported the need for field workers to be provided information about the nature of the hazards, the recognizable symptoms of disease and the simple ways to minimize exposure to hazards like parasites and pesticides (Tr. W2, pp. 366G, 384, 398, 407–408). She stated, further, that the most practical way to provide such information is by posting

signs (in appropriate languages), by providing workers with a copy of the field sanitation regulation at the start of each workshift, or by brief informal conferences in the field (Tr., W2, pp. 407–408). Valarie Wilk, representing the Farmworkers Justice Fund, one of the plaintiffs in the field sanitation litigation, said health education is an integral part of field sanitation standard and that workers, growers, health professionals and farmworker advocates all need such education (Tr., W5, pp. 1136, 1137). Dr. Barbara H. Linden, an economist at the National Social Science and Law Center, referred to the requirements in the Army and Air Force manuals for training soldiers on how field sanitation reduces and prevents the spread of diseases caused by filth, how to cope with extreme heat and on the importance of personal hygiene (Tr., W5, pp. 1205–1208). Mr. Troy Lowry of the Texas Department of Health testified that it is "essential" that workers be informed: "the more information you can put out, and the more you can demonstrate there is a need for something, the better compliance you're going to have, the better participation you're going to have" (T5., L2, p. 21).

Numerous other experts and witnesses with substantial practical experience in migrant health agreed that health education is needed, that pamphlets and/or signs concerning field sanitation should be distributed or posted, respectively, and that such education was especially vital to alert field workers to wash their hands before they go to the bathroom, in order to minimize exposure to agrichemicals, which are rapidly absorbed by the skin in the genital area (e.g., Tr., W2, p. 366E; L2, p. 197; T1, p. 133).

Dr. Donna Olsen, who directed a comparative study of the health of migrant workers and urban poor in Utah, asserted that OSHA should fund an educational effort for migrant workers, some of whose health knowledge is "barely out of the pre-Columbian Indian culture (Tr., F2, p. 28)." Dr. Naomi Baumslag, Clinical Professor, Department of Community Medicine at Emory University, stressed empirical evidence demonstrating the correlation between health education and disease reduction (Tr., W1. pp. 260–263).

There was little if any opposition in the record expressed by witnesses representing other groups and interests. Mr. Frank Ranson, a businessman representing the Portable Sanitation Association, said that from his experience providing information to field workers would be useful (Tr., W4, p. 885–7). James F. Wilder, Executive Vice President of the Soybean Producers Association of North Carolina, which opposed promulgation of a federal field sanitation standard, asserted in a pre-hearing comment that evidence shows that workers don't use facilities in the field when they are provided and that disease probably comes from the home. He therefore supported "a good Federal education program on hygiene practices for workers (especially migrants)" rather than "useless regulations" like the field sanitation proposal (Ex. 13–254).

Based on this record, OSHA has concluded that there is more than substantial record evidence in support of some requirement that would provide field workers with necessary information on how to minimize field hazards. However, mindful of the practical limitations on implementing such a requirement in the fields and of the potential costs to already beleaguered farmers, OSHA has sought to assure that the information necessary to protect fieldworkers' health shall be communicated, while the resulting burdens on agricultural employers are held to the absolute minimum.

In requiring employers to communicate a limited amount of simple information to field workers, OSHA does not intend that the obligation include the transmission of any information beyond what is immediately useful, practical and necessary for workers to protect themselves. Employers are not, for example, expected to describe the particular characteristics or toxicities of individual agrichemicals in use in the field or to explain germ theory. OSHA anticipates that the appropriate information could be communicated to field workers verbally or pictorially, in fliers or posters, which could be prepared and furnished by a trade association or a farmworker-support organization. For example, a poster might depict such protective practices as washing hands before going to the bathroom. These communications should be supplemented orally, as necessary. OSHA also believes that the information could be communicated entirely orally, in approximately ten minutes.

Employers also are not required to communicate the information on any particular schedule. OSHA believes that the required frequency of communication will vary with the situation. For example, in the first weeks after the standard takes effect, it may well be necessary to advise fieldworkers several times of the hazards and how to protect against them. Thereafter, as field workers gain familiarity with the information, the need for such frequent communication is expected to be substantially reduced. For new field workers and at the beginning of each season, more frequent communication again may be needed.

The practical information that should be communicated to fieldworkers includes the good hygiene practices needed to minimize field worker exposure to the dangers of heat, commuicable diseases, retention of urine and agrichemical residues.

IX. Effect of Standard on States

The 23 States and two territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard or amend their existing standard if not comparable, within six months of the publication of this final standard. These jurisdictions are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Seventeen (17) of the States with private sector programs have either adopted or are in the process of adopting a standard. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

For states that do not have OSHA-approved plans, OSHA intends this standard to preempt state occupational field sanitation standards insofar as they regulate farms with 11 or more employees. However, the preemption provisions of section 18 of the OSH Act do not apply to state field sanitation standards insofar as they regulate farms with fewer than 11 employees, because under the current congressional prohibition OSHA itself has no authority to promulgate or enforce a standard applicable to such small farms.

X. Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 653, 655, 657], 29 CFR Part 1928 are hereby amended as set forth below.

The **Federal Register** has been requested to officially file this document at 2:00 p.m. on April 28, 1987 which shall be the time of issuance of this document as provided by 29 CFR part 1911.18. The time of issuance is the earliest moment that petitions for review may be filed with the U.S. Court of Appeals.

Signed at Washington, DC., this 27th day of April, 1987.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

XI. Regulatory Text

29 CFR Part 1928 is amended as follows:

1. The authority citation for 29 CFR Part 1928 continues to read as follows:

Authority: Secs 6 and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.A new Subpart I and § 1928.110 is added to 29 CFR 1928 to read as follows:

2. Subparts E through H are reserved, and a new Subpart I consisting of § 1928.110 is added to 29 CFR Part 1928 to read as follows:

Subparts E–H—[Reserved]

Subpart I—General Environmental Controls

§ 1928.110 Field sanitation.

(a) *Scope.* This section shall apply to any agricultural establishment where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field.

(b) *Definitions.* *"Agricultural employer"* means any person, corporation, association, or other legal entity that:

(i) Owns or operates an agricultural establishment;

(ii) Contracts with the owner or operator of an agricultural establishment in advance of production for the purchase of a crop and exercises substantial control over production; or

(iii) Recruits and supervises employees or is responsible for the management and condition of an agricultural establishment.

"Agricultural establishment" is a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants, or parts of plants.

"Hand-labor operations" means agricultural activities or agricultural operations performed by hand or with hand tools. Except for purposes of paragraph (c)(2)(iii) of this section, "hand-labor operations" also include other activities or operations performed in conjunction with hand labor in the field. Some examples of "hand-labor operations" are the hand-cultivation, hand-weeding, hand-planting and hand-harvesting of vegetables, nuts, fruits, seedlings or other crops, including mushrooms, and the hand packing of produce into containers, whether done on the ground, on a moving machine or in a temporary packing shed located in the field. "Hand-labor" does not include such activities as logging operations, the care or feeding of livestock, or hand-labor operations in permanent structures (e.g., canning facilities or packing houses).

"Handwashing facility" means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels.

"Potable water" means water that meets the standards for drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141.

"Toilet facility" means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination which is supplied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets and sanitary privies.

(c) *Requirements.* Agricultural employers shall provide the following for employees engaged in hand-labor operations in the field, without cost to the employee:

(1) *Potable drinking water.* (i) Potable water shall be provided and placed in locations readily accessible to all employees.

(ii) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet the needs of all employees.

(iii) The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

(2) *Toilet and handwashing facilities.* (i) One toilet facility and one handwashing facility shall be provided for each twenty (20) employees or fraction thereof, except as stated in paragraph (c)(2)(v) of this section.

(ii) Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from the inside and shall be constructed to insure privacy.

(iii) Toilet and handwashing facilities shall be accessibly located and in close proximity to each other. The facilities shall be located within a one-quarter-mile walk of each hand laborer's place of work in the field.

(iv) Where due to terrain it is not feasible to locate facilities as required above, the facilities shall be located at the point of closest vehicular access.

(v) Toilet and handwashing facilities are not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.

(3) *Maintenance.* Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

(i) Drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered and shall be regularly cleaned.

(ii) Toilet facilities shall be operational and maintained in clean and sanitary condition.

(iii) Handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition; and

(iv) Disposal of wastes from facilities shall not cause unsanitary conditions.

(4) *Reasonable Use.* The employer shall notify each employee of the location of the sanitation facilities and water and shall allow each employee reasonable opportunities during the workday to use them. The employer also shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine and agrichemical residues:

(i) Use the water and facilities provided for drinking, handwashing and elimination;

(ii) Drink water frequently and especially on hot days;

(iii) Urinate as frequently as necessary;

(iv) Wash hands both before and after using the toilet; and

(v) Wash hands before eating and smoking.

(d) *Dates*—(1) *Effective Date.* This standard shall take effect on May 30, 1987.

(2) *Startup Dates.* Employers must comply with the requirements of paragraphs:

(i) Paragraph (c)(1), to provide potable drinking water, by May 30, 1987;

(ii) Paragraph (c)(2), to provide handwashing and toilet facilities, by July 30, 1987;

(iii) Paragraph (c)(3), to provide maintenance for toilet and handwashing facilities, by July 30, 1987; and

(iv) Paragraph (c)(4), to assure reasonable use, by July 30, 1987.

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Friday
May 1, 1987

Part V

Environmental Protection Agency

Industrial Biotest Laboratories, Inc.; Disposal of Raw Materials; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00237; FRL-3194-6]

Industrial Biotest Laboratories, Inc.; Disposal of Raw Materials

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who sponsored laboratory studies that were conducted by Industrial Biotest Inc. (IBT) and submitted such IBT studies to EPA and the Food and Drug Administration (FDA) in connection with information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Raw materials relating to these IBT studies have been in the possession of the Federal Government in connection with *U.S.* v. *Keplinger, et al.* This case has been concluded, and submitters of these IBT studies have been notified to take possession of the raw materials that relate to these studies. Raw materials that have not been claimed by study sponsors have been stored at EPA since June 1985. Since these raw materials are no longer needed by the Federal Government, and have not been claimed by the sponsoring persons, EPA intends to discontinue storage by disposing of all unclaimed raw materials.

DATE: Unclaimed raw materials relating to IBT studies that were submitted to EPA and/or FDA to satisfy FIFRA or FFDCA pesticide information requirements will be disposed of on or about May 15, 1987.

FOR FURTHER INFORMATION CONTACT: By Mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

SUPPLEMENTARY INFORMATION: Raw materials to which this notice applies consist of paraffin tissue blocks and slides of tissues cut for microscopic examination. Tissue samples involved were taken during the approximate period of 1968 to 1976.

Sponsors of IBT studies were notified individually by letter from IBT during the period of April to July 1984 to contact IBT if they wished to retrieve their study raw materials at IBT's Northbrook, IL facility, and that otherwise the study raw materials would be disposed of. The IBT letters also advised study sponsors that EPA believed, based on 40 CFR 169.2(k) and sections 8 and 12(a)(2)(B) of FIFRA, that study sponsors should maintain the slides and tissue blocks as if they were specifically covered by recent EPA Good Laboratory Practices, 48 FR 53946 (November 29, 1983; effective May 2, 1984) until EPA informed them that these materials are no longer pertinent to the registration of any pesticide product. The IBT letters also advised that FDA recommends retention of these materials on studies which sponsors intended to validate or had successfully validated to the satisfaction of FDA. EPA believes that IBT study sponsors have received adequate notice that they could retrieve their study raw materials, and that no useful purpose can be served by storing these materials in the future. Hence, these materials will not be retained by the Government.

Dated: April 28, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-9973 Filed 4-30-87; 8:45 am]

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federal register

Friday
May 1, 1987

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 862

Clinical Chemistry and Toxicology Devices—General Provisions and Classifications and Premarket Notification Exemptions; Final, and Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 78N-2285]

Clinical Chemistry and Clinical Toxicology Devices; General Provisions and Classifications of 220 Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 220 clinical chemistry and clinical toxicology devices. The preamble to this rule responds to comments received on the proposed regulations regarding classification of these devices. This action is being taken under the Medical Device Amendments of 1976.

DATES: This final rule will become effective on July 30, 1987. Comments by June 30, 1987 regarding the regulations for those devices whose classifications in the final rule are different from their proposed classifications.

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

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: .

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A. Background

In the **Federal Register** of February 2, 1982 (47 FR 4802), FDA published a proposed rule containing general provisions applicable to the classification of clinical chemistry and clinical toxicology devices and individual proposed regulations to classify clinical chemistry and clinical toxicology devices in commercial distribution into one of two regulatory classes: class I (general controls) and class II (performance standards). The agency did not propose any regulations to classify clinical chemistry devices or clinical toxicology devices into class III (premarket approval).

In this final rule, FDA is classifying 220 clinical chemistry and clinical toxicology devices.

FDA is classifying 138 devices into class I and 82 devices into class II. Of the 138 class I devices, 31 were proposed for class I, while 106 were proosed for class II. (The one remaining class I device was the subject of a reclassification petition, as discussed below.) Neither the proposal nor the final rule has placed any preamendments devices in class III. However, FDA is codifying the statutory classification of one postamendments device into class III. (see paragraph 25).

The decision to classify into class I many devices that FDA proposed to classify into class II is based on FDA's consideration of the 3,000 comments on the proposed rule, many of which urged that all or most clinical chemistry and clinical toxicology devices be classified into class I. As a result of these comments, FDA reconsidered its proposed classification for each of the devices included in the 1982 proposal and, to evaluate the comments, reviewed relevant scientific literature. The literature confirmed that, for many devices, the comments were correct in their contention that the devices should be classified into class I rather than class II.

FDA has concluded that the agency may legally publish a final rule classifying clinical chemistry and clinical toxicology devices (*see AFL-CIO* v. *Marshall*, 617 F.2d 636, 676 (D.C. Cir. 1979)). The purpose of publishing a proposal and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal or after reconsideration, the agency may determine that its proposed classification is incorrect. Persons interested in the classification process should therefore anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed general provisions for clinical chemistry and clinical toxicology devices (see 47 FR 4804; February 2, 1982). However, because of the large number of devices that are being classified differently than was proposed in part because of new scientific literature (see the reference list at the end of this preamble), FDA is allowing interested persons to comment on the regulations for those devices whose classifications in the final rule are different from their proposed classifications by June 30, 1987.

If FDA decides on the basis of the comments received that any changes in the final rule are necessary, it will publish those changes in the **Federal Register.**

Among the 220 devices being classified are 14 devices that were reclassified into class I (1 device) or class II (13 devices) in response to 19 reclassification petitions on postamendments clinical chemistry and clinical toxicology devices. Fourteen rather than 19 codifications are announced in response to the petitions because two petitions described the same type of device and four petitions related to devices adequately described by provisions in the clinical chemistry and clinical toxicology classification proposal of February 2, 1982. For a further discussion of these petitions and FDA's actions on the petitions, see the discussion at the end of the preamble under "H. Reclassification of Devices." Thus, in this final rule FDA is classifying 220 devices.

Elsewhere in this issue of the **Federal Register,** FDA is proposing to grant an exemption from the requirement of premarket notification for each of 21 class I clinical chemistry and clinical toxicology devices.

Classification of medical devices in commercial distribution is required by the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 302-392). The effect of classifying a device in class I is to require that the device continue to meet only the general controls applicable to all devices. The effect of classifying a device in class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. Devices that FDA previously regarded as new drugs, or newly offered devices that are not substantially equivalent to a device that was in commercial distribution before the amendments (postamendments devices), are

classified by statute into class III and already are required to have in effect an approved application for premarket approval. (see sections 520(l) and 513(f) of the act (21 U.S.C. 360j(l) and 360c(f)).

The preamble to the proposed rule described the development of the general provisions and the proposed regulations classifying clinical chemistry and clinical toxicology devices and the activities of the Clinical Chemistry and Clinical Toxicology Devices Panel (formerly the Clinical Chemistry and Hematology Devices Panel), an FDA advisory committee that makes recommendations to FDA concerning the classification of clinical chemistry and clinical toxicology devices. FDA provided a period of 60 days for interested persons to submit written comments on these proposals. FDA subsequently extended the period by 120 days, to September 1, 1982 (see 47 FR 11879; March 19, 1982). The comments received and FDA's responses are discussed below.

In April 1985, H.R. 2177 (99th Cong. 1st Sess.) was introduced in the U.S. House of Representatives. The bill was a legislative proposal of the Department of Health and Human Services. Among other things, the bill would have (1) amended the act to eliminate the statutory category of class II, (2) made the establishment of a performance standard one of the several general controls that may be made applicable to a device, and (3) streamlined the procedure for establishing standards set out in section 514 of the act. If legislation comparable to this bill becomes law, there will be only two categories of devices, class I (general controls) and class II (premarket approval, formerly class III). Class II devices would be redesignated as class I devices. Because this legislation includes transitional provisions that translate classifications under the current law to classifications under the proposed law, FDA is continuing its issuance of classification rules under the current law.

B. FDA's Priorities for Establishing Performance Standards

In the Federal Register of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement; Class II Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. At this time, however, FDA does not have the resources to establish performance standards for all of the devices already classified (or being classified) in class II.

In the October 23, 1985, notice, FDA announced it will consider the following factors when setting priorities for establishing performance standards for class II devices:

1. The seriousness of questions concerning the safety and effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device.
2. The recommendations of FDA's advisory committees.
3. The impact of an FDA guideline or recommendation.
4. The effect of a Federal standard or other regulatory controls under an authority other than the act.
5. The impact of voluntary standards.
6. The impact of activities authorized under the general controls provisions of the act.
7. The effect of dissemination of information and education efforts.
8. The sufficiency of voluntary corrective actions.
9. Valid scientific evidence developed since classification.
10. The existence of a petition for reclassification.
11. The impact of any other factors that affect a device's safety or effectiveness.

C. Chances in the Name of the Clinical Chemistry and Clinical Toxicology Devices Advisory Committee

FDA has periodically reorganized its advisory panels for device classification. Most recently on April 14, 1984, FDA terminated the Clinical Chemistry and Hematology Devices Panel and its sections and established several new committees, including the Clinical Chemistry and Clinical Toxicology Devices Panel (see 49 FR 17446; April 24, 1984). The new panel performs the same functions with respect to clinical chemistry and clinical toxicology devices as did its predecessors, the Clinical Chemistry Device Classification Panel and the Clinical Toxicology Device Classification Panel (1976–1978) and the Clinical Chemistry and Hematology Devices Panel (1978–1984).

D. Changes in Classification of Devices

As discussed above, based upon the comments received and on additional consideration of all information before the agency, FDA has classified 106 devices into class I that were the subject of proposals to classify the devices into class II. The names of devices that are being classified differently from the proposals are identified with asterisks (*) in the listing of devices under "E. List of Clinical Chemistry and Clinical Toxicology Devices." The reasons for these changes are identified in the preamble under "F. Summaries of Comments and FDA's Responses to Comments." As discussed above, FDA does not believe that it is necessary to issue new proposals concerning these changes.

Occasionally, the agency has made minor changes in device names or identifications to clarify the final regulations. Additionally, the agency has corrected typographical errors that were made in a number of proposed regulations.

E. List of Clinical Chemistry and Clinical Toxicology Devices

A list of clinical chemistry and clinical toxicology devices follows. The list shows the section of the Code of Federal Regulations at which the device classification is being codified, the docket number of any proposed classification regulation, the classification of each device, a statement (yes or no) whether public comments were received on the proposed classification regulation, and asterisks for devices that are being classified differently than was proposed.

The list also identifies the 21 generic types of clinical chemistry and clinical toxicology devices that are subjects of a proposed rule published elsewhere in this issue of the Federal Register. In that proposed rule, FDA is proposing to grant to manufacturers of each of the 21 class I devices an exemption from the requirement of premarket notification with respect to these devices. The name of each of the 21 devices is identified with footnote "[2]" (§ § 862.1190, 862.1210, 862.1255, 862.1290, 862.1305, 862.1320, 862.1365, 862.1380, 862.1420, 862.1470, 862.1490, 862.1515, 862.1565, 862.1575, 862.1640, 862.1670, 862.1720, 862.1815, 862.2100, 862.3750, and 862.3850).

SUBPART B—CLINICAL CHEMISTRY TEST SYSTEMS

Section	Device	Docket number	Class	Comment
862.1020	Acid Phosphatase (total or prostatic test system)	78N-2287	II	Yes.
862.1025	Adrenocorticotropic hormone (ACTH) test system	78N-2288	II	Yes.
862.1030	Alanine amino transferase (ALT/SGPT) test system*	78N-2289	I	Yes.
862.1035	Albumin test system	78N-2290	II	Yes.
862.1040	Aldolase test system*	78N-2291	I	Yes.
862.1045	Aldosterone test system	78N-2292	II	Yes.
862.1050	Alkaline phosphatase or isoenzymes test system	78N-2293	II	Yes.
862.1060	Delta-aminolevulinic acid test system*	78N-2295	I	Yes.
862.1065	Ammonia test system*	78N-2296	I	Yes.
862.1070	Amylase test system	78N-2297	II	Yes.
862.1075	Androstenedione test system*	78N-2298	I	Yes.
862.1080	Androsterone test system*	78N-2299	I	Yes.
862.1085	Angiotensin I and renin test system	78N-2300	II	Yes.
862.1090	Angiotensin converting enzyme test (A.C.E.) system[1]	77N-0394	II	
862.1095	Ascorbic acid test system*	78N-2301	I	Yes.
862.1100	Aspartate amino transferase (AST/SGOT) test system	78N-2302	II	Yes.
862.1110	Bilirubin (total or direct) test system	78N-2303	II	Yes.
862.1115	Urinary bilirubin and its conjugates (nonquantitative) test system*	78N-2304	I	Yes.
862.1120	Blood gases (P_{CO} $2P_0$ 2) and blood pH test system	78N-2305	II	Yes.
862.1130	Blood volume test system*	78N-2307	I	Yes.
862.1135	C-Peptides of pro-insulin test system*	78N-2308	I	Yes.
862.1140	Calcitonin test system	78N-2309	II	Yes.
862.1145	Calcium test system	78N-2310	II	Yes.
862.1150	Calibrator	78N-2311	II	Yes.
862.1155	Human chorionic gonadotropin (HCG) test system	78N-2312	II, III	Yes.
862.1160	Bicarbonate/carbon dioxide test system	78N-2313	II	Yes.
862.1165	Catecholamines (total) test system*	78N-2314	I	Yes.
862.1170	Chloride test system	78N-2315	II	Yes.
862.1175	Cholesterol (total) test system*	78N-2316	I	Yes.
862.1177	Cholylglycine test system[1]	78P-0058	II	
862.1180	Chymotrypsin test system*	78N-2317	I	Yes.
862.1185	Compound S (11-deoxycortisol) test system*	78N-2318	I	Yes.
862.1187	Conjugated sulfolithocholic acid (SLCG) test system[1]	78N-0185	II	
862.1190	Copper test system* [2]	78N-2319	I	Yes.
862.1195	Corticoids test system*	78N-2320	I	Yes.
862.1200	Corticosterone test system*	78N-2321	I	Yes.
862.1205	Cortisol (hydrocortisone and hydroxycorticosterone) test system	78N-2322	II	Yes.
862.1210	Creatine test system* [2]	78N-2323	I	Yes.
862.1215	Creatine phosphokinase/creatine kinase or isoenzymes test system	78N-2324	II	Yes.
862.1225	Creatinine test system	78N-2326	II	Yes.
862.1230	Cyclic AMP test system	78N-2327	II	Yes.
862.1240	Cystine test system*	78N-2329	I	Yes.
862.1245	Dehydroepiandrosterone (free and sulfate) test system*	78N-2330	I	Yes.
862.1250	Desoxycorticosterone test system*	78N-2331	I	Yes.
862.1255	2,3-Diphosphoglyceric acid test system* [2]	78N-2332	I	Yes.
862.1260	Estradiol test system*	78N-2333	I	Yes.
862.1265	Estriol test system*	78N-2334	I	Yes.
862.1270	Estrogens (total in pregnancy) test system*	78N-2335	I	Yes.
862.1275	Estrogens (total, nonpregnancy) test system*	78N-2336	I	Yes.
862.1280	Estrone test system*	78N-2337	I	Yes.
862.1285	Etiocholanolone test system*	78N-2338	I	Yes.
862.1290	Fatty acids test system* [2]	78N-2339	I	Yes.
862.1295	Folic acid test system	78N-2340	II	Yes.
862.1300	Follicle-stimulating hormone test system*	78N-2341	I	Yes.
862.1305	Formiminoglutamic acid (FIGLU) test system* [2]	78N-2342	I	Yes.
862.1310	Galactose test system*	78N-2343	I	Yes.
862.1315	Galactose-1 phosphate uridyl transferase test system	78N-2344	II	Yes.
862.1320	Gastric acidity test system* [2]	78N-2345	I	Yes.
862.1325	Gastrin test system*	78N-2346	I	Yes.
862.1330	Globulin test system*	78N-2347	I	Yes.
862.1335	Glucagon test system*	78N-2348	I	Yes.
862.1340	Urinary glucose (nonquantitative) test system	78N-2349	II	Yes.
862.1345	Glucose test system	78N-2350	II	Yes.
862.1360	Gamma-glutamyl transpeptidase and isoenzymes test system*	78N-2353	I	Yes.
862.1365	Glutathione test system* [2]	78N-2354	I	Yes.
862.1370	Human growth hormone test system*	78N-2355	I	Yes.
862.1375	Histidine test system*	78N-2356	I	Yes.
862.1377	Urinary homocystine (nonquantitative) test system[1]	80P-0510	II	
862.1380	Hydroxybutyric dehydrogenase test system* [2]	78N-2357	I	Yes.
862.1385	17-Hydroxycortico-steroids (17-ketogenic steroids) test system*	78N-2358	I	Yes.
862.1390	5-Hydroxyindole acetic acid/serotonin test system*	78N-2359	I	Yes.

SUBPART B—CLINICAL CHEMISTRY TEST SYSTEMS—Continued

Section	Device	Docket number	Class	Comment
862.1395	17-Hydroxyprogesterone test system*	78N-2360	I	Yes.
862.1400	Hydroxyproline test system*	78N-2361	I	Yes.
862.1405	Immunoreactive insulin test sytem*	78N-2362	I	Yes.
862.1410	Iron (non-heme) test system*	78N-2363	I	Yes.
862.1415	Iron-binding capacity test system*	78N-2364	I	Yes.
862.1420	Isocitric dehydrogenase test system* [2]	78N-2365	I	Yes.
862.1430	17-Ketosteroids test system*	78N-2367	I	Yes.
862.1435	Ketones (non-quantitative) test system*	78N-2368	I	Yes.
862.1440	Lactate dehydrogenase test system	78N-2369	II	Yes.
862.1445	Lactate dehydrogenase isoenzymes test system	78N-2370	II	Yes.
862.1450	Lactic acid test system*	78N-2371	I	Yes.
862.1455	Lecithin/sphingomyelin ratio in amniotic fluid test system	78N-2372	II	Yes.
862.1460	Leucine aminopeptidase test system*	78N-2373	I	Yes.
862.1465	Lipase test system*	78N-2374	I	Yes.
862.1470	Lipid (total) test system* [2]	78N-2375	I	Yes.
862.1475	Lipoprotein test system*	78N-2376	I	Yes.
862.1485	Luteinizing hormone test system*	78N-2378	I	Yes.
862.1490	Lysozyme (muramidase) test system* [2]	78N-2379	I	Yes.
862.1495	Magnesium test system*	78N-2380	I	Yes.
862.1500	Malic dehydrogenase test system*	78N-2381	I	Yes.
862.1505	Mucopolysaccharides (nonquantitative) test system*	78N-2382	I	Yes.
862.1509	Methylmalonic acid (nonquantitative) test system[1]	80P-0511	II	
862.1510	Nitrite (nonquantitative) test system*	78N-2383	I	Yes.
862.1515	Nitrogen (aminonitrogen) test system* [2]	78N-2384	I	Yes.
862.1520	5'-Nucleotidase test system*	78N-2385	I	Yes.
862.1530	Plasma oncometry test system*	78N-2387	I	Yes.
862.1535	Ornithine carbamyl transferase test system*	78N-2388	I	Yes.
862.1540	Osmolality test system*	78N-2389	I	Yes.
862.1542	Oxalate test system[1]	84P-0212	I	
862.1545	Parathyroid hormone test system	78N-2390	II	Yes.
862.1550	Urinary pH (nonquantitative) test system*	78N-2391	I	Yes.
862.1555	Phenylalanine test system	78N-2392	II	Yes.
862.1560	Urinary phenylketones (nonquantitative) test system*	78N-2393	I	Yes.
862.1565	6-Phosphogluconate dehydrogenase test system* [2]	78N-2394	I	Yes.
862.1570	Phosphohexose isomerase test system*	78N-2395	I	Yes.
862.1575	Phospholipids test system* [2]	78N-2396	I	Yes.
862.1580	Phosphorus (inorganic) test system*	78N-2397	I	Yes.
862.1585	Human placental lactogen test system	78N-2398	II	Yes.
862.1590	Porphobilinogen test system*	78N-2399	I	Yes.
862.1595	Porphyrins test system*	78N-2400	I	Yes.
862.1600	Potassium test system	78N-2401	II	Yes.
862.1605	Pregnanediol test system*	78N-2402	I	Yes.
862.1610	Pregnanetriol test system*	78N-2403	I	Yes.
862.1615	Pregnenolone test system*	78N-2404	I	Yes.
862.1620	Progesterone test system*	78N-2405	I	Yes.
862.1625	Prolactin (lactogen) test system*	78N-2406	I	Yes.
862.1630	Protein (fractionation) test system*	78N-2407	I	Yes.
862.1635	Total protein test system	78N-2408	II	Yes.
862.1640	Protein-bound iodine test system* [2]	78N-2409	I	Yes.
862.1645	Urinary protein or albumin (nonquantitative) test system*	78N-2410	I	Yes.
862.1650	Pyruvate kinase test system*	78N-2411	I	Yes.
862.1655	Pyruvic acid test system*	78N-2412	I	Yes.
862.1660	Quality control material (assayed and unassayed)	78N-2413	I	Yes.
862.1665	Sodium test system	78N-2414	II	Yes.
862.1670	Sorbitol dehydrogenase test system* [2]	78N-2415	I	Yes.
862.1675	Blood specimen collection device	78N-2416	II	Yes.
862.1680	Testosterone test system*	78N-2417	I	Yes.
862.1685	Thyroxine-binding globulin test system	78N-2418	II	Yes.
862.1690	Thyroid-stimulating hormone test system	78N-2419	II	Yes.
862.1695	Free thyroxine test system	78N-2420	II	Yes.
862.1700	Total thyroxine test system	78N-2421	II	Yes.
862.1705	Triglyceride test system*	78N-2422	I	Yes.
862.1710	Total triiodothyronine test system	78N-2423	II	Yes.
862.1715	Triiodothyronine uptake test system	78N-2424	II	Yes.
862.1720	Triose phosphate isomerase test system* [2]	78N-2425	I	Yes.
862.1725	Trypsin test system*	78N-2426	I	Yes.
862.1730	Free tryosine test system*	78N-2427	I	Yes.
862.1770	Urea nitrogen test	78N-2428	II	Yes.
862.1775	Uric acid test system*	78N-2429	I	Yes.
862.1780	Urinary calculi (stone) test system*	78N-2430	I	Yes.
862.1785	Urinary urbilinogen (nonquantitative) test system*	78N-2431	I	Yes.

SUBPART B—CLINICAL CHEMISTRY TEST SYSTEMS—Continued

Section	Device	Docket number	Class	Comment
862.1790	Uroporphyrin test system*	78N-2432	I	Yes.
862.1795	Vanilmandelic acid test system*	78N-2433	I	Yes.
862.1805	Vitamin A test system*	78N-2435	I	Yes.
862.1810	Vitamin B^{12} test system	78N-2436	II	Yes.
862.1815	Vitamin E test system*	78N-2437	I	Yes.
862.1820	Xylose test system*	78N-2438	I	Yes.

[1] Not proposed; classification results from a reclassification petition. See the discussion at the end of the preamble, "H. Reclassification of Devices."

[2] The device is subject of a proposed rule published elsewhere in this issue of the FEDERAL REGISTER to grant manufacturers an exemption from premarket notification with respect to these devices.

SUBPART C—CLINICAL LABORATORY INSTRUMENTS

Section	Device	Docket No.	Class	Comment
862.2050	General purpose laboratory equipment labeled or promoted for a specific medical use.	78N-2439	I	Yes.
862.2100	Calculator/data processing module for clinical use [2]	78N-2441	I	Yes.
862.2140	Centrifugal chemistry analyzer for clinical use	78N-2443	I	No.
862.2150	Continuous flow sequential multiple chemistry analyzer for clinical use.	78N-2444	I	No.
862.2160	Discrete photometric chemistry analyzer for clinical use	78N-2445	I	No.
862.2170	Micro chemistry analyzer for clinical use	78N-2446	I	No.
862.2230	Chromatographic separation material for clinical use	78N-2450	I	No.
862.2250	Gas liquid chromatography system for clinical use	78N-2452	I	No.
862.2260	High-pressure liquid chromatography system for clinical use	78N-2453	I	No.
862.2270	Thin-layer chromatography system	78N-2454	I	No.
862.2300	Colorimeter, photometer, or spectrophotometer for clinical use	78N-2455	I	Yes.
862.2310	Clinical sample concentrator	78N-2456	I	No.
862.2320	Beta or gamma counter for clinical use	78N-2457	I	No.
862.2400	Densitometer/scanner (integrating, reflectance, TLC or radiochromatogram) for clinical use.	78N-2459	I	No.
862.2485	Electrophoresis apparatus for clinical use	78N-2463	I	No.
862.2500	Enzyme analyzer for clinical use	78N-2464	I	No.
862.2540	Flame emission photometer for clinical use	78N-2467	I	No.
862.2560	Fluorometer for clinical use	78N-2468	I	No.
862.2680	Microtitrator for clinical use	78N-2472	I	No.
862.2700	Nephelometer for clinical use	78N-2474	I	No.
862.2720	Plasma oncometer for clinical use	78N-2475	I	No.
862.2730	Osmometer for clinical use	78N-2476	I	No.
862.2750	Pipetting and diluting system for clinical use	78N-2477	I	No.
862.2800	Refractometer for clinical use	78N-2481	I	Yes.
862.2850	Atomic absorption spectrophotometer for clinical use	78N-2483	I	Yes.
862.2860	Mass spectrometer for clinical use	78N-2484	I	Yes.
862.2900	Automated urinalysis system	78N-2487	I	No.
862.2920	Plasma viscometer for clinical use	78N-2488	I	No.

[2] The device is subject of a proposed rule published elsewhere in this issue of the FEDERAL REGISTER to grant manufacturers an exemption from premarket notification with respect to these devices.

SUBPART D—CLINCAL TOXICOLOGY TEST SYSTEM

Section	Device	Docket Number	Class	Comment
862.3030	Acetaminophen test system [1]	79P-0317	II	
862.3035	Amikacin test system [1]	77P-0338 and 77P-0342	II	
862.3040	Alcohol test system	78N-2490	II	Yes.
862.3050	Breath-alcohol test system	78N-2491	I	No.
862.3100	Ampehtamine test system	78N-2495	II	Yes.
862.3110	Antimony test system*	78N-2496	I	Yes.
862.3120	Arsenic test system*	78N-2497	I	Yes.
862.3150	Barbiturate test system	78N-2498	II	Yes.
862.3170	Benzodiazepine test system	78N-2499	II	Yes.
862.3200	Clinical toxicology calibrator	78N-2501	II	Yes.
862.3220	Carbon monoxide test system*	78N-2503	I	Yes.
862.3240	Cholinesterase test system*	78N-2505	I	Yes.
862.3250	Cocaine and cocaine metabolite test system	78N-2506	II	Yes.
862.3270	Codeine test system	78N-2508	II	Yes.
862.3280	Clinical toxicology control material	78N-2509	I	No.

SUBPART D—CLINCAL TOXICOLOGY TEST SYSTEM—Continued

Section	Device	Docket Number	Class	Comment
862.3300	Digitoxin test system	78N-2511	II	Yes.
862.3320	Digoxin test system	78N-2513	II	Yes.
862.3350	Diphenylhydantoin test system	78N-2515	II	Yes.
862.3380	Ethosuximide test system	78N-2516	II	Yes.
862.3450	Gentamicin test system	78N-2518	II	Yes.
862.3520	Kanamycin test system	78N-2522	II	Yes.
862.3550	Lead test system	78N-2523	II	Yes.
862.3555	Lidocaine test system [1]	78P-0341	II	
862.3560	Lithium test system	78N-2377	II	Yes.
862.3580	Lysergic acid diethylamide (LSD) test system	78N-2526	II	Yes.
862.3600	Mercury test system*	78N-2527	I	Yes.
862.3610	Methamphetamine test system	78N-2528	II	Yes.
862.3620	Methadone test system	78N-2529	II	Yes.
862.3630	Methaqualone test system [1]	77P-0052	II	
862.3640	Morphine test system	78N-2531	II	Yes.
862.3645	Neuroleptic drugs radioreceptor assay test system [1]	82P-0263	II	
862.3650	Opiate test system	78N-2532	II	Yes.
862.3660	Phenobarbital test system	78N-2533	II	Yes.
862.3670	Phenothiazine test system	78N-2534	II	Yes.
862.3680	Primidone test system	78N-2535	II	Yes.
862.3700	Propoxyphene test system	78N-2537	II	Yes.
862.3750	Quinine test system [1]	78N-2540	I	Yes.
862.3830	Salicylate test system	78N-2541	II	Yes.
862.3850	Sulfonamide test system [1]	78N-2542	I	Yes.
862.3870	Cannabinoid test system	78N-2543	II	Yes.
862.3880	Theophylline test system [1]	77P-0340	II	
862.3900	Tobramycin test system	78N-2545	II	Yes.
862.3910	Tricyclic antidepressant drugs test system [1]	79P-0091	II	
862.3950	Vancomycin test system [2]	80P-0142	II	

[1] Not proposed; classification results from a reclassification petition. See the discussion at the end of the preamble, "H. Reclassification of Devices.

[2] The device is subject of a proposed rule published elsewhere in this issue of the Federal Register to grant manufacturers an exemption from premarket notification with respect to these devices.

F. Summaries of Comments and FDA's Responses to Comments

FDA received about 3,000 comments from the public on the 206 proposed regulations, and about 90 percent of the comments requested that most of the 175 clinical chemistry and clinical toxicology devices that FDA proposed to be in class II be classified instead into class I. Most comments agreed with FDA's proposed classification of 31 devices into class I, and in the final rule all 31 devices are classified into class I as proposed.

In response to comments and upon its own reconsideration, FDA is classifying 106 clinical chemistry and clinical toxicology devices into class I instead of class II as proposed. FDA also is classifying 69 clinical chemistry and clinical toxicology devices into class II as proposed, where neither comments nor further consideration by FDA demonstrated that the agency's proposed classification for these devices was incorrect. Each name of a generic type of device that is being classified differently than was proposed is identified with an asterisk (*) in the list of devices under "E. List of Clinical Chemistry and Clinical Toxicology Devices."

The many comments arguing that most clinical chemistry and clinical toxicology devices be classified into class I led FDA to conduct a new review of the literature to ascertain whether it supported the proposed classification of each device or that classification urged by the comments. FDA considered the following five factors during its review of comments requesting that FDA classify certain clinical chemistry and clinical toxicology devices into class I rather than class II and its evaluation of literature relevant to these comments: (1) Whether the device test system has substantial or limited clinical utility (i.e., the extent to which an erroneous device test would have an effect on a physician's diagnosis); (2) whether class I controls, along with the establishment of a calibrator standard, would or would not be sufficient to assure the safe and effective performance of the device; (3) whether, based on the device's performance, including its accuracy, precision, sensitivity, and specificity, class I controls are adequate to assure the safe and effective performance of the device (or whether the device presents risks to health that need to be controlled by a performance standard or for which a performance standard is needed to assure the safe and effective performance of the device); (4) the absence of or presence of recalls of the device in FDA's recall-health hazard evaluation program; and (5) the absence of or frequency of reported problems with the device.

Although many comments identified specific devices, most comments were general in nature. FDA is responding below to the general comments in paragraphs 1 through 7. In paragraphs 8 through 25, FDA is responding to specific comments on certain devices and is providing reasons for changing or not changing the proposed classifications of the devices. When a comment applies to more than one device, the agency is summarizing the comment, listing the devices involved, then providing a response.

1. Several comments disputed FDA's proposals to place certain devices into class II and suggested instead that the devices be classified into class I, because medical practitioners use more than the results of a single in vitro test to evaluate a patient's condition.

FDA agrees that the results of one in vitro test usually are not the only factor used in determining the condition of a patient. However, FDA disagrees that this fact alone supports classifying all clinical chemistry and clinical toxicology devices into class I. In vitro diagnostic devices are intended for a wide variety of uses, such as to detect clinically inapparent disease, to either confirm or rule out diagnostic hypotheses, or to monitor the course of disease. If misleading or incorrect results are obtained from an in vitro test, the patient may be placed at risk.

Accordingly, FDA must consider in vitro devices individually to identify those that may be classified into class I because the tests performed using the devices are not the sole or the primary determinant of clinical diagnoses.

2. Comments requested that many devices that FDA proposed for classification into class II be classified into class I because (a) the devices are already subject to FDA's labeling requirements governing in vitro diagnostic products for human use (21 CFR 809.10) and the general controls of class I, and (b) the advisory Panel and FDA may not have appreciated the effectiveness of the general controls of class I at the time the Panel recommended and FDA proposed that the devices be classified into class II. Comments stated that the devices should be classified into class I because the agency has not shown that in vitro diagnostic devices present unreasonable risks. Comments stated that the devices have been in clinical use for many years, standards for the devices would not help prevent failures of the devices, market factors influence the emergence of safe and effective products, technology has improved performance of the devices, and voluntary standards and controls help assure the safety and effectiveness of devices. All of these factors, it was alleged, help assure that clinical chemistry and clinical toxicology devices are safe and effective, thus obviating the need for class II controls.

FDA agrees that certain clinical chemistry and clinical toxicology devices proposed for classification into class II should instead be classified into class I. However, FDA disagrees that labeling requirements and general controls alone will provide reasonable assurance of the safety and effectiveness of all clinical chemistry and clinical toxicology devices, particularly if different models or versions of the same generic type of device provide different measurements of the same factor in the same clinical specimen.

Accordingly, FDA believes that the classification of certain clinical chemistry and clinical toxicology devices into class II, and development of mandatory performance standards for these class II devices (in addition to the labeling regulations and general controls of class I), will assure that these devices provide acceptable and comparable measurement results. In paragraphs 8 through 25 below, FDA provides its reasons for classifying clinical chemistry and clinical toxicology devices into either class I or class II.

3. Many comments stated that few complaints have been reported for clinical chemistry and clinical toxicology devices in FDA's device experience network and that, even when such complaints have occurred, a performance standard would not have prevented or resolved the complaints. The comments argued that FDA's meager complaint data do not support classifying clinical chemistry and clinical toxicology devices into class II.

FDA disagrees with the comments. Although few complaints on clinical chemistry and clinical toxicology devices have been reported in its device experience network, this information is not necessarily an accurate reflection of the actual levels of adverse experiences with devices. Moreover, device experience network and medical device reporting data are not the final determinants of device classification. Nevertheless, the evidence available to FDA obtained through the medical device reporting rule (21 CFR Part 803) is in agreement with FDA's decisions in this final rule. For certain devices, FDA believes that the establishment of performance standards is necessary to provide reasonable assurance of the safety and effectiveness of the devices.

4. Many comments stated that laboratory proficiency testing is an alternative to performance standards for identifying and eliminating unsafe or ineffective devices. The comments argued that, because of proficiency testing, classification of clinical chemistry and clinical toxicology devices into class II is unnecessary.

FDA disagrees with the comments. FDA believes that proficiency testing is done primarily to measure laboratory competence, and it frequently is not possible to determine device performance from measurement of laboratory performance.

5. Many comments stated that the references cited in the proposed rule do not document problems which adequately support classification of the devices into class II.

FDA agrees that the agency should have included more information on the scientific literature supporting its proposed classifications. In this final rule, FDA is listing, discussing, and inviting comments on key references, obtained from the agency's review of the literature (1979 through 1984), that support the agency's classification decisions.

6. Two comments requested that FDA modify the identifications of most of the clinical chemistry and clinical toxicology devices by excluding (a) any examples of analytical methods and (b) any description of specific medical conditions or diseases.

FDA agrees in part and disagrees in part with the comments. FDA agrees that it is unnecessary to include examples of analytical methods in the identifications of these devices. However, FDA believes that it should describe some of the intended uses of a device. Accordingly, in each of the final rules, FDA is removing the examples of analytical methods but is retaining a brief description of some of the intended uses of the device.

7. One comment suggested that any instrument that is not used exclusively in clinical pathology laboratories not be classified as a medical device. The comment said that devices such as atomic absorption spectrophotometers, mass spectrometers, or refractometers are seldom used in the medical laboratory.

FDA disagrees with the comment. For the reasons provided in the proposal under the heading "Products That Have Both Medical and Nonmedical Uses," FDA will regulate a multipurpose product as a medical device if it is intended for a medical purpose. FDA will determine the intended use of a product based upon the expressions of the person legally responsible for its labeling and by the circumstances surrounding its distribution.

8. FDA proposed that the devices listed below be classified into class II. Comments discussed above in paragraphs 1 through 5 requested that the devices be classified into class I. (The references shown in the column on the right are identified at the end of the preamble.)

Section	Device	Reference Nos.
862.1030	Alanine amino transferase (ALT/SGPT) test system	1
862.1040	Aldolase test system	2 and 3

Section	Device	Reference Nos.
862.1180	Chymotrypsin test system	4
862.1360	Gamma-glutamyl transpeptidase and isoenzymes test system	5 and 6
862.1380	Hydroxybutyric dehydrogenase test system	7
862.1420	Isocitric dehydrogenase test system	8
862.1460	Leucine aminopeptidase test system	9
862.1465	Lipase test system	10 through 12
862.1490	Lysozyme (muramidase) test system	13
862.1500	Malic dehydrogenase test system	14
862.1520	5'-Nucleotidase test system	15 and 16
862.1535	Ornithine carbamyl transferase test system	17
862.1565	6-Phosphogluconate dehydrogenase test system	18
862.1570	Phosphohexose isomerase test system	18
862.1650	Pyruvate kinase test system	19 and 20
862.1670	Sorbitol dehydrogenase test system	8
862.1720	Triose phosphate isomerase test system	21
862.1725	Trypsin test system	22 through 24
862.3240	Cholinesterase test system	25 through 28
862.1075	Androstenedione test system	33 and 34
862.1080	Androsterone test system	35
862.1135	C-peptides of proinsulin test system	36 and 37
862.1185	Compound S (11-deoxycortisol) test system	38
862.1195	Corticoids test system	39
862.1200	Corticosterone test system	
862.1245	Dehydroepiandrosterone (free and sulfate) test system	40 through 43
862.1250	Desoxycorticosterone test system	44
862.1260	Estradiol test system	45 and 46
862.1265	Estriol test system	45 and 46
862.1270	Estrogens (total, in pregnancy) test system	45 and 46
862.1275	Estrogens (total, nonpregnancy) test system	45 and 46
862.1280	Estrone test system	45 and 46
862.1300	Follicle-Stimulating hormone test system	47
862.1325	Gastrin test system	48
862.1335	Glucagon test system	49 through 51
862.1370	Human growth hormone test system	52
862.1385	17-Hydroxycorticosteroids (17-ketogenic steroids) test system	39
862.1395	17-Hydroxyprogesterone test system	34
862.1405	Immunoreactive insulin test system	53 and 54
862.1430	17-Ketosteroids test system	39, 42, and 55
862.1485	Luteinizing hormone test system	56 and 57
862.1605	Pregnanediol test system	
862.1610	Pregnanetriol test system	44, 58, and 59
862.1615	Pregnenolone test system	
862.1620	Progesterone test system	60 and 61
862.1625	Prolactin (lactogen) test system	62 and 63

FDA agrees with the comments. Based upon the comments and the scientific literature cited above reviewed to assist the agency in evaluating the comments, FDA concludes that the tests performed using the devices listed above are not the sole or the primary determinant of clinical diagnoses. The results obtained with the devices listed above are always considered in the context of other laboratory results and a patient's condition before a physician makes a final diagnosis or determination.

For some of the devices listed above, performance problems have been identified. These devices are nevertheless being classified into class I because their performance deviations are attributable to the device calibrator. Calibrators are marketed separately from the device as part of the device, or as part of a device kit. In any case, FDA is classifying calibrators used with clinical chemistry devices as class II devices, even if the calibrator is built into the device, or is part of a device kit, that is classified into class I. A calibrator has a reference value assigned to it which serves as the basis upon which patient tests results are derived. Because of the central role that a calibrator plays in the measurement process and the critical effects calibrators have on the accuracy of test results, elsewhere in this rule FDA is classifying calibrators (§§ 862.1150 and 862.3200) into class II. (FDA's response in paragraph 11 discusses further why calibrators are placed in class II.)

Because the tests performed using the devices listed above are not the sole or primary determinant of clinical diagnoses, and any risks to health from poor performance of the calibrator that is used with certain of the devices listed above will be controlled by classifying calibrators into class II, FDA no longer believes that performance standards are necessary for these devices. FDA now believes that the general controls of class I alone are sufficient to provide reasonable assurance of their safety and effectiveness. Accordingly, in the final rule FDA is placing the devices listed above in class I instead of class II as proposed.

9. FDA proposed that the devices listed below be classified into class II. Comments requested that the devices be classified into class I for the reasons provided above in paragraphs 1 through 5.

Section	Device	Reference Nos.
862.1020	Acid phosphatase (total or prostatic) test system	29
862.1050	Alkaline phosphatase or isoenzymes test system	30
862.1070	Amylase test system	30
862.1100	Aspartate aminotransferase (AST/SGOT)	30 and 31
862.1215	Creatine phosphokinase/creatine kinase or isoenzymes system	30
862.1315	Galactose-1-phosphate uridyl transferase test system	32
862.1440	Lactate dehydrogenase test system	30
862.1445	Lactate dehydrogenase isoenzymes test system	29

FDA disagrees with the comments. The results of these devices, which are used to measure the activity of enzymes, have significant clinical utility. These tests are often relied upon by physicians as critical diagnostic aids (Refs. 29 through 32). Risks to health have been reported due to problems with some of these devices (Ref. 29), and recommendations have been made of ways to reduce the device-to-device variation in test results (Ref. 31). FDA concludes that performance standards are necessary to provide acceptable ranges of accuracy, precision, sensitivity, and specificity for these devices, thereby minimizing the possibility that the devices may generate inaccurate diagnostic information. Performance standards, therefore, are necessary to provide reasonable assurance of the safety and effectiveness of the devices. Accordingly, FDA is classifying the devices listed above into class II as proposed.

10. FDA proposed that the devices listed below be classified into class II. Comments requested that the devices be classified into class I for the reasons provided in paragraph 1 through 5.

Section	*Device*	*Reference Nos.*
862.1025	Adrenocorticotropic hormone (ACTH) test system	64 and 65
862.1045	Aldosterone test system	64 through 66
862.1085	Angiotensins I and renin test system	64, 65, and 67
862.1140	Calcitonin test system	68 through 70
862.1205	Cortisol (hydrocortisone and hydroxycorticosterone) test system	44, 73, and 74
862.1545	Parathyroid hormone test system	29, 64, and 65
862.1585	Human placental lactogen test system	75
862.1685	Thyroxine-binding globulin test system	64 and 65
862.1690	Thyroid-stimulating hormone test system	64 and 65
862.1695	Free thyroxine test system	30, 64, and 65
862.1700	Total thyroxine test system	30
862.1710	Total triiodothyronine test system	30, 64, and 65
862.1715	Triiodothyronine uptake test system	30, 64, and 65

FDA disagrees with the comments. The agency believes that physicians frequently rely heavily on these tests, and that measurements of hormones obtained from use of these devices have significant clinical utility (Refs. 64 and 65). The scientific literature contains evidence that some of these devices present continuing performance problems, including problems with the devices' precision, sensitivity, or specificity (Refs. 29, 30, 44, 66 to 70, and 73 through 75). Because these performance deficiencies may lead to an erroneous diagnosis and thereby place patients at risk, these devices are being placed in class II. FDA also believes that performance standards are necessary for the devices above to provide reasonable assurance of their safety and effectiveness. Accordingly, FDA is classifying the devices listed above into class II as proposed.

11. FDA proposed that the two devices listed below be classified into class II. Comments requested that the devices be classified into class I for the reasons discussed above in paragraphs 1 through 5. Further, comments argued that calibrators may be integral components of diagnostic devices and that they should be classified with the appropriate test system, not as separate devices.

Section	*Device*
862.1150	Calibrator.
862.3200	Clinical toxicology calibrator.

FDA disagrees with the comments. Many clinical chemistry and clinical toxicology devices are intended to be used with a calibrator. The calibrator for a device may be manufactured and distributed separately from the device with which it is intended to be used, manufactured and distributed as one of several device components, such as in a kit of reagents, or built-in as an integral part of the device. FDA believes that the calibrator's performance has critical effects on the accuracy of any test result, regardless of the classification of the device with which it is used. For example, even when a calibrator is built into a device classified into class I, the performance of the calibrator has critical effects on the accuracy of the test. FDA believes that performance standards are necessary for all calibrators for clinical chemistry and clinical toxicology devices (§§ 862.1150 and 862.3200) to control the concentration, stability, uniformity, and overall reliability of the devices. The agency believes that establishment of performance standards for calibrators would provide reasonable assurance of the safety and effectiveness of the devices with which they are used and that sufficient information exists to establish such standards. Accordingly, FDA is adopting the proposed regulations classifying the devices above without change. To clarify its classification regulations, FDA also is adding in Subpart A new § 862.2 *Regulation of calibrators.*

12. FDA proposed that the devices listed below be classified into class II. Comments requested that the devices be classified into class I for the reasons provided in paragraphs 1 through 5.

Section	Device	Reference Nos.
862.1060	Delta-aminolevulinic acid test system	76 and 77
862.1065	Ammonia test system	78 and 79
862.1095	Ascorbic acid test system	80
862.1115	Urinary bilirubin and its conjugates (non-quantitative) test system	
862.1130	Blood volume test system	81 through 84
862.1165	Catecholamines (total) test system	85 through 91
862.1175	Cholesterol (total) test system	92 and 93
862.1190	Copper test system	94 and 95
862.1210	Creatine test system	96
862.1240	Cystine test system	97
862.1255	2,3-Diphosphoglyceric acid test system	
862.1285	Etiocholanolone test system	98 and 99
862.1290	Fatty acids test system	100
862.1305	Formiminoglutamic acid (FIGLU) test system	32, 101, and 102
862.1310	Galactose test system	103
862.1320	Gastric acidity test system	
862.1330	Globulin test system	104
862.1365	Glutathione test system	105
862.1375	Histidine test system	64 and 106
862.1390	5-Hydroxyindole acetic acid/serotonin test system	107
862.1400	Hydroxyproline test system	108 through 110
862.1410	Iron (non-heme) test system	108 and 109
862.1415	Iron-binding capacity test system	111 through 113
862.1450	Lactic acid test system	

Section	Device	Reference Nos.
862.1470	LKipid (total) test system	
862.1475	Lipoprotein test system	115 and 116
862.1495	Magnesium test system	117 and 118
862.1510	Urinary nitrites (nonquantitative) test system	119
862.1515	Nitrogen (amino-nitrogen) test system	
862.1530	Plasma oncometry test system	120
862.1540	Osmolality test system	120 and 121
862.1550	Urinary pH (nonquantitative) test system	80
862.1560	Urinary phenylketones (nonquantitative test system	
862.1575	Phospholipid test system	
862.1580	Phosphorus (inorganic) test system	122
862.1590	Porphobilinogen test system	123
862.1595	Porphyrins test system	124
862.1630	Protein (fractionation) test system	
862.1640	Protein-bound iodine test system	
862.1645	Urinary protein or albumin (nonquantitative) test system	80 and 125 through 127
862.1655	Pyruvic acid test system	
862.1705	Triglyceride test system	88 through 90, 128, and 129
862.1730	Free tyrosine test system	130
862.1775	Uric acid test system	131
862.1780	Urinary calculi (stone) test system	96 and 132
862.1785	Urinary urobilinogen (nonquantitative) test system	80 and 133
862.1790	Uroporphyrin test system	133 and 134
862.1795	Vanilmandelic acid test system	
862.1805	Vitamin A test system	136 through 138
862.1815	Vitamine E test system	
862.1820	Xylose test system	139 and 140
862.3110	Antimony test system	
862.3120	Arsenic test system	
862.3220	Carbon monoxide test system	141 and 142
862.3600	Mercury test system	143

FDA agrees with the comments. Based upon the comments and the scientific literature cited above reviewed to assist the agency in evaluating the comments, FDA concludes that the labeling regulations in 21 CFR 809.10, the general controls of class I, and establishment of a standard for the calibrator for each of these devices (as noted above) will provide reasonable assurance of the safety and effectiveness of the devices above. Some of these devices measure less diagnostically useful levels of constituents of body fluids. Others measure diagnostically significant levels of constituents of body fluids with a very high degree of reliability. In either case, the measurements provided by use of these devices may be substantiated by other means and, in some cases, the devices are used merely as an aid in the diagnosis or treatment of normally noncritical conditions. Accordingly, in the final rule FDA is classifying the devices listed above into class I rather than class II as proposed.

13. FDA proposed that the devices listed below be classified into class II. Comments requested that the devices be classified into class I for the reasons provided above in paragraphs 1 through 5.

Section	Device	Reference Nos.
862.1035	Albumin test system	144 through 149
862.1110	Bilirubin (total or direct) test system.	150 through 152
862.1120	Blood gases ($P_{co}2$, P_o2), and blood $_pH$ test system.	150 through 153
862.1145	Calcium test system	150 through 154
862.1160	Bicarbonate/carbon dioxide test system.	153
862.1170	Chloride test system	150
862.1225	Creatinine test system.	155
862.1295	Folic acid test system	156 and 157
862.1340	Urinary gloucose (nonquantitative) test system.	158 through 164
862.1345	Glucose test system	150 through 162
862.1455	Lecithin-sphingomyelin ratio in amniotic fluid test system.	165 through 167
862.1555	Phenylalanine test system.	101, 130, and 168
862.1600	Potassium test system.	150
862.1635	Total protein test system.	126, 127, 148 through 148, and 169, through 171
862.1665	Sodium test system	150 and 172
862.1770	Urea nitrogen test system.	173 through 177
862.1810	Vitamin B12 test system.	178 through 185
862.3550	Lead test system	150 and 186

FDA disagrees with the comments. The agency believes that insufficient information exists to determine that general controls alone are sufficient to provide reasonable assurance of the safety and effectiveness of the devices. These devices are used to measure diagnostically critical analyses as an aid in the diagnosis and treatment of seriously ill patients. The literature (Refs. 15, 101, 126, 127, 130, and 144 through 186) provides evidence of continuing risks to health resulting from deficiencies in the accuracy and precision of a number of these devices. The agency believes that performance standards are necessary to provide reasonable assurance of the safety and effectiveness of the devices and sufficient information is available to establish such standards. Accordingly, in this final rule FDA is classifying the devices listed above into class II as proposed.

14. FDA proposed that the two devices listed below be classified into class II. Comments requested that the devices be classified into class I for the reasons discussed in paragraphs 1 through 5.

Section	Device
862.3750	Quinine test system.
862.3850	Sulfonamide test system.

FDA agrees with the comments. FDA now believes that the general controls of class I alone are sufficient to provide reasonable assurance of the safety and effectiveness of the two devices. In the scientific literature that FDA reviewed to evaluate the comments, FDA found no evidence of problems with the performance of the devices (Ref. 187). Accordingly, in the final rule FDA is classifying the devices into class I rather than class II as proposed.

15. FDA proposed that the devices listed below be classified into class II. Comments requested that the devices be classified into class I for the reasons discussed in paragraphs 1 through 5.

Section	Device
862.3040	Alcohol test system.
862.3100	Amphetamine test system.
862.3150	Barbiturate test system.
862.3170	Benzodiazepine test system.
862.3250	Cocaine and cocaine metabolite test system.
862.3270	Codeine test system.
862.3300	Digitoxin test system.
862.3320	Digoxin test system.
862.3350	Diphenylhydantoin test system.
862.3380	Ethosuximide test system.
862.3450	Gentamicin test system.
862.3520	Kanamycin test system.
862.3560	Lithium test system.
862.3580	Lysergic acid diethylamide (LSD) test system.
862.3610	Methamphetamine test system.
862.3620	Methadone test system.
862.3640	Morphine test system.
862.3650	Opiate test system.
862.3660	Phenobarbital test system.
862.3670	Phenothiazine test system.
862.3680	Primidone test system.
862.3700	Propoxyphene test system.
862.3830	Salicylate test system.
862.3870	Cannabinoid test system.
862.3900	Tobramycin test system.

FDA disagrees with the comments. These devices, which include devices intended both for the measurement of therapeutic drugs and of drugs of abuse, are of major importance in the management of illnesses and acute medical conditions. With many of these drugs, the difference is narrow between a therapeutic and a toxic blood level. Assays of a high degree of accuracy are required to provide reasonable assurance of the safety and

effectiveness of these devices used for drug assays. Similarly, highly sensitive and dependable assays are essential for the prompt treatment of persons exposed to drugs of abuse (Refs. 150, 186, and 188 through 190). Literature reviewed to evaluate the comments reveals that risks to health resulting from lack of accuracy and precision need to be resolved, and reference methods and reliable reference materials must be established for therapeutic drug assays (Ref. 188). Therefore, the agency believes that performance standards are necessary to ensure acceptable ranges of accuracy, precision, sensitivity, and specificity, thereby minimizing the possibility that the devices may generate inaccurate diagnostic information, and to provide reasonable assurance of safety and effectiveness of the devices. Accordingly, in the final rule FDA is classifying the devices listed above into class II as proposed.

16. Section 862.1230; Cyclic AMP test system.

FDA proposed that the cyclic AMP and the cyclic GMP test system be classified into class II. A comment stated that the devices are not commercially marketed at this time and are intended only for research purposes.

FDA agrees that the cyclic GMP test system has been marketed only for research purposes and is not being marketed commercially. However, the cyclic AMP test system is being marketed, as discussed below. Therefore, in the final rule FDA is changing the name of the device and its identification to remove the cyclic GMP test system.

FDA believes that evidence of safety and effectiveness has been established (as defined in 21 CFR 860.7) for the cyclic AMP test system intended for use in measuring cyclic AMP in urine or plasma in response to administering parathyrin for diagnosing pseudohypoparathyroidism (Refs. 191 through 193) and that the device is being commercially marketed for this purpose. FDA believes that performance standards are necessary for this device to provide acceptable ranges of accuracy, precision, sensitivity, and specificity, thereby minimizing the possibility that the device may generate inaccurate diagnostic information, and to provide reasonable assurance of safety and effectiveness of the device. Accordingly, in the final rule, FDA is changing the name of the device and its identification and is classifying the cyclic AMP test system into class II as proposed.

17. Section 862.1435; Ketones (nonquantitative) test system: proposed class II.

Comments requested that the device be classified into class I rather than class II based on the arguments summarized above in paragraphs 1 through 5 and on the argument that general controls are adequate safeguards for nonquantitative assays of random urine samples. Comments also requested that the identification of the device be broadened to include both urine and serum nonquantitative systems, citing literature references and established current clinical use.

FDA agrees with the comments. Because of these comments and evidence in the scientific literature (Ref. 80), the agency now believes that the general controls of class I and the labeling requirements of 21 CFR 809.10 are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The agency further believes that it is well known that the qualitative measurement in vitro of ketones in serum improves management of ketotic conditions. In addition, FDA is clarifying the name of the generic type of device and, for the reasons above and reasons provided in the response in paragraph 12, classifying the device into class I. Accordingly, FDA is classifying the device into class I rather than class II as proposed and is changing the identification of the device to include urine and serum nonquantitative test systems.

18. Section 862.1505; Mucopolysaccharides (nonquantitative) test system; proposed class II.

Comments requested that the device be classified into class I rather than class II based on the arguments above in paragraphs 1 through 5. Two of the comments argued that this test is only a screening procedure. One comment also requested clarification of the identification of the device concerning its use with boldy fluids other than urine.

FDA agrees with the comments. Based upon these comments and the scientific literature reviewed to evaluate the comments, the agency now believes that the general controls of class I and the labeling requirements of 21 CFR 809.10 are sufficient to provide reasonable assurance of the safety and effectiveness of this device (Ref. 194). The agency also believes that these test systems are intended for use only to assay mucopolysaccharides in urine and not to assay other body fluids, such as serum or plasma. For the reasons above and the reasons provided in the response in paragraph 12, in the final rule FDA is classifying the device into class I rather than class II and is changing the identification of the device to delete mention of its use with serum or plasma.

19. Section 862.1675; Blood specimen collection device; proposed class II.

Comments requested that the device be classified into class I rather than class II based on the arguments above in paragraphs 1 through 5.

FDA disagrees with the comments. Risks to health that result from various kinds of contamination involving blood specimen collection devices continue to be reported in current literature (Refs. 150 and 195 through 197). Considering the critical effects of analytical interference on the results of virtually all blood assays, FDA believes that a performance standard is necessary for the blood specimen collection device to provide reasonable assurance of the safety and effectiveness of the device. Accordingly, in the final rule FDA is classifying the device into class II as proposed.

20. Section 862.1680; Testosterone test system.

FDA proposed that the testosterone and dihydrotestosterone test system be classified into class II. Comments requested that the device be classified into class I rather than class II based on the arguments above in paragraphs 1 through 5. Also, a comment stated that only one manufacturer distributes a device intended to measure dihydrotestosterone and that this manufacturer has never made clinical claims for the product, because it is intended for research purposes. The comment requested that the dihydrotestosterone test system not be classified as an in vitro diagnostic device, because the device has not been commercially marketed.

FDA agrees with the comments. For the reasons provided in paragraph 8. FDA is classifying the device into class I rather than class II. The agency agrees that the dihydrotestosterone test system has been distributed only for research purposes (Refs. 24, 198, and 200). Accordingly, in the final rule FDA is adopting the proposed regulation, with a change in the name of the generic type of device and its identification to remove reference to the dihydrotestosterone test system, and is classifying the device into class I rather than class II as proposed.

21. Section 862.2050; General purpose laboratory equipment; proposed class I.

A comment requested that the identification of general purpose laboratory equipment be modified to be consistent with the definition of general

purpose articles in the registration and listing regulations in 21 CFR 807.65(c). In addition, after the close of the comment period on this proposed regulation, FDA received a petition (83P-0162/CP) requesting FDA to withdraw proposed § 862.2050 because the petitioner claimed that laboratory equipment is not a device within the meaning of section 201(h) of the act. FDA denied the petition, because laboratory equipment intended for a medical use is a device, as discussed below.

FDA believes that its proposed rule classifying this generic type of device was not inconsistent with 21 CFR 807.65(c). However, to alleviate any concerns, in the final rule FDA is changing the name of the device from "general purpose laboratory equipment" to "general purpose laboratory equipment labeled or promoted for a specific medical use." FDA also is clarifying the identification of the device. FDA intended to classify as a device only the general purpose laboratory equipment that is intended to prepare or examine specimens from the human body and that is labeled or promoted from a specific medical use; and exclude from the device identification any general purpose laboratory equipment that is not labeled or promoted for a specific medical use. FDA explained its policy on regulation of multi-purpose products in the preamble to the proposed rule (47 FR 4802 at 4804) under "Products that Have Both Medical and Nonmedical Uses." Accordingly, FDA is adopting the proposed regulation with clarifying changes in the name of the device and its identification.

22. Section 862.2100; Calculator/data processing module for clinical use; proposed class I.

A comment requested that the identification of the generic type of device be clarified and expanded to include certain equipment used in conjunction with the diverse computer systems in current use.

FDA agrees with the comment. The agency is revising the identification of the device to include the devices employed in current data-handling technologies. Accordingly, FDA is adopting the proposed regulation with a clarifying change in the identification of the device.

23. Section 862.2300; Colorimeter, photometer, or spectrophotometer for clinical use; proposed class I.

A comment requested that the identification of the generic type of device be clarified and expanded to be more inclusive.

FDA agrees with the comment. The agency is broadening the identification of the device to include the various instruments used for the diverse optical techniques in current use. Accordingly, FDA is adopting the proposed regulation with a clarifying change in the identification of the device.

24. Section 862.2230; Chromatographic separation material for clinical use; proposed class I.

One comment expressed concern that FDA's different classification of chromatographic separation materials and the devices that incorporate the materials as components. The comment stated that it is confusing and inconsistent for FDA to classify several diagnostic devices utilizing chromatographic separation materials into class II, while the chromatographic separation materials themselves are proposed for class I.

FDA disagrees with the comment. FDA's classification of a diagnostic test system is based on the degree of control necessary to provide reasonable assurance of the safety and effectiveness of the generic type of device (i.e., the complete device). To achieve this outcome, FDA must at times classify a device and a device component differently, particularly when the component is separately available for purchase. Chromatographic materials are commercially available independent of the devices with which they are intended for use and are adequately regulated with class I controls. Therefore, it is reasonable to regulate chromatographic materials in class I instead of increasing the applicable regulatory control to class II merely to obtain consistency with the classification of a device requiring a greater degree of regulatory control. Accordingly, the proposed regulation concerning chromatographic separation material for clinical use is being adopted as proposed.

25. Section 862.1155; Human chorionic gonadotropin (HCG) test system.

FDA proposed that the human chorionic gonadotropin (HCG) test system for use in the early detection of pregnancy be classified into class II. Comments requested that the device be classified into class I rather than class II.

FDA disagrees with the comments. The agency believes that the human chorionic gonadotropin test system has significant clinical utility. FDA notes that the scientific literature contains evidence that the device continues to present problems, including variations in analytical sensitivity and specificity (Refs. 71 and 72), that should be addressed by a performance standard to provide reasonable assurance of the safety and effectiveness of the device.

In its proposed regulations for this device (47 FR 4808), FDA stated that human chorionic gonadotropin HCG test systems intended for uses other than the early detection of pregnancy, such as intended for use in the diagnosis and management of treatment of trophoblastic tumors and carcinomas of the stomach, liver, pancreas, and breast, were investigational devices not in commercial distribution when the amendments were enacted. FDA stated in the proposal that these devices intended for uses other than the early detection of pregnancy are already classified into class III (premarket approval) by section 513(f) of the act; and that under the statute these devices intended for these other uses are subject to premarket approval without the 30-month grace period applicable to class III devices of the type that were in commercial distribution on the enactment date of the amendments (see §§ 513(f)(1), 515(a), and 501(f)(1)(B) of the act (21 U.S.C. 360c(f)(1), 360e(a) and 351(f)(1)(B))).

If FDA knows that a device being commercially distributed may be a "new" device as described above because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. The classification regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

FDA believes that human chorionic gonadotropin (HCG) test systems may be commercially distributed while intended for new uses, i.e., uses for diagnosis and management of treatment of trophoblastic tumors and certain carcinomas. FDA is codifying the statutory classification of the new device into class III for such new uses (§ 862.1155(b)), as specified in § 862.3(b). FDA's belief that the device may be commercially distributed for these new uses is based on its review of an article in "Obstetrics and Gynecology" (Ref. 201). Hussa reviews the findings of numerous investigators regarding the clinical utility of HCG. The review indicates that the development of highly sensitive and specific radioimmunoassays for HCG has expanded the utility of HCG measurements from pregnancy testing to applications in a variety of clinical conditions. HCG determinations are increasingly being used as diagnostic aids for conditions such as: Molar

pregnancy and trophoblastic disease, gestational choriocarcinoma (as a follow-up), hydatidiform mole (as a postevacuation follow-up), ectopic pregnancy, threatened abortion, and nonseminomatous germ cell testicular tumors (as a staging and follow-up). Accordingly, in this final rule FDA is adopting the regulation for human chorionic gonadotropin (HCG) test system intended for the early detection of pregnancy as proposed with clarifying changes and codifying the statutory classification of the device into class III if intended for any uses other than early detection of pregnancy, such as in the diagnosis and management of certain tumors and carcinomas.

26. FDA has made clarifying and conforming changes in the identifications of test systems used to detect abusable drugs in body fluids, e.g., blood, serum, and urine (§§ 862.3100, 862.3150, 862.3170, 862.3250, 862.3270, 862.3580, 862.3610, 862.3620, 862.3630, 862.3640, 862.3650, 862.3660, 862.3670, 862.3700, 862.3870, and 862.3910.

G. Exemptions for Class I Devices

FDA received no comments regarding exemptions for clinical chemistry and clinical toxicology devices. FDA proposed that manufacturers of one class I clinical chemistry and clinical toxicology device, general purpose laboratory equipment (§ 862.2050), and of manufacturers of certain components of the thin-layer chromatography system for clinical use (§ 862.2270), be exempt from the current good manufacturing practice (CGMP) regulations with the exception of the requirements specified in 21 CFR 820.180 and 820.198 relating to records and complaint files. In this final rule, FDA is granting the exemptions that were proposed.

As stated in the proposed rule, the agency has determined that exemption of manufacturers of any device from §§ 820.180 and 820.198 of the CGMP regulations would not be in the public interest. Moreover, compliance with these sections is not unduly burdensome for device manufacturers. The complaint file requirements of § 820.198 ensure that device manufacturers have adequate systems for complaint investigation and follow-up. The general requirements concerning records in § 820.180 ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective actions are adequate, and can determine whether an exemption from other sections of the CGMP regulations, if one has been granted, is still appropriate. Also for the reasons given in the proposed regulations, these exemptions do not apply to devices that are labeled or otherwise represented as sterile.

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device CGMP regulations. These petitions may be submitted in accordance with the provisions of section 520(f)(2) of the act (21 U.S.C. 360j(f)(2)). The agency announced the availability of these guidelines in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

FDA proposed to grant an exemption from the requirement of premarket notification for one clinical chemistry and clinical toxicology device, general purpose laboratory equipment (§ 862.2050). In the final rule, FDA is granting the device, with its modified description, an exemption from the requirement of premarket notification as proposed.

Elsewhere in this issue of the **Federal Register**, FDA is proposing to grant an exemption from the requirement of premarket notification for certain class I clinical chemistry and clinical toxicology devices. FDA is also explaining in that proposed rule the agency's recently developed policy on granting such exemptions from premarket notification.

H. Reclassification of Devices

Postamendments devices that are not substantially equivalent to devices marketed before the amendments are classified by statute into class III under section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)). In response to petitions received by FDA under section 513(f)(2) of the act and Part 860 of the regulations, FDA may reclassify a new device into class I or class II.

FDA received a number of such petitions requesting reclassification into class I or class II of certain clinical chemistry and clinical toxicology devices. FDA then published in the **Federal Register** the recommendations of the Panel on these petitions, to provide a period for public comment. FDA is presenting in the table below a summary of its actions on the petitions and is providing, after the table, a summary of any comments received and FDA's responses to the comments. By order in the form of a letter to each petitioner, FDA reclassified each of these devices. Accordingly, in this final rule FDA is announcing its reclassifications under 21 CFR 860.134 and codifying its reclassifications of the devices listed below.

FDA's order and regulation codifying reclassification of a device applies to any device which is substantially equivalent to the reclassified device. FDA determines substantial equivalence of new devices by reviewing premarket notification submissions under section 510(k) of the act and Subpart E of 21 CFR Part 807.

Section No.	Petition number/date petition received by FDA	Generic type of device	Class recommended by Section	FEDERAL REGISTER cite for notice/public comments on notice	Date of FDA's order reclassifying device/FDA's classification of device
862.1090	77N-0394, Oct. 3, 1977	Angiotensin converting enzyme test system.	II	March 31, 1978; 43 FR 13631; no comments were received.	May 23, 1978; Class II.
862.1177	78P-0058, Feb. 14, 1978	Cholylglycine test system	II	June 6, 1978; 43 FR 24600; no comments were received.	July 26, 1978; Class II.
862.1187	78N-0185, Feb. 15, 1978	Conjugated sulfolithocholic acid test system.	II	June 30, 1978; 43 FR 28557; no comments were received.	Aug. 3 1978; Class II.
862.1315	78P-0003, Dec. 9, 1977	Galactose-1-phosphate uridyl transferase test system.	II	June 6, 1978; 43 FR 24605; no comments were received.	July 26, 1978; Class II.
862.1377	80P-0510, Oct. 9, 1980	Urinary homocystine (nonquantitative) test system.	II	July 7, 1981; 46 FR 35189; no comments were received.	Aug. 25, 1981; Class II.
862.1509	80P-0511, Oct. 9, 1980	Urinary methylmalonic acid (nonquantitative) test system.	II	July 7, 1981; 46 FR 35191; no comments were received.	Aug. 25, 1981; Class II.
862.1542	84P-0212, April 19, 1983	Oxalate test system	I	July 3, 1984; 49 FR 27371; no comments were received.	Sept. 7, 1974; Class I.
862.3030	79P-0317, May 7, 1979	Acetaminophen test system	II	April 22, 1980; 45 FR 27016; no comments were received.	June 9, 1980; Class II.
862.3035	77P-0338, Aug. 16, 1977	Amikacin test system	II	Jan. 13, 1978; 43 FR 1995; one comment was received—see paragraph 1 below.	March 2, 1978; Class II.

Section No.	Petition number/date petition received by FDA	Generic type of device	Class recommended by Section	FEDERAL REGISTER cite for notice/public comments on notice	Date of FDA's order reclassifying device/FDA's classification of device
862.3035	77P-0342, Aug. 8, 1977	Amikacin test system	II	Feb. 7, 1978; 43 FR 5068; one comment was received—see paragraph 2 below.	March 30, 1978; Class II.
862.3280	78P-0268, July 10, 1978	Clinical toxicology control material	I	March 13, 1979; 44 FR 14639; no comments were received.	March 31, 1982; Class I.
862.3250	77N-0431, Aug. 20, 1976	Cocaine and cocaine metabolite test system.	II	Feb. 7, 1978; 43 FR 5070; no comments were received.	March 29, 1978; Class II.
862.3450	77P-0287, June 23, 1977	Gentamicin test system	II	Jan. 31, 1978; 43 FR 4116; one comment was received—see paragraph 3 below.	March 13, 1978; Class II.
862.3555	78P-0341, Aug. 4, 1977	Lidocaine test system	II	Feb. 3, 1978; 43 FR 4682; no comments were received.	March 20, 1978; Class II.
862.3630	77P-0052, Aug. 24, 1976	Methaqualone test system	II	Feb. 24, 1978; 43 FR 7711; no comments were received.	April 7, 1978; Class II.
862.3645	82P-0263, May 6, 1982	Neuroleptic drugs radioreceptor assay test system.	II	Aug. 16, 1983; 48 FR 37080; no comments were received.	Dec. 23, 1983; Class II.
862.3880	77P-0340, Aug. 4, 1977	Theophylline test system	II	Jan. 13, 1978; 43 FR 1996; no comments were received.	March 2, 1978; Class II.
862.3910	79P-0091, March 21, 1979	Tricyclic anti-depressant drugs test system	II	Nov. 30, 1979; 44 FR 69011; no comments were received.	Jan. 26, 1980; Class II.

Section No.	Petition number/date petition received by	Generic type of device	Class recommended by Section	FEDERAL REGISTER cite for notice/public comments on notice	Date of FDA's order reclassifying device/FDA's classification of device
862.3950	80P-0142, Sept. 10, 1979	Vancomycin test system	II	April 29, 1980; 45 FR 28497	July 12, 1980; Class II.

1. FDA received a comment on the recommendation on the Amikacin test system (§ 862.3035, petition 77P-0338). The comment suggested that compliance with current good manufacturing practice (CGMP) regulations and adequate labeling would be sufficient to ensure the safe and effective use of "Amikacin Serum Assay." The comment indicated that the device should be classified in class I.

FDA disagrees with the comment. FDA believes that compliance with CGMP regulations and use of adequate labeling are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA believes that establishment of a performance standard for the device is necessary to provide acceptable ranges of accuracy, precision, sensitivity, and specificity and thereby minimize the possibility that the device would provide inaccurate diagnostic information. FDA believes that a performance standard is needed to provide reasonable assurance of the safety and effectiveness of the device and that sufficient information is available to develop such a standard.

2. FDA received a second comment on the recommendation on the Amikacin test system (§ 862.3035, petition 77P-0342) concerning the content of a future performance standard. The comment recommended that parameters such as antibody content, antibody quality, moisture content, pH, and other appropriate characteristics be included in the standard.

FDA agrees with the comment. FDA believes that the specific characteristics suggested by the comment should be addressed in any performance standard.

3. FDA received one comment on the recommendation on the Gentamicin test system (§ 862.3450, petition 77P-0287). The comment suggested that the following attributes be addressed in the standard: Gentamicin content, antibody content, antibody quality moisture content, pH, and other appropriate chacteristics.

FDA agrees with the comment. FDA agrees that the suggested attributes should be addressed in any performance standard.

I. Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel name	Publication date in FEDERAL REGISTER
Circulatory Systems Devices Panel.	March 9, 1979; 44 FR 13284-13434 (proposals); February 5, 1980; 45 FR 7904-7971 (final regulations).
Clinical Chemistry and Clinical Toxicology Services Panel.	February 2, 1982; 47 FR 4802-4929 (proposals); May 1, 1987 (final regulations and proposals).
Hematology and Pathology Devices Panel.	September 11, 1979; 44 FR 52950-53063 (proposals); September 12, 1980; 45 FR 60576-60651 (final regulations).
General Hospital and Personal Use Devices Panel.	August 24, 1979; 4 FR 49844-49954 (proposals); October 21, 1980; 45 FR 69678-69737 (final regulations).
Gastroenterology-Urology Devices Panel.	January 23, 1981; 46 FR 7562-7641 (proposals); November 23, 1983; 48 FR 52012-53029 (final regulations).
Immunology Devices Panel.	April 22, 1980; 45 FR 27204-27359 (proposals); November 9, 1982; 47 FR 50814-50840 (final regulations).
Microbiology Devices Panel.	April 22, 1980; 45 FR 27204-27359 (proposals); November 9, 1982; 47 FR 50814-50840 (final regulations).
Obstetrics-Gynecology Devices Panel.	April 3, 1979; 44 FR 19894-19971 (proposals); February 26, 1980; 45 FR 12682-12720 (final regulations).
Radiologic Devices Panel.	January 29, 1982; 47 FR 4406-4451 (proposals).
Ear, Nose, and Throat Devices Panel.	January 22, 1982; 47 FR 3280-3325 (proposals); November 6, 1986; 51 FR 40378 (final regulations).
Dental Devices Panel	December 30, 1980; 45 FR 85962-86168 (proposals).
Anesthesiology and Respiratory Therapy Devices Panel.	November 2, 1979; 44 FR 63292-63426 (proposals); July 16, 1982; 47 FR 31130-31150 (final regulations).
Neurological Devices Panel.	November 23, 1978; 43 FR 54640-55732 (proposals); September 4, 1979; 44 FR 51726-51778 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Physical Medicine Devices).	August 28, 1979; 44 FR 50458-50537 (proposals); November 23, 1983; 48 FR 53032-53054 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Orthopedic Devices).	July 2, 1982; 47 FR 29052-29140 (proposals).
General and Plastic Surgery Devices Panel.	January 19, 1982; 47 FR 2810-2853 (proposals).

J. References

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

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K. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) 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.

L. Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has detemined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section (b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo: These devices are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and under the final rule, remain subject only to such controls either in their entirety or with certain exemptions. Those devices classified into class II will remain subject only to the general controls provisions of the act unless and until applicable performance standards are established. In sum, the device classification rules do not have a significant impact on a substantial number of small entities, are not major rules, and do not significantly change the regulatory status of the devices subject to classification.

Interested persons may, on or before June 30, 1987, submit to the Dockets Management Branch (address above) written comments regarding the regulations for those devices whose classifications in the final rule are different from their proposed classifications. 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 862

Clinical chemistry and clincial toxicology devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21

of the Code of Federal Regulations is amended by adding new Part 862, to read as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

Subpart A—General Provisions

Sec.

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862.2 Regulation of calibrators.
862.3 Effective dates of requirement for premarket approval.

Subpart B—Clinical Chemistry Test Systems

862.1020 Acid phosphatase (total or prostatic) test system.
862.1025 Adrenocorticotropic hormone (ACTH) test system.
862.1030 Alanine amino transferase (ALT/SGPT) test system.
862.1035 Albumin test system.
862.1040 Aldolase test system.
862.1045 Aldosterone test system.
862.1050 Alkaline phosphatase or isoenzymes test system.
862.1060 Delta-aminolevulinic acid test system.
862.1065 Ammonia test system.
862.1070 Amylase test system.
862.1075 Androstenedione test system.
862.1080 Androsterone test system.
862.1085 Angiotensin I and renin test system.
862.1090 Angiotensin converting enzyme (A.C.E.) test system.
862.1095 Ascorbic acid test system.
862.1100 Aspartate amino transferase (AST–SGOT) test system.
862.1110 Bilirubin (total or direct) test system.
862.1115 Urinary bilirubin and its conjugates (nonquantitative) test system.
862.1120 Blood gases ($P_{CO}2P_O2$) and blood pH test system.
862.1130 Blood volume test system.
862.1135 C-Peptides of proinsulin test system.
862.1140 Calcitonin test system.
862.1145 Calcium test system.
862.1150 Calibrator.
862.1155 Human chorionic gonadotropin (HCG) test system.
862.1160 Bicarbonate/carbon dioxide test system.
862.1165 Catecholamines (total) test system.
862.1170 Chloride test system.
862.1175 Cholesterol (total) test system.
862.1177 Cholylglycine test system.
862.1180 Chymotrypsin test system.
862.1185 Compound S (11-deoxycortisol) test system.
862.1187 Conjugated sulfolithocholic acid (SLCG) test system.
862.1190 Copper test system.
862.1195 Corticoids test system.
862.1200 Corticosterone test system.
862.1205 Cortisol (hydrocortisone and hydroxycorticosterone) test system.
862.1210 Creatine test system.
862.1215 Creatine phosphokinase/creatine kinase or isoenzymes test system.
862.1225 Creatinine test system.
862.1230 Cyclic AMP test system.
862.1240 Cystine test system.
862.1245 Dehydroepiandrosterone (free and sulfate) test system.
862.1250 Desoxycorticosterone test system.
862.1255 2,3-Diphosphoglyceric acid test system.
862.1260 Estradiol test system.
862.1265 Estriol test system.
862.1270 Estrogens (total, in pregnancy) test system.
862.1275 Estrogens (total, nonpregnancy) test system.
862.1280 Estrone test system.
862.1285 Etiocholanolone test system.
862.1290 Fatty acids test system.
862.1295 Folic acid test system.
862.1300 Follicle-stimulating hormone test system.
862.1305 Formiminoglutamic acid (FIGLU) test system.
862.1310 Galactose test system.
862.1315 Galactose-1-phosphate uridyl transferase test system.
862.1320 Gastric acidity test system.
862.1325 Gastrin test system.
862.1330 Globulin test system.
862.1335 Glucagon test system.
862.1340 Urinary glucose (nonquantitative) test system.
862.1345 Glucose test system.
862.1360 Gamma-glutamyl transpeptidase and isoenzymes test system.
862.1365 Glutathione test system.
862.1370 Human growth hormone test system.
862.1375 Histidine test system.
862.1377 Urinary homocystine (nonquantitative) test system.
862.1380 Hydroxybutyric dehydrogenase test system.
862.1385 17-Hydroxycorticosteroids (17-ketogenic steroids) test system.
862.1390 5-Hydroxyindole acetic acid/serotonin test system.
862.1395 17-Hydroxyprogesterone test system.
862.1400 Hydroxyproline test system.
862.1405 Immunoreactive insulin test system.
862.1410 Iron (non-heme) test system.
862.1415 Iron-binding capacity test system.
862.1420 Isocitric dehydrogenase test system.
862.1430 17-Ketosteroids test system.
862.1435 Ketones (nonquantitative) test system.
862.1440 Lactate dehydrogenase test system.
862.1445 Lactate dehydrogenase isoenzymes test system.
862.1450 Lactic acid test system.
862.1455 Lecithin/sphingomyelin ratio in amniotic fluid test system.
862.1460 Leucine aminopeptidase test system.
862.1465 Lipase test system.
862.1470 Lipid (total) test system.
862.1475 Lipoprotein test system.
862.1485 Luteinizing hormone test system.
862.1490 Lysozyme (muramidase) test system.
862.1495 Magnesium test system.
862.1500 Malic dehydrogenase test system.
862.1505 Mucopolyaccharides test system.
862.1509 Methylmalonic acid (nonquantitative) test system.
862.1510 Nitrite (nonquantitative) test system.
862.1515 Nitrogen (amino-nitrogen) test system.
862.1520 5'-Nucleotidase test system.
862.1530 Plasma oncometry test system.
862.1535 Ornithine carbamyl transferase test system.
862.1540 Osmolality test system.
862.1542 Oxalate test system.
862.1545 Parathyroid hormone test system.
862.1550 Urinary pH (nonquantitative) test system.
862.1555 Phenylalanine test system.
862.1560 Urinary phenylketones (nonquantitative) test system.
862.1565 6-Phosphogluconate dehydrogenase test system.
862.1570 Phosphohexose isomerase test system.
862.1575 Phospholipid test system.
862.1580 Phosphorus (inorganic) test system.
862.1585 Human placental lactogen test system.
862.1590 Porphobilinogen test system.
862.1595 Porphyrins test system.
862.1600 Potassium test system.
862.1605 Pregnanediol test system.
862.1610 Pregnanetriol test system.
862.1615 Pregnenolone test system.
862.1620 Progesterone test system.
862.1625 Prolactin (lactogen) test system.
862.1630 Protein (fractionation) test system.
862.1635 Total protein test system.
862.1640 Protein-bound iodine test system.
862.1645 Urinary protein or albumin (nonquantitative) test system.
862.1650 Pyruvate kinase test system.
862.1655 Pyruvic acid test system.
862.1660 Quality control material (assayed and unassayed).
862.1665 Sodium test system.
862.1670 Sorbitol dehydrogenase test system.
862.1675 Blood specimen collection device.
862.1680 Testosterone test system.
862.1685 Thyroxine-binding globulin test system.
862.1690 Thyroid-stimulating hormone test system.
862.1695 Free thyroxine test system.
862.1700 Total thyroxine test system.
862.1705 Triglyceride test system.
862.1710 Total triiodothyronine test system.
862.1715 Triiodothyronine uptake test system.
862.1720 Triose phosphate isomerase test system.
862.1725 Trypsin test system.
862.1730 Free tyrosine test system.
862.1770 Urea nitrogen test system.
862.1775 Uric acid test system.
862.1780 Urinary calculi (stones) test system.
862.1785 Urinary urobilinogen (nonquantitative) test system.
862.1790 Uroporphyrin test system.
862.1795 Vanilmandelic acid test system.
862.1805 Vitamin A test system.
862.1810 Vitamin B_{12} test system.
862.1815 Vitamin E test system.
862.1820 Xylose test system.

Subpart C—Clinical Laboratory Instruments

862.2050 General purpose laboratory equipment labeled or promoted for a specific medical use.
862.2100 Calculator/data processing module for clinical use.
862.2140 Centrifugal chemistry analyzer for clinical use.
862.2150 Continuous flow sequential multiple chemistry analyzer for clinical use.
862.2160 Discrete photometric chemistry analyzer for clinical use.
862.2170 Microchemistry analyzer for clinical use.
862.2230 Chromatographic separation material for clinical use.
862.2250 Gas liquid chromatography system for clinical use
862.2260 High-pressure liquid chromatography system for clinical use.
862.2270 Thin-layer chromatography system for clinical use.
862.2300 Colorimeter, photometer, or spectrophotometer for clinical use.
862.2310 Clinical sample concentrator.
862.2320 Beta- or gamma-counter for clinical use.
862.2400 Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use.
862.2485 Electophoresis apparatus for clinical use.
862.2500 Enzyme analyzer for clinical use.
862.2540 Flame emission photometer for clinical use.
862.2560 Fluorometer for clinical use.
862.2680 Microtitrator for clinical use.
862.2700 Nephelometer for clinical use.
862.2720 Plasma oncometer for clinical use.
862.2730 Osmometer for clinical use.
862.2750 Pipetting and diluting system for clinical use.
862.2800 Refractometer for clinical use.
862.2850 Atomic absorption spectrophotometer for clinical use.
862.2860 Mass spectrometer for clinical use.
862.2900 Automated urinalysis system.
862.2920 Plasma viscometer for clinical use.

Subpart D—Clinical Toxicology Test Systems

862.3030 Acetaminophen test system.
862.3035 Amikacin test system.
862.3040 Alcohol test system.
862.3050 Breath-alcohol test system.
862.3100 Amphetamine test system.
862.3110 Antimony test system.
862.3120 Arsenic test system.
862.3150 Barbiturate test system.
862.3170 Benzodiazepine test system.
862.3200 Clinical toxicology calibrator.
862.3220 Carbon monoxide test system.
862.3240 Cholinesterase test system.
862.3250 Cocaine and cocaine metabolite test system.
862.3270 Codeine test system.
862.3280 Clinical toxicology control material.
862.3300 Digitoxin test system.
862.3320 Digoxin test system.
862.3350 Diphenylhydantoin test system.
862.3380 Ethosuximide test system.
862.3450 Gentamicin test system.
862.3520 Kanamycin test system.
862.3550 Lead test system.
862.3555 Lidocaine test system.
862.3560 Lithium test system.
862.3580 Lysergic acid diethylamide (LSD) test system.
862.3600 Mercury test system.
862.3610 Methamphetamine test system.
862.3620 Methadone test system.
862.3630 Methaqualone test system.
862.3640 Morphine test system.
862.3645 Neuroleptic drugs radioreceptor assay test system.
862.3650 Opiate test system.
862.3660 Phenobarbital test system.
862.3670 Phenothiazine test system.
862.3680 Primidone test system.
862.3700 Propoxyphene test system.
862.3750 Quinine test system.
862.3830 Salicylate test system.
862.3850 Sulfonamide test system.
862.3870 Cannabinoid test system.
862.3880 Theophylline test system.
862.3900 Tobramycin test system.
862.3910 Tricyclic antidepressant drugs test system.
862.3950 Vancomycin test system.

Authority. Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

Subpart A—General Provisions

§ 862.1 Scope.

(a) This part sets forth the classification of clinical chemistry and clinical toxicology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required in § 807.87.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 862.2 Regulation of calibrators.

Many devices classified in this part are intended to be used with a calibrator. A calibrator has a reference value assigned to it which serves as the basis by which test results of patients are derived or calculated. The calibrator for a device may be (a) manufactured and distributed separately from the device with which it is intended to be used, (b) manufactured and distributed as one of several device components, such as in a kit of reagents, or (c) built-in as an integral part of the device. Because of the central role that a calibrator plays in the measurement process and the critical effect calibrators have on accuracy of test results, elsewhere in this part, all three of these types of calibrators (§§ 862.1150 and 862.3200) (21 CFR 862.1150 and 862.3200) are classified into class II, notwithstanding the classification of the device with which it is intended to be used. Thus, a device and its calibrator may have different classifications, even if the calibrator is built into the device.

§ 862.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without

any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

Subpart B—Clinical Chemistry Test Systems

§ 862.1020 Acid phosphatase (total or prostatic) test system.

(a) *Identification.* An acid phosphatase (total or prostatic) test system is a device intended to measure the activity of the acid phosphatase enzyme in plasma and serum.

(b) *Classification.* Class II.

§ 862.1025 Adrenocorticotropic hormone (ACTH) test system.

(a) *Identification.* an Adrenocorticotropic hormone (ACTH) test system is a device intended to measure adrenocorticotropic hormone in plasma and serum. ACTH measurements are used in the differential diagnosis and treatment of certain disorders of the adrenal glands such as Cushing's syndrome, adrenocortical insufficiency, and the ectopic ACTH syndrome.

(b) *Classification.* Class II.

§ 862.1030 Alanine amino transferase (ALT/SGPT) test system.

(a) *Identification.* An alanine amino transferase (ALT/SGPT) test system is a device intended to measure the activity of the enzyme alanine amino transferase (ALT) (also known as a serum glutamic pyruvic transaminase or SGPT) in serum and plasma. Alanine amino transferase measurements are used in the diagnosis and treatment of certain liver diseases (e.g., viral hepatitis and cirrhosis) and heart diseases.

(b) *Classification.* Class I.

§ 862.1035 Albumin test system.

(a) *Identification.* An albumin test system is a device intended to measure the albumin concentration in serum and plasma. Albumin measurements are used in the diagnosis and treatment of numerous diseases involving primarily the liver or kidneys.

(b) *Classification.* Class II.

§ 862.1040 Aldolase test system.

(a) *Identification.* An aldolase test system is a device intended to measure the activity of the enzyme aldolase in serum or plasma. Aldolase measurements are used in the diagnosis and treatment of the early stages of acute hepatitis and for certain muscle diseases such as progressive Duchenne-type muscular dystrophy.

(b) *Classification.* Class I.

§ 862.1045 Aldosterone test system.

(a) *Identification.* An aldosterone test system is a device intended to measure the hormone aldosterone in serum and urine. Aldosterone measurements are used in the diagnosis and treatment of primary aldosteronism (a disorder caused by the excessive secretion of aldosterone by the adrenal gland), hypertension caused by primary aldosteronism, selective hypoaldosteronism, edematous states, and other conditions of electrolyte imbalance.

(b) *Classification.* Class II.

§ 862.1050 Alkaline phosphatase or isoenzymes test system.

(a) *Identification.* An alkaline phosphatase or isoenzymes test system is a device intended to measure alkaline phosphatase or its isoenzymes (a group of enzymes with similar biological activity) in serum or plasma. Measurements of alkaline phosphatase or its isoenzymes are used in the diagnosis and treatment of liver, bone, parathyroid, and intestinal diseases.

(b) *Classification.* Class II.

§ 862.1060 Delta-aminolevulinic acid test system.

(a) *Identification.* A *delta*-aminolevulinic acid test system is a device intended to measure the level of *delta*-aminolevulinic acid (a precursor of porphyrin) in urine. *Delta*-aminolevulinic acid measurements are used in the diagnosis and treatment of lead poisoning and certain porphyrias (diseases affecting the liver, gastrointestinal, and nervous systems that are accompanied by increased urinary excretion of various heme compounds including *delta*-aminolevulinic acid).

(b) *Classification.* Class I.

§ 862.1065 Ammonia test system.

(a) *Identification.* An ammonia test system is a device intended to measure ammonia levels in blood, serum, and plasma. Ammonia measurements are used in the diagnosis and treatment of severe liver disorders, such as cirrhosis, hepatitis, and Reye's syndrome.

(b) *Classification.* Class I.

§ 862.1070 Amylase test system.

(a) *Identification.* An amylase test system is a device intended to measure the activity of the enzyme amylase in serum and urine. Amylase measurements are used primarily for the diagnosis and treatment of pancreatitis (inflammation of the pancreas).

(b) *Classification.* Class II.

§ 862.1075 Androstenedione test system.

(a) *Identification.* An androstenedione test system is a device intended to measure androstenedione (a substance secreted by the testes, ovary, and adrenal glands) in serum. Adrostenedione measurements are used in the diagnosis and treatment of females with excessive levels of androgen (male sex hormone) production.

(b) *Classification.* Class I.

§ 862.1080 Androsterone test system.

(a) *Identification.* An androsterone test system is a device intended to measure the hormone adrosterone in serum, plasma, and urine. Androsterone measurements are used in the diagnosis and treatment of gonadal and adrenal diseases.

(b) *Classification.* Class I.

§ 862.1085 Angiotensin I and renin test system.

(a) *Identification.* An angiotensin I and renin test system is a device intended to measure the level of angiotensin I generated by renin in plasma. Angiotensin I measurements are used in the diagnosis and treatment of certain types of hypertension.

(b) *Classification.* Class II.

§ 862.1090 Angiotensin converting enzyme (A.C.E.) test system.

(a) *Identification.* An angiotensin converting enzyme (A.C.E.) test system is a device intended to measure the activity of angiotensin converting enzyme in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of diseases such as sarcoidosis, a disease characterized by the formation of nodules in the lungs, bones, and skin, and Gaucher's disease, a hereditary disorder affecting the spleen.

(b) *Classification.* Class II.

§ 862.1095 Ascorbic acid test system.

(a) *Identification.* An ascorbic acid test system is a device intended to measure the level of ascorbic acid (vitamin C) in plasma, serum, and urine. Ascorbic acid measurements are used in the diagnosis and treatment of ascorbic acid dietary deficiencies.

(b) *Classification.* Class I.

§ 862.1100 Aspartate amino transferase (AST/SGOT) test system.

(a) *Identification.* An aspartate amino transferase (AST/SGOT) test system is a device intended to measure the activity of the enzyme aspartate amino transferase (AST) (also known as a serum glutamic oxaloacetic transferase or SGOT) in serum and plasma. Aspartate amino transferase measurements are used in the diagnosis and treatment of certain types of liver and heart disease.

(b) *Classification.* Class II.

§ 862.1110 Bilirubin (total or direct) test system.

(a) *Identification.* A bilirubin (total or direct) test system is a device intended to measure the levels of bilirubin (total or direct) in plasma or serum. Measurements of the levels of bilirubin, an organic compound formed during the normal and abnormal distruction of red blood cells, if used in the diagnosis and treatment of liver, hemolytic hematological, and metabolic disorders, including hepatitis and gall bladder block.

(b) *Classification.* Class II.

§ 862.1115 Urinary bilirubin and its conjugates (nonquantitative) test system.

(a) *Identification.* A urinary bilirubin and its conjugates (nonquantitative) test system is a device intended to measure the levels of bilirubin conjugates in urine. Measurements of urinary bilirubin and its conjugates (nonquantitative) are used in the diagnosis and treatment of certain liver diseases.

(b) *Classification.* Class I.

§ 862.1120 Blood gases ($P_{CO}2$, P_O2) and blood pH test system.

(a) *Identification.* A blood gases ($P_{CO}2$, P_O2) and blood pH test system is a device intended to measure certain gases in blood, serum, plasma or pH of blood, serum, and plasma. Measurements of blood gases ($P_{CO}2$, P_O2) and blood pH are used in the diagnosis and treatment of life-threatening acid-base disturbances.

(b) *Classification.* Class II.

§ 862.1130 Blood volume test system.

(a) *Identification.* A blood volume test system is a device intended to measure the circulating blood volume. Blood volume measurements are used in the diagnosis and treatment of shock, hemorrhage, and polycythemia vera (a disease characterized by an absolute increase in erythrocyte mass and total blood volume).

(b) *Classification.* Class I.

§ 862.1135 C-peptides of porinsulin test system.

(a) *Identification.* A C-peptides of proinsulin test system is a device intended to measure C-peptides of proinsulin levels in serum, plasma, and urine. Measurements of C-peptides of proinsulin are used in the diagnosis and treatment of patients with abnormal insulin secretion, including diabetes mellitus.

(b) *Classification.* Class I.

§ 862.1140 Calcitonin test system.

(a) *Identification.* A calcitonin test system is a device intended to measure the thyroid hormone calcitonin (thyrocalcitonin) levels in plasma and serum. Calcitonin measurements are used in the diagnosis and treatment of diseases involving the thyroid and parathyroid glands, including carcinoma and hyperparathyroidism (excessive activity of the parathyroid gland).

(b) *Classification.* Class II.

§ 862.1145 Calcium test system.

(a) *Identification.* A calcium test system is a device intended to measure the total calcium level in serum. Calcium measurements are used in the diagnosis and treatment of parathyroid disease, a variety of bone diseases, chronic renal disease and tetany (intermittent muscular contractions or spasms).

(b) *Classification.* Class II.

§ 862.1150 Calibrator.

(a) *Identification.* A calibrator is a device intended for medical purposes for use in a test system to establish points of reference that are used in the determination of values in the measurement of substances in human specimens. (See also § 862.2 in this part.)

(b) *Classification.* Class II.

§ 862.1155 Human chorionic gonadotropin (HCG) test system.

(a) *Human chorionic gonadotropin (HCG) test system intended for the early detection of pregnancy*—(1) *Identification.* A human chorionic gonadotropin (HCG) test system is a device intended for the early detection of pregnancy is intended to measure HCG, a placental hormone, in plasma or urine.

(2) *Classification.* Class II.

(b) *Human chorionic gonadotropin (HCG) test system intended for any uses other than early detection of pregnancy*—

(1) *Identification.* A human chorionic goadotropin (HCG) test system is a device intended for any uses other than early detection of pregnancy (such as an aid in the diagnosis, prognosis, and management of treatment of persons with certain tumors or carcinomas) is intended to measure HCG, a placental hormone, in plasma or urine.

(2) *Classification.* Class III.

(3) *Date PMA or notice of completion of a PDP is required.* As of the enactment date of the amendments, May 28, 1976, an approval under section 515 of the act is required before the device described in paragraph (b)(1) may be commercially distributed. See § 862.3.

§ 862.1160 Bicarbonate/carbon dioxide test system.

(a) *Identification.* A bicarbonate/carbon dioxide test system is a device intended to measure bicarbonate/carbon dioxide in plasma, serum, and whole blood. Bicarbonate/carbon dioxide measurements are used in the diagnosis and treatment of numerous potentially serious disorders associated with changes in body acid-base balance.

(b) *Classification.* Class II.

§ 862.1165 Catecholamines (total) test system.

(a) *Identification.* A catecholamines (total) test system is a device intended to determine whether a group of similar compounds (epinephrine, norepinephrine, and dopamine) are present in urine and plasma. Catecholamine determinations are used in the diagnosis and treatment of adrenal medulla and hypertensive disorders, and for catecholamine-secreting tumors (pheochromo-cytoma, neuroblastoma, ganglioneuroma, and retinoblastoma).

(b) *Classification.* Class I.

§ 862.1170 Chloride test system.

(a) *Identification.* A chloride test system is a device intended to measure the level of chloride in plasma, serum, sweat, and urine. Chloride measurements are used in the diagnosis and treatment of electrolyte and metabolic disorders such as cystic fibrosis and diabetic acidosis.

(b) *Classification.* Class II.

§ 862.1175 Cholesterol (total) test system.

(a) *Identification.* A cholesterol (total) test system is a device intended to measure cholesterol in plasma and serum. Cholesterol measurements are used in the diagnosis and treatment of disorders involving excess cholesterol in the blood and lipid and lipoprotein metabolism disorders.

(b) *Classification.* Class I.

§ 862.1177 Cholylglycine test system.

(a) *Identification.* A cholylglycine test system is a device intended to measure the bile acid cholylglycine in serum. Measurements obtained by this device are used in the diagnosis and treatment

of liver disorders, such as cirrhosis or obstructive liver disease.

(b) *Classification.* Class II.

§ 862.1180 Chymotrypsin test system.

(a) *Identification.* A chymotrypsin test system is a device intended to measure the activity of the enzyme chymotrypsin in blood and other body fluids and in feces. Chymotrypsin measurements are used in the diagnosis and treatment of pancreatic exocrine insufficiency.

(b) *Classification.* Class I.

§ 862.1185 Compound S (11-deoxycortisol) test system.

(a) *Identification.* A compound S (11-dioxycortisol) test system is a device intended to measure the level of compound S (11-dioxycortisol) in plasma. Compound S is a steroid intermediate in the biosynthesis of the adrenal hormone cortisol. Measurements of compound S are used in the diagnosis and treatment of certain adrenal and pituitary gland disorders resulting in clinical symptoms of masculinization and hypertension.

(b) *Classification.* Class I.

§ 862.1187 Conjugated sulfolithocholic acid (SLCG) test system.

(a) *Identification.* A conjugated sulfolithocholic acid (SLCG) test system is a device intended to measure the bile acid SLCG in serum. Measurements obtained by this device are used in the diagnosis and treatment of liver disorders, such as cirrhosis or obstructive liver disease.

(b) *Classification.* Class II.

§ 862.1190 Copper test system.

(a) *Identification.* A copper test system is a device intended to measure copper levels in plasma, serum, and urine. Measurements of copper are used in the diagnosis and treatment of anemia, infections, inflammations, and Wilson's disease (a hereditary disease primarily of the liver and nervous system). Test results are also used in monitoring patients with Hodgkin's disease (a disease primarily of the lymph system).

(b) *Classification.* Class II.

§ 862.1195 Corticoids test system.

(a) *Identification.* A corticoids test system is a device intended to measure the levels of corticoids (hormones of the adrenal cortex) in serum and plasma. Measurements of corticoids are used in the diagnosis and treatment of disorders of the cortex of the adrenal glands, especially those associated with hypertension and electrolyte disturbances.

(b) *Classification.* Class I.

§ 862.1200 Corticosterone test system.

(a) *Identification.* A corticosterone test system is a device intended to measure corticosterone (a steroid secreted by the adrenal gland) levels in plasma. Measurements of corticosterone are used in the diagnosis and treatment of adrenal disorders such as adrenal cortex disorders and blocks in cortisol synthesis.

(b) *Classification.* Class I.

§ 862.1205 Cortisol (hydrocortisone and hydroxycorticosterone) test system.

(a) *Identification.* A cortisol (hydrocortisone and hydroxycorticosterone) test system is a device intended to measure the cortisol hormones secreted by the adrenal gland in plasma and urine. Measurements of cortisol are used in the diagnosis and treatment of disorders of the adrenal gland.

(b) *Classification.* Class II.

§ 862.1210 Creatine test system.

(a) *Identification.* A creatine test system is a device intended to measure creatine (a substance synthesized in the liver and pancreas and found in biological fluids) in plasma, serum, and urine. Measurements of creatine are used in the diagnosis and treatment of muscle diseases and endocrine disorders including hyperthyroidism.

(b) *Classification.* Class I.

§ 862.1215 Creatine phosphokinase/creatine kinase or isoenzymes test system.

(a) *Identification.* A creatine phosphokinase/creatine kinase or isoenzymes test system is a device intended to measure the activity of the enzyme creatine phosphokinase or its isoenzymes (a group of enzymes with similar biological activity) in plasma and serum. Measurements of creatine phosphokinase and its isoenzymes are used in the diagnosis and treatment of myocardial infarction and muscle diseases such as progressive, Duchenne-type muscular dystrophy.

(b) *Classification.* Class II.

§ 862.1225 Creatinine test system.

(a) *Identification.* A creatinine test system is a device intended to measure creatinine levels in plasma and urine. Creatinine measurements are used in the diagnosis and treatment of renal diseases, in monitoring renal dialysis, and as a calculation basis for measuring other urine analytes.

(b) *Classification.* Class II.

§ 862.1230 Cyclic AMP test system.

(a) *Identification.* A cyclic AMP test system is a device intended to measure the level of adenosine 3≠, 5≠-monophosphate (cyclic AMP) in plasma, urine, and other body fluids. Cyclic AMP measurements are used in the diagnosis and treatment of endocrine disorders, including hyperparathyroidism (overactivity of the parathyroid gland). Cyclic AMP measurements may also be used in the diagnosis and treatment of Graves' disease (a disorder of the thyroid) and in the differentiation of causes of hypercalcemia (elevated levels of serum calcium.)

(b) *Classification.* Class II.

§ 862.1240 Cystine test system.

(a) *Identification.* A cystine test system is a device intended to measure the amino acid cystine in urine. Cystine measurements are used in the diagnosis of cystinuria (occurrence of cystine in urine). Patients with cystinuria frequently develop kidney calculi (stones).

(b) *Classification.* Class I.

§ 862.1245 Dehydroepiandrosterone (free and sulfate) test system.

(a) *Identification.* A dehydroepiandrosterone (free and sulfate) test system is a device intended to measure dehydroepiandrosterone (DHEA) and its sulfate in urine, serum, plasma, and amniotic fluid. Dehydroepiandrosterone measurements are used in the diagnosis and treatment of DHEA-secreting adrenal carcinomas.

(b) *Classification.* Class I.

§ 862.1250 Desoxycorticosterone test system.

(a) *Identification.* A desoxycorticosterone test system is a device intended to measure desoxycorticosterone (DOC) in plasma and urine. DOC measurements are used in the diagnosis and treatment of patients with hypermineralocorticoidism (excess retention of sodium and loss of potassium) and other disorders of the adrenal gland.

(b) *Classification.* Class I.

§ 862.1255 2,3-Diphosphoglyceric acid test system.

(a) *Identification.* A 2,3-diphosphoglyceric acid test system is a device intended to measure 2,3-diphosphoglyceric acid (2,3-DPG) in erythrocytes (red blood cells). Measurements of 2,3-diphosphoglyceric acid are used in the diagnosis and treatment of blood disorders that affect the delivery of oxygen by erythrocytes to tissues and in monitoring the quality of stored blood.

(b) *Classification.* Class I.

§ 862.1260 Estradiol test system.

(a) *Identification.* An estradiol test system is a device intended to measure

estradiol, an estrogenic steroid, in plasma. Estradiol measurements are used in the diagnosis and treatment of various hormonal sexual disorders and in assessing placental function in complicated pregnancy.

(b) *Classification.* Class I.

§ 862.1265 Estriol test system.

(a) *Identification.* An estriol test system is a device intended to measure estriol, an estrogenic steroid, in plasma, serum, and urine of pregnant females. Estriol measurements are used in the diagnosis and treatment of fetoplacental distress in certain cases of high-risk pregnancy.

(b) *Classification.* Class I.

§ 862.1270 Estrogens (total, in pregnancy) test system.

(a) *Identification.* As estrogens (total, in pregnancy) test system is a device intended to measure total estrogens in plasma, serum, and urine during pregnancy. The device primarily measures estrone plus estradiol. Measurements of total estrogens are used to aid in the diagnosis and treatment of fetoplacental distress in certain cases of high-risk pregnancy.

(b) *Classification.* Class I.

§ 862.1275 Estrogens (total, nonpregnancy) test system.

(a) *Identification.* As estrogens (total, nonpregnancy) test system is a device intended to measure the level of estrogens (total estrone, estradiol, and estriol) in plasma, serum, and urine of males and nonpregnant females. Measurement of estrogens (total, nonpregnancy) is used in the diagnosis and treatment of numerous disorders, including infertility, amenorrhea (absence of menses) differentiation of primary and secondary ovarian malfunction, estrogen secreting testicular and ovarian tumors, and precocious puberty in females.

(b) *Classification.* Class I.

§ 862.1280 Estrone test system.

(a) *Identification.* An estrone test system is a device intended to measure estrone, an estrogenic steroid, in plasma. Estrone measurements are used in the diagnosis and treatment of numerous disorders, including infertility, amenorrhea, differentiation of primary and secondary ovarian malfunction, estrogen secreting testicular and ovarian tumors, and precocious puberty in females.

(b) *Classification.* Class I.

§ 862.1285 Etiocholanolone test system.

(a) *Identification.* As etiocholanolone test system is a device intended to measure etiocholanolone in serum and urine. Etiocholanolone is a metabolic product of the hormone testosterone and is excreted in the urine. Etiocholanolone measurements are used in the diagnosis and treatment of disorders of the testes and ovaries.

(b) *Classification.* Class I.

§ 862.1290 Fatty acids test system.

(a) *Identification.* A fatty acids test system is a device intended to measure fatty acids in plasma and serum. Measurements of fatty acids are used in the diagnosis and treatment of various disorders of lipid metabolism.

(b) *Classification.* Class I.

§ 862.1295 Folic acid test system.

(a) *Identification.* A folic acid test system is a device intended to measure the vitamin folic acid in plasma and serum. Folic acid measurements are used in the diagnosis and treatment of megaloblastic anemia, which is characterized by the presence of megaloblasts (an abnormal red blood cell series) in the bone marrow.

(b) *Classification.* Class I.

§ 862.1300 Follicle-stimulating hormone test system.

(a) *Identification.* A follicle-stimulating hormone test system is a device intended to measure follicle-stimulating hormone (FSH) in plasma, serum, and urine. FSH measurements are used in the diagnosis and treatment of pituitary gland and gonadal disorders.

(b) *Classification.* Class I.

§ 862.1305 Formiminoglutamic acid (FIGLU) test system.

(a) *Identification.* A formiminoglutamic acid (FIGLU) test system is a device intended to measure formiminolutamic acid in urine. FIGLU measurements obtained by this device are used in the diagnosis of anemias, such as pernicious anemia and congenital hemolytic anemia.

(b) *Classification.* Class I.

§ 862.1310 Galactose test system.

(a) *Identification.* A galactose test system is a device intended to measure galactose in blood and urine. Galactose measurements are used in the diagnosis and treatment of the hereditary disease galactosemia (a disorder of galactose metabolism) in infants.

(b) *Classification.* Class I.

§ 862.1315 Galactose-1-phosphate uridyl transferase test system.

(a) *Identification.* A galactose-1-phosphate uridyl transferase test system is a device intended to measure the activity of the enzyme galactose-1-phosphate uridyl transferase in erythrocytes (red blood cells). Measurements of galactose-1-phosphate uridyl transferase are used in the diagnosis and treatment of the hereditary disease galactosemia (disorder of galactose metabolism) in infants.

(b) *Classification.* Class II.

§ 862.1320 Gastric acidity test system.

(a) *Identification.* A gastric acidity test system is a device intended to measure the acidity of gastric fluid. Measurements of gastric acidity are used in the diagnosis and treatment of patients with peptic ulcer, Zollinger-Ellison syndrome (peptic ulcer due to gastrin-secreting tumor of the pancreas), and related gastric disorders.

(b) *Classification.* Class I.

§ 862.1325 Gastrin test system.

(a) *Identification.* A gastrin test system is a device intended to measure the hormone gastrin in plasma and serum. Measurements of gastrin are used in the diagnosis and treatment of patients with ulcers, pernicious anemia, and the Zollinger-Ellison syndrome (peptic ulcer due to a gastrin-secreting tumor of the pancreas).

(b) *Classification.* Class I.

§ 862.1330 Globulin test system.

(a) *Identification.* A globulin test system is a device intended to measure globulins (proteins) in plasma and serum. Measurements of globulin are used in the diagnosis and treatment of patients with numerous illnesses including severe liver and renal disease, multiple myeloma, and other disorders of blood globulins.

(b) *Classification.* Class I.

§ 862.1335 Glucagon test system.

(a) *Identification.* A glucagon test system is a device intended to measure pancreatic hormone glucagon in plasma and serum. Glucagon measurements are used in the diagnosis and treatment of patients with various disorders of carbohydrate metabolism, including diabetes mellitus, hypoglycemia, and hyperglycemia.

(b) *Classification.* Class I.

§ 862.1340 Urinary glucose (nonquantitative) test system.

(a) *Identification.* A urinary glucose (nonquantitative) test system is a device intended to measure glucosuria (glucose in urine). Urinary glucose (nonquantitative) measurements are used in the diagnosis and treatment of carbohydrate metabolism disorders including diabetes mellitus, hypoglycemia, and hyperglycemia.

(b) *Classification.* Class II.

§ 862.1345 Glucose test system.

(a) *Identification.* A glucose test system is a device intended to measure glucose quantitatively in blood and other body fluids. Glucose measurements are used in the diagnosis and treatment of carbohydrate metabolism disorders including diabetes mellitus, neonatal hypoglycemia, and idiopathic hypoglycemia, and of pancreatic islet cell carcinoma.

(b) *Classification.* Class II.

§ 862.1360 Gamma-glutamyl transpeptidase and isoenzymes test system.

(a) *Identification.* A gamma-glutamyl transpeptidase and isoenzymes test system is a device intended to measure the activity of the enzyme gamma-glutamyl transpeptidase (GGTP) in plasma and serum. Gamma-glutamyl transpeptidase and isoenzymes measurements are used in the diagnosis and treatment of liver diseases such as alcoholic cirrhosis and primary and secondary liver tumors.

(b) *Classification.* Class I.

§ 862.1365 Glutathione test system.

(a) *Identification.* A glutathione test system is a device intended to measure glutathione (the tripeptide of glycine, cysteine, and glutamic acid) in erythrocytes (red blood cells). Glutathione measurements are used in the diagnosis and treatment of certain drug-induced hemolytic (erythrocyte destroying) anemias due to an inherited enzyme deficiency.

(b) *Classification.* Class I.

§ 862.1370 Human growth hormone test system.

(a) *Identification.* A human growth hormone test system is a device intended to measure the levels of human growth hormone in plasma. Human growth hormone measurements are used in the diagnosis and treatment of disorders involving the anterior lobe of the pituitary gland.

(b) *Classification.* Class I.

§ 862.1375 Histidine test system.

(a) *Identification.* A histidine test system is a device intended to measure free histidine (an amino acid) in plasma and urine. Histidine measurements are used in the diagnosis and treatment of hereditary histidinemia characterized by excess histidine in the blood and urine often resulting in mental retardation and disordered speech development.

(b) *Classification.* Class I.

§ 862.1377 Urinary homocystine (nonquantitative) test system.

(a) *Identification.* A urinary homocystine (nonquantitative) test system is a device intended to identify homocystine (an analogue of the amino acid cystine) in urine. The identification of urinary homocystine is used in the diagnosis and treatment of homocystinuria (homosystine in urine), a heritable metabolic disorder which may cause mental retardation.

(b) *Classification.* Class II.

§ 862.1380 Hydroxybutyric dehydrogenase test system.

(a) *Identification.* A hydroxybutyric dehydrogenase test system is a device intended to measure the activity of the enzyme alpha-hydroxybutric dehydrogenase (HBD) in plasma or serum. HBD measurements are used in the diagnosis and treatment of myocardial infarction, renal damage (such as rejection of transplants), certain hematological diseases (such as acute leukemias and megaloblastic anemias) and, to a lesser degree, liver disease.

(b) *Classification.* Class I.

§ 862.1385 17-Hydroxycorticosteroids (17-ketogenic steroids) test system.

(a) *Identification.* A 17-hydroxycorticosteroids (17-ketogenic steroids) test system is a device intended to measure corticosteroids that possess a dihydroxyacetone ($HOCH_2$—C CH_2OH) moiety on the steroid nucleus in urine. —— O

Corticosteroids with this chemical configuration include cortisol, cortisone 11-desoxycortisol, desoxycorticosterone, and their tetrahydroderivatives. This group of hormones is synthesized by the adrenal gland. Measurements of 17-hydroxycorticosteroids (17-ketogenic steroids) are used in the diagnosis and treatment of various diseases of the adrenal or pituitary glands and gonadal disorders.

(b) *Classification.* Class I.

§ 862.1390 5-Hydroxyindole acetic acid/serotonin test system.

(a) *Identification.* A 5-hydroxyindole acetic acid/serotonin test system is a device intended to measure 5-hydroxyindole acetic acid/serotonin in urine. Measurements of 5-hydroxyindole acetic acid/serotonin are used in the diagnosis and treatment of carcinoid tumors of endocrine tissue.

(b) *Classification.* Class I.

§ 862.1395 17-Hydroxyprogesterone test system.

(a) *Identification.* A 17-hydroxyprogesterone test system is a device intended to measure 17-hydroxyprogesterone (a steroid) in plasma and serum. Measurements of 17-hydroxyprogesterone are used in the diagnosis and treatment of various disorders of the adrenal glands or the ovaries.

(b) *Classification.* Class I.

§ 862.1400 Hydroxyproline test system.

(a) *Identification.* A hydroxyproline test system is a device intended to measure the amino acid hydroxyproline in urine. Hydroxyproline measurements are used in the diagnosis and treatment of various collagen (connective tissue) diseases, bone diseass such as Paget's disease, and endocrine disorders such as hyperparathyroidism and hyperthyroidism.

(b) *Classification.* Class I.

§ 862.1405 Immunoreactive insulin test system.

(a) *Identification.* An immunoreactive insulin test system is a device intended to measure immunoreactive insulin in serum and plasma. Immunoreactive insulin measurements are used in the diagnosis and treatment of various carbohydrate metabolism disorders, including diabetes mellitus, and hypoglycemia.

(b) *Classification.* Class I.

§ 862.1410 Iron (non-heme) test system.

(a) *Identification.* An iron (non-heme) test system is a device intended to measure iron (non-heme) in serum and plasma. Iron (non-heme) measurements are used in the diagnosis and treatment of diseases such as iron deficiency anemia, hemochromatosis (a disease associated with widespread deposit in the tissues of two iron-containing pigments, hemosiderin and hemofuscin, and characterized by pigmentation of the skin), and chronic renal disease.

(b) *Classification.* Class I.

§ 862.1415 Iron-binding capacity test system.

(a) *Identification.* An iron-binding capacity test system is a device intended to measure iron-binding capacity in serum. Iron-binding capacity measurements are used in the diagnosis and treatment of anemia.

(b) *Classification.* Class I.

§ 862.1420 Isocitric dehydrogenase test system.

(a) *Identification.* An isocitric dehydrogenase test system is a device intended to measure the activity of the enzyme isocitric dehydrogenase in serum and plasma. Isocitric dehydrogenase measurements are used in the diagnosis and treatment of liver disease such as viral hepatitis, cirrhosis, or acute inflammation of the biliary tract; pulmonary disease such as pulmonary infarction (local arrest or sudden insufficiency of the blood supply

to the lungs), and diseases associated with pregnancy.

(b) *Classification.* Class I.

§ 862.1430 17-Ketosteroids test system.

(a) *Identification.* A 17-ketosteroids test system is a device intended to measure 17-ketosteroids in urine. Measurements of 17-ketosteroids are used in the diagnosis and treatment of disorders of the adrenal cortex and gonads and of other endocrine disorders, including hypertension, diabetes, and hypothyroidism.

(b) *Classification.* Class I.

§ 862.1435 Ketones (nonquantitative) test system.

(a) *Identification.* A ketones (nonquantitative) test system is a device intended to identify ketones in urine and other body fluids. Identification of ketones is used in the diagnosis and treatment of acidosis (a condition characterized by abnormally high acidity of body fluids) or ketosis (a condition characterized by increased production of ketone bodies such as acetone) and for monitoring patients on ketogenic diets and patients with diabetes.

(b) *Classification.* Class I.

§ 862.1440 Lactate dehydrogenase test system.

(a) *Identification.* A lactate dehydrogenase test system is a device intended to measure the activity of the enzyme lactate dehydrogenase in serum. Lactate dehydrogenase measurements are used in the diagnosis and treatment of liver diseases such as acute viral hepatitis, cirrhosis, and metastatic carcinoma of the liver, cardiac diseases such as myocardial infarction, and tumors of the lung or kidneys.

(b) *Classification.* Class II.

§ 862.1445 Lactate dehydrogenase isoenzymes test system.

(a) *Identification.* A lactate dehydrogenase isoenzymes test system is a device intended to measure the activity of lactate dehydrogenase isoenzymes (a group of enzymes with similar biological activity) in serum. Measurements of lactate dehydrogenase isoenzymes are used in the diagnosis and treatment of liver diseases, such as viral hepatitis, and myocardial infarction.

(b) *Classification.* Class II.

§ 862.1450 Lactic acid test system.

(a) *Identification.* A lactic acid test system is a device intended to measure lactic acid in whole blood and plasma. Lactic acid measurements that evaluate the acid-base status are used in the diagnosis and treatment of lactic acidosis (abnormally high acidity of the blood).

(b) *Classification.* Class I.

§ 862.1455 Lecithin/sphingomyelin ratio in amniotic fluid test system.

(a) *Identification.* A lecithin/sphingomyelin ratio in amniotic fluid test system is a device intended to measure the lecithin/sphingomyelin ratio in amniotic fluid. Lecithin and sphingomyelin are phospholipids (fats or fat-like substances containing phosphorus). Measurements of the lecithin/sphingomyelin ratio in amniotic fluid are used in evaluating fetal maturity.

(b) *Classification.* Class II.

§ 862.1460 Leucine aminopeptidase test system.

(a) *Identification.* A leucine aminopeptidase test system is a device intended to measure the activity of the enzyme leucine amino-peptidase in serum, plasma, and urine. Leucine aminopeptidase measurements are used in the diagnosis and treatment of liver diseases such as viral hepatitis and obstructive jaundice.

(b) *Classification.* Class I.

§ 862.1465 Lipase test system.

(a) *Identification.* A lipase test system is a device intended to measure the activity of the enzymes lipase in serum. Lipase measurements are used in diagnosis and treatment of diseases of the pancreas such as acute pancreatitis and obstruction of the pancreatic duct.

(b) *Classification.* Class I.

§ 862.1470 Lipid (total) test system.

(a) *Identification.* A lipid (total) test system is a device intended to measure total lipids (fats or fat-like substances) in serum and plasma. Lipid (total) measurements are used in the diagnosis and treatment of various diseases involving lipid metabolism and atherosclerosis.

(b) *Classification.* Class I.

§ 862.1475 Lipoprotein test system.

(a) *Identification.* A lipoprotein test system is a device intended to measure lipoprotein in serum and plasma. Lipoprotein measurements are used in the diagnosis and treatment of lipid disorders (such as diabetes mellitus), atherosclerosis, and various liver and renal diseases.

(b) *Classification.* Class I.

§ 862.1485 Luteinizing hormone test system.

(a) *Identification.* A luteinizing hormone test system is a device intended to measure luteinizing hormone in serum and urine. Luteinizing hormone measurements are used in the diagnosis and treatment of gonadal dysfunction.

(b) *Classification.* Class I.

§ 862.1490 Lysozyme (muramidase) test system.

(a) *Identification.* A lysozyme (muramidase) test system is a device intended to measure the activity of the bacteriolytic enzyme lysozyme (muramidase) in serum, plasma, leukocytes, and urine. Lysozyme measurements are used in the diagnosis and treatment of monocytic leukemia and kidney disease.

(b) *Classification.* Class I.

§ 862.1495 Magnesium test system.

(a) *Identification.* A magnesium test system is a device intended to measure magnesium levels in serum and plasma. Magnesium measurements are used in the diagnosis and treatment of hypomagnesemia (abnormally low plasma levels of magnesium) and hypermagnesemia (abnormally high plasma levels of magnesium).

(b) *Classification.* Class I.

§ 862.1500 Malic dehydroqenase test system.

(a) *Identification.* A malic dehydrogenase test system is a device that is intended to measure the activity of the enzyme malic dehydrogenase in serum and plasma. Malic dehydrogenase measurements are used in the diagnosis and treatment of muscle and liver diseases, myocardial infarctions, cancer, and blood disorders such as myelogenous (produced in the bone marrow) leukemia.

(b) *Classification.* Class I.

§ 862.1505 Mucopolysaccharides (nonquantitative) test system.

(a) *Identification.* A mucopolysaccharides (nonquantitative) test system is a device intended to measure the levels of mucopolysaccharides in urine. Mucopolysaccharide measurements in urine are used in the diagnosis and treatment of various inheritable disorders that affect bone and connective tissues, such as Hurler's, Hunter's, Sanfilippo's, Scheie's Morquio's and Maroteaux-Lamy syndromes.

(b) *Classification.* Class I.

§ 862.1509 Methylmalonic acid (nonquantitative) test system.

(a) *Identification.* A methylmalonic acid (nonquantitative) test system is a device intended to identify methylmalonic acid in urine. The identification of methylmalonic acid in urine is used in the diagnosis and

treatment of methylmalonic aciduria, a heritable metabolic disorder which, if untreated, may cause mental retardation.

(b) *Classification.* Class II.

§ 862.1510 Nitrite (nonquantitative) test system.

(a) *Identification.* A nitrite (nonquantitative) test system is a device intended to identify nitrite in urine. Nitrite identification is used in the diagnosis and treatment of uninary tract infection of bacterial origin.

(b) *Classification.* Class I.

§ 862.1515 Nitrogen (amino-nitrogen) test system.

(a) *Identification.* A nitrogen (amino-nitrogen) test system is a device intended to measure amino acid nitrogen levels in serum, plasma, and urine. Nitrogen (amino-nitrogen) measurements are used in the diagnosis and treatment of certain forms of severe liver diseases and renal disorders.

(b) *Classification.* Class I.

§ 862.1520 A 5'-Nucleotidase test system.

(a) *Identification.* A 5'-nucleotidase test system is a device intended to measure the activity of the enzyme 5'-nucleotidase in serum and plasma. Measurements of 5'-nucleotidase are used in the diagnosis and treatment of liver diseases and in the differentiations between liver and bone diseases in the presence of elevated serum alkaline phosphatase activity.

(b) *Classification.* Class I.

§ 862.1530 Plasma oncometry test system.

(a) *Identification.* A plasma oncometry test system is a device intended to measure plasma oncotic pressure. Plasma oncotic pressure is that portion of the total fluid pressure contributed by proteins and other molecules too large to pass through a specified membrane. Measurements of plasma oncotic pressure are used in the diagnosis and treatment of dehydration and circulatory disorders related to low serum protein levels and increased capillary permeability, such as edema and shock.

(b) *Classification.* Class I.

§ 862.1535 Ornithine carbamyl transferase test system.

(a) *Identification.* An ornithine carbamyl transferase test system is a device intended to measure the activity of the enzyme ornithine carbamyl transferase (OCT) in serum. Ornithine carbamyl transferase measurements are used in the diagnosis and treatment of liver diseases, such as infectious hepatitis, acute cholecystitis (inflammation of the gall bladder), cirrhosis, and liver metastases.

(b) *Classification.* Class I.

§ 862.1540 Osmolality test system.

(a) *Identification.* An osmolality test system is a device intended to measure ionic and nonionic solute concentration in body fluids, such as serum and urine. Osmolality measurement is used as an adjunct to other tests in the evaluation of a variety of diseases, including kidney diseases (e.g., chronic progressive renal failure), diabetes insipidus, other endocrine and metabolic disorders, and fluid imbalances.

(b) *Classification.* Class I.

§ 862.1542 Oxalate test system.

(a) *Identification.* An oxalate test system is a device intended to measure the concentration of oxalate in urine. Measurements of oxalate are used to aid in the diagnosis or treatment of urinary stones or certain other metabolic disorders.

(b) *Classification.* Class I.

§ 862.1545 Parathyroid hormone test system.

(a) *Identification.* A parathyroid hormone test system is a device intended to measure the levels of parathyroid hormone in serum and plasma. Measurements of parathyroid hormone levels are used in the differential diagnosis of hypercalcemia (abnormally high levels of calcium in the blood) and hypocalcemia (abnormally low levels of calcium in the blood) resulting from disorders of calcium metabolism.

(b) *Classification.* Class II.

§ 862.1550 Urinary pH (nonquantitative) test system.

(a) *Identification.* A urinary pH (nonquantitative) test system is a device intended to estimate the pH of urine. Estimations of pH are used to evaluate the acidity or alkalinity of urine as it relates to numerous renal and metabolic disorders and in the monitoring of patients with certain diets.

(b) *Classification.* Class I.

§ 862.1555 Phenylalanine test system.

(a) *Identification.* A phenylalanine test system is a device intended to measure free phenylalanine (an amino acid) in serum, plasma, and urine. Measurements of phenylalanine are used in the diagnosis and treatment of congenital phenylketonuria which, if untreated, may cause mental retardation.

(b) *Classification.* Class II.

§ 862.1560 Urinary phenylketones (nonquantitative) test system.

(a) *Identification.* A urinary phenylketones (nonquantitative) test system is a device intended to identify phenylketones (such as phenylpyruvic acid) in urine. The identification of urinary phenylketones is used in the diagnosis and treatment of congenital phenylketonuria which, if untreated, may cause mental retardation.

(b) *Classification.* Class I.

§ 862.1565 6-Phosphogluconate dehydrogenase test system.

(a) *Identification.* A 6-phosphogluconate dehydrogenase test system is a device intended to measure the activity of the enzyme 6-phosphogluconate dehydrogenase (6 PGD) in serum and erythrocytes. Measurements of 6-phosphogluconate dehydrogenase are used in the diagnosis and treatment of certain liver diseases (such as hepatitis) and anemias.

(b) *Classification.* Class I.

§ 862.1570 Phosphohexose isomerase test system.

(a) *Identification.* A phosphohexose isomerase test system is a device intended to measure the activity of the enzyme phosphohexose isomerase in serum. Measurements of phosphohexose isomerase are used in the diagnosis and treatment of muscle diseases such as muscular dystrophy, liver diseases such as hepatitis or cirrhosis, and metastatic carcinoma.

(b) *Classification.* Class I.

§ 862.1575 Phospholipid test system.

(a) *Identification.* A phospholipid test system is a device intended to measure phospholipids in serum and plasma. Measurements of phospholipids are used in the diagnosis and treatment of disorders involving lipid (fat) metabolism.

(b) *Classification.* Class I.

§ 862.1580 Phosphorus (inorganic) test system.

(a) *Identification.* A phosphorus (inorganic) test system is a device intended to measure inorganic phosphorus in serum, plasma, and urine. Measurements of phosphorus (inorganic) are used in the diagnosis and treatment of various disorders, including parathyroid gland and kidney diseases, and vitamin D imbalance.

(b) *Classification.* Class I.

§ 862.1585 Human placental lactogen test system.

(a) *Identification.* A human placental lactogen test system is a device intended to measure the hormone

human placental lactogen (HPL), (also known as human chorionic somatomammotrophin (HCS)), in maternal serum and maternal plasma. Measurements of human placental lactogen are used in the diagnosis and clinical management of high-risk pregnancies involving fetal distress associated with placental insufficiency. Measurements of HPL are also used in pregnancies complicated by hypertension, proteinuria, edema, post-maturity, placental insufficiency, or possible miscarriage.

(b) *Classification.* Class II.

§ 862.1590 Porphobilinogen test system.

(a) *Identification.* A porphobilinogen test system is a device intended to measure porphobilinogen (one of the derivatives of hemoglobin which can make the urine a red color) in urine. Measurements obtained by this device are used in the diagnosis and treatment of porphyrias (primarily inherited diseases associated with disturbed porphyrine metabolism), lead poisoning, and other diseases characterized by alterations in the heme pathway.

(b) *Classification.* Class I.

§ 862.1595 Porphyrins test system.

(a) *Identification.* A porphyrins test system is a device intended to measure porphyrins (compounds formed during the biosynthesis of heme, a constituent of hemoglobin, and related compounds) in urine and feces. Measurements obtained by this device are used in the diagnosis and treatment of lead poisoning, porphyrias (primarily inherited diseases associated with disturbed porphyrin metabolism), and other diseases characterized by alterations in the heme pathway.

(b) *Classification.* Class I.

§ 862.1600 Potassium test system.

(a) *Identification.* A potassium test system is a device intended to measure potassium in serum, plasma, and urine. Measurements obtained by this device are used to monitor electrolyte balance in the diagnosis and treatment of diseases conditions characterized by low or high blood potassium levels.

(b) *Classification.* Class II.

§ 862.1605 Pregnanediol test system.

(a) *Identification.* A pregnanediol test system is a device intended to measure pregnanediol (a major urinary metabolic product of progesterone) in urine. Measurements obtained by this device are used in the diagnosis and treatment of disorders of the ovaries or placenta.

(b) *Classification.* Class I.

§ 862.1610 Pregnanetriol test system.

(a) *Identification.* A pregnanetriol test system is a device intended to measure pregnanetriol (a precursor in the biosynthesis of the adrenal hormone cortisol) in urine. Measurements obtained by this device are used in the diagnosis and treatment of congenital adrenal hyperplasia (congenital enlargement of the adrenal gland).

(b) *Classification.* Class I.

§ 862.1615 Pregnenolone test system.

(a) *Identification.* A pregnenolone test system is a device intended to measure pregnenolone (a precursor in the biosynthesis of the adrenal hormone cortisol and adrenal androgen) in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of diseases of the adrenal cortex or the gonads.

(b) *Classification.* Class I.

§ 862.1620 Progesterone test system.

(a) *Identification.* A progesterone test system is a device intended to measure progesterone (a female hormone) in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of disorders of the ovaries or placenta.

(b) *Classification.* Class I.

§ 862.1625 Prolactin (lactogen) test system.

(a) *Identification.* A prolactin (lactogen) test system is a device intended to measure the anterior pituitary polypeptide hormone prolactin in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of disorders of the anterior pituitary gland or of the hypothalamus portion of the brain.

(b) *Classification.* Class I.

§ 862.1630 Protein (fractionation) test system.

(a) *Identification.* A Protein (fractionation) test system is a device intended to measure protein fractions in blood, urine, cerebrospinal fluid, and other body fluids. Protein fractionations are used as a aid in recognizing abnormal proteins in body fluids and genetic variants of proteins produced in diseases with tissue destruction.

(b) *Classification.* Class I.

§ 862.1635 Total protein test system.

(a) *Identification.* A total protein test system is a device intended to measure total protein(s) in serum or plasma. Measurements obtained by this device are used in the diagnosis and treatment of a variety of diseases involving the liver, kidney, or bone marrow as well as other metabolic or nutritional disorders.

(b) *Classification.* Class II.

§ 862.1640 Protein-bound iodine test system.

(a) *Identification.* A protein-bound iodine test system is a device intended to measure protein-bound iodine in serum. Measurements of protein-bound iodine obtained by this device are used in the diagnosis and treatment of thyroid disorders.

(b) *Classification.* Class I.

§ 862.1645 Urinary protein or albumin (nonquantitative) test system.

(a) *Identification.* A urinary protein or albumin (nonquantitative) test system is a device intended to identify proteins or albumin in urine. Identification of urinary protein or albumin (nonquantitative) is used in the diagnosis and treatment of disease conditions such as renal or heart diseases or thyroid disorders, which are characterized by proteinuria or albuminuria.

(b) *Classification.* Class I.

§ 862.1650 Pyruvate kinase test system.

(a) *Identification.* A pyruvate kinase test system is a device intended to measure the activity of the enzyme pyruvate kinase in erythrocytes (red blood cells). Measurements obtained by this device are used in the diagnosis and treatment of various inherited anemias due to pyruvate kinase deficiency or of acute leukemias.

(b) *Classification.* Class I.

§ 862.1655 Pyruvic acid test system.

(a) *Identification.* A pyruvic acid test system is a device intended to measure pyruvic acid (an intermediate compound in the metabolism of carbohydrate) in plasma. Measurements obtained by this device are used in the evaluation of electrolyte metabolism and in the diagnosis and treatment of acid-base and electrolyte disturbances or anoxia (the reduction of oxygen in body tissues).

(b) *Classification.* Class I.

§ 862.1660 Quality control material (assayed and unassayed).

(a) *Identification.* A quality control material (assayed and unassayed) for clinical chemistry is a device intended for medical purposes for use in a test system to estimate test precision and to detect systematic analytical deviations that may arise from reagent or analytical instrument variation. A quality control material (assayed and unassayed) may be used for proficiency testing in interlaboratory surveys. This generic type of device includes controls (assayed and unassayed) for blood gases, electrolytes, enzymes, multianalytes (all kinds), single

(specified) analytes, or urinalysis controls.

(b) *Classification.* Class I.

§ 862.1665 Sodium test system.

(a) *Identification.* A sodium test system is a device intended to measure sodium in serum, plasma, and urine. Measurements obtained by this device are used in the diagnosis and treatment of aldosteronism (excessive secretion of the hormone aldosterone), diabetes insipidus (chronic excretion of large amounts of dilute urine, accompanied by extreme thirst), adrenal hypertension, Addison's disease (caused by destruction of the adrenal glands), dehydration, inappropriate antidiuretic hormone secretion, or other diseases involving electrolyte imbalance.

(b) *Classification.* Class II.

§ 862.1670 Sorbitol dehydrogenase test system.

(a) *Identification.* A sorbitol dehydrogenase test system is a device intended to measure the activity of the enzyme sorbitol dehydrogenase in serum. Measurements obtained by this device are used in the diagnosis and treatment of liver disorders such as cirrhosis or acute hepatitis.

(b) *Classification.* Class I.

§ 862.1675 Blood specimen collection device.

(a) *Identification.* A blood specimen collection device is a device intended for medical purposes to collect and to handle blood specimens and to separate serum from nonserum (cellular) components prior to further testing. This generic type device may include blood collection tubes, vials, systems, serum separators, blood collection trays, or vacuum sample tubes.

(b) *Classification.* Class II.

§ 862.1680 Testosterone test system.

(a) *Identification.* A testosterone test system is a device intended to measure testosterone (a male sex hormone) in serum, plasma, and urine. Measurement of testosterone are used in the diagnosis and treatment of disorders involving the male sex hormones (androgens), including primary and secondary hypogonadism, delayed or precocious puberty, impotence in males and, in females hirsutism (excessive hair) and virilization masculinization) due to tumors, polycystic ovaries, and adrenogenital syndromes.

(b) *Classification.* Class I (general controls).

§ 862.1685 Thyroxine-binding globulin test system.

(a) *Identification.* A thyroxine-binding globulin test system is a device intended to measure thyroxine (thyroid)-binding globulin (TBG), a plasma protein which binds thyroxine, in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of thyroid diseases.

(b) *Classification.* Class II.

§ 862.1690 Thyroid stimulating hormone test system.

(a) *Identification.* A thyroid stimulating hormone test system is a device intended to measure thyroid stimulating hormone, also known as thyrotrophin and thyrotrophic hormone, in serum and plasma. Measurements of thyroid stimulating hormone produced by the anterior pituitary are used in the diagnosis of thyroid or pituitary disorders.

(b) *Classification.* Class II.

§ 862.1695 Free thyroxine test system.

(a) *Identification.* A free thyroxine test system is a device intended to measure free (not protein bound) thyroxine (thyroid hormone) in serum and plasma. Levels of free thyroxine in plasma are thought to reflect the amount of thyroxine hormone available to the cells and may therefore determine the clinical metabolic status of thyroxine. Measurements obtained by this device are used in the diagnosis and treatment of thyroid diseases.

(b) *Classification.* Class II.

§ 862.1700 Total thyroxine test system.

(a) *Identification.* A total thyroxine test system is a device intended to measure total (free and protein bound) thyroxine (thyroid hormone) in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of thyroid diseases.

(b) *Classification.* Class II.

§ 862.1705 Triglyceride test system.

(a) *Identification.* A triglyceride test system is a device intended to measure triglyceride (neutral fat) in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of patients with diabetes mellitus, nephrosis, liver obstruction, other diseases involving lipid metabolism, or various endocrine disorders.

(b) *Classification.* Class I.

§ 862.1695 Free thyroxine test system.

(a) *Identification.* A free thyroxine test system is a device intended to measure free (not protein bound) thyroxine (thyroid hormone) in serum or plasma. Levels of free thyroxine in plasma are thought to reflect the amount of thyroxine hormone available to the cells and may therefore determine the clinical metabolic status of thyroxine. Measurements obtained by this device are used in the diagnosis and treatment of thyroid diseases.

(b) *Classification.* Class II.

§ 862.1700 Total thyroxine test system.

(a) *Identification.* A total thyroxine test system is a device intended to measure total (free and protein bound) thyroxine (thyroid hormone) in serum or plasma. Measurements obtained by this device are used in the diagnosis and treatment of thyroid diseases.

(b) *Classification.* Class II.

§ 862.1705 Triglyceride test system.

(a) *Identification.* A triglyceride test system is a device intended to measure triglyceride (neutral fat) in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of patients with diabetes mellitus, nephrosis, liver obstruction, other diseases involving lipid metabolism, or various endocrine disorders.

(b) *Classification.* Class I.

§ 862.1710 Total triiodothyronine test system.

(a) *Identification.* A total triiodothyronine test system is a device intended to measure the hormone triiodothyronine in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of thyroid diseases such as hyperthyroidism.

(b) *Classification.* Class II.

§ 862.1715 Triiodothyronine uptake test system.

(a) *Identification.* A triiodothyronine uptake test system is a device intended to measure the total amount of binding sites available for binding thyroid hormone on the thyroxine-binding proteins, thyroid-binding globulin, thyroxine-binding prealbumin, and albumin of serum and plasma. The device provides an indirect measurement of thyrkoxine levels in serum and plasma. Measurements of triiodothyronine uptake are used in the diagnosis and treatment of thyroid disorders.

(b) *Classification.* Class II.

§ 862.1720 Triose phosphate isomerase test system.

(a) *Identification.* A triose phosphate isomerase test system is a device intended to measure the activity of the enzyme triose phosphate isomerase in erythrocytes (red blood cells). Triose phosphate isomerase is an enzyme important in glycolysis (the energy-yielding conversion of glucose to lactic acid in various tissues). Measurements

obtained by this device are used in the diagnosis and treatment of congenital triose phosphate isomerase enzyme deficiency, which causes a type of hemolytic anemia.

(b) *Classification.* Class II.

§ 862.1725 Trypsin test system.

(a) *Identification.* A trypsin test system is a device intended to measure the activity of trypsin (a pancreatic enzyme important in digestion for the breakdown of proteins) in blood and other body fluids and in feces. Measurements obtained by this device are used in the diagnosis and treatment of pancreatic disease.

(b) *Classification.* Class I.

§ 862.1730 Free tyrosine test system.

(a) *Identification.* A free tyrosine test system is a device intended to measure free tyrosine (an amono acid) in serum and urine. Measurements obtained by this device are used in the diagnosis and treatment of diseases such as congenital tyrosinemia (a disease that can cause liver/kidney disorders) and as an adjunct to the measurement of phenylalanine in detecting congenital phenylketonuria (a disease that can cause brain damage).

(b) *Classification.* Class I.

§ 862.1770 Urea nitrogen test system.

(a) *Identification.* A urea nitrogen test system is a device intended to measure urea nitrogen (an end-product of nitrogen metabolism) in whole blood, serum, plasma, and urine. Measurements obtained by this device are used in the diagnosis and treatment of certain renal and metabolic diseases.

(b) *Classification.* Class II.

§ 862.1775 Uric acid test system.

(a) *Identification.* A uric acid test system is a device intended to measure uric acid in serum, plasma, and urine. Measurements obtained by this device are used in the diagnosis and treatment of numerous renal and metabolic disorders, including renal failure, gout, leukemia, psoriasis, starvation or other wasting conditions, and of patients receiving cytotoxic drugs.

(b) *Classification.* Class I.

§ 862.1780 Urinary calculi (stones) test system.

(a) *Identification.* A urinary calculi (stones) test system is a device intended for the analysis of urinary calculi. Analysis of urinary calculi is used in the diagnosis and treatment of calculi of the urinary tract.

(b) *Classification.* Class I.

§ 862.1785 Urinary urobilinogen (nonquantitative) test system.

(a) *Identification.* A urinary urobilinogen (nonquantitative) test system is a device intended to detect and estimate urobilinogen (a bile pigment degradation product of red cell hemoglobin) in urine. Estimations obtained by this device are used in the diagnosis and treatment of liver diseases and hemolytic (red cells) disorders.

(b) *Classification.* Class I.

§ 862.1790 Uroporphyrin test system.

(a) *Identification.* A uroporphyrin test system is a device intended to measure uroporphyrin in urine. Measurements obtained by this device are used in the diagnosis and treatment of porphyrias (primarily inherited diseases associated with disturbed porphyrin metabolism), lead poisoning, and other diseases characterized by alterations in the heme pathway.

(b) *Classification.* Class I.

§ 862.1795 Vanilmandelic acid test system.

(a) *Identification.* A vanilmandelic acid test system is a device intended to measure vanilmandelic acid in urine. Measurements of vanilmandelic acid obtained by this device are used in the diagnosis and treatment of neuroblastoma, pheochromocytoma, and certain hypertensive conditions.

(b) *Classification.* Class I.

§ 862.1805 Vitamin A test system.

(a) *Identification.* A vitamin A test system is a device intended to measure vitamin A in serum or plasma. Measurements obtained by this device are used in the diagnosis and treatment of vitamin A deficiency conditions, including night blindness, or skin, eye, or intestinal disorders.

(b) *Classification.* Class I.

§ 862.1810 Vitamin B_{12} test system.

(a) *Identification.* A vitamin B_{12} test system is a device intended to measure vitamin B_{12} in serum, plasma, and urine. Measurements obtained by this device are used in the diagnosis and treatment of anemias of gastrointestinal malabsorption.

(b) *Classification.* Class II.

§ 862.1815 Vitamin E test system.

(a) *Identification.* A vitamin E test system is a device intended to measure vitamin E (tocopherol) in serum. Measurements obtained by this device are used in the diagnosis and treatment of infants with vitamin E deficiency syndrome.

(b) *Classification.* Class I.

§ 862.1820 Xylose test system.

(a) *Identification.* A xylose test system is a device intended to measure xylose (a sugar) in serum, plasma, and urine. Measurements obtained by this device are used in the diagnosis and treatment of gastrointestinal malabsorption syndrome (a group of disorders in which there is subnormal absorption of dietary constituents and thus excessive loss from the body of the nonabsorbed substances).

(b) *Classification.* Class I.

Subpart C—Clinical Laboratory Instruments

§ 862.2050 General purpose laboratory equipment labeled or promoted for a specific medical use.

(a) *Identification.* General purpose laboratory equipment labeled or promoted for a specific medical use is a device that is intended to prepare or examine specimens from the human body and that is labeled or promoted for a specific medical use.

(b) *Classification.* Class I. The device identified in paragraph (a) of this section is exempt from the premarket notification procedures in Subpart E of Part 807 and is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 862.2100 Calculator/data processing module for clinical use.

(a) *Identification.* A calculator/data processing module for clinical use is an electronic device intended to store, retrieve, and process laboratory data.

(b) *Classification.* Class I.

§ 862.2140 Centrifugal chemistry analyzer for clinical use.

(a) *Identification.* A centrifugal chemistry analyzer for clinical use is an automatic device intended to centrifugally mix a sample and a reagent and spectrophotometrically measure concentrations of the sample constituents. This device is intended for use in conjunction with certain materials to measure a variety of analytes.

(b) *Classification.* Class I.

§ 862.2150 Continuous flow sequential multiple chemistry analyzer for clinical use.

(a) *Identification.* A continuous flow sequential multiple chemistry analyzer for clinical use is a modular analytical instrument intended to simultaneously perform multiple chemical procedures using the principles of automated

continuous flow systems. This device is intended for use in conjunction with certain materials to measure a variety of analytes.

(b) *Classification.* Class I.

§ 862.2160 Discrete photometric chemistry analyzer for clinical use.

(a) *Identification.* A discrete photometric chemistry analyzer for clinical use is a device intended to duplicate manual analytical procedures by performing automatically various steps such as pipetting, preparing filtrates, heating, and measuring color intensity. This device is intended for use in conjunction with certain materials to measure a variety of analytes. Different models of the device incorporate various instrumentation such as micro analysis apparatus, double beam, single, or dual channel photometers, and bichromatic 2-wavelength photometers. Some models of the device may include reagent-containing components that may also serve as reaction units.

(b) *Classification.* Class I.

§ 862.2170 Microchemistry analyzer for clinical use.

(a) *Identification.* A micro chemistry analyzer for clinical use is a device intended to duplicate manual analytical procedures by performing automatically various steps such as pipetting, preparing filtrates, heating, and measuring color intensity. The distinguishing characteristic of the device is that it requires only micro volume samples obtainable from pediatric patients. This device is intended for use in conjunction with certain materials to measure a variety of analytes.

(b) *Classification.* Class I.

§ 862.2230 Chromatographic separation material for clinical use.

(a) *Identification.* A chromatographic separation material for clinical use is a device accessory (e.g., ion exchange absorbents, ion exchagne resins, and ion papers) intended for use in ion exchange chromatography, a procedure in which a compound is separated from a solution.

(b) *Classification.* Class I.

§ 862.2250 Gas liquid chromatography system for clinical use.

(a) *Identification.* A gas liquid chromatography system for clinical use is a device intended to separate one or more drugs or compounds from a mixture. Each of the constituents in a vaporized mixture of compounds is separated according to its vapor pressure. The device may include accessories such as columns, gases, column supports, and liquid coating.

(b) *Classification.* Class I.

§ 862.2260 High pressure liquid chromatography system for clinical use.

(a) *Identification.* A high pressure liquid chromatography system for clinical use is a device intended to separate one or more drugs or compounds from a solution by processing the mixture of compounds (solutes) through a column packed with materials of uniform size (stationary phase) under the influence of a high pressure liquid (mobile phase). Separation of the solutes occurs either by absorption, sieving, partition, or selective affinity.

(b) *Classification.* Class I.

§ 862.2270 Thin-layer chromatography system for clinical use.

(a) *Identification.* A thin-layer chromatography (TLC) system for clinical use is a device intended to separate one or more drugs or compounds from a mixture. The mixture of compounds is absorbed onto a stationary phase or thin layer of inert material (e.g., cellulose, alumina, etc.) and eluted off by a moving solvent (moving phase) until equilibrium occurs between the two phases.

(b) *Classification.* Class I. Particular components of TLC systems, i.e., the thin-layer chromatography apparatus, TLC atomizer, TLC developing tanks, and TLC ultraviolet light, are exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 862.2300 Colorimeter, photometer, or spectrophotometer for clinical use.

(a) *Identification.* A colorimeter, a photometer, or a spectrophotometer for clinical use is an instrument intended to measure radiant energy emitted, transmitted, absorbed, or reflected under controlled conditions. The device may include a monochromator to produce light of a specific wavelength.

(b) *Classification.* Class I.

§ 862.2310 Clinical sample concentrator.

(a) *Identification.* A clinical sample concentrator is a device intended to concentrate (by dialysis, evaporation, etc.) serum, urine, cerebrospinal fluid, and other body fluids before the fluids are analyzed.

(b) *Classification.* Class I.

§ 862.2320 Beta or gamma counter for clinical use.

(a) *Identification.* A beta or gamma counter for clinical use is a device intended to detect and count beta or gamma radiation emitted by clinical samples. Clinical samples are prepared by addition of a radioactive reagent to the sample. These measurements are useful in the diagnosis and treatment of various disorders.

(b) *Classification.* Class I.

§ 862.2400 Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use.

(a) *Identification.* A densitometer/scanner (integrating, reflectance, thin-layer chromatography, or radiochromatogram) for clinical use is device intended to measure the concentration of a substance on the surface of a film or other support media by either a photocell measurement of the light transmission through a given area of the medium or, in the case of the radiochromatogram scanner, by measurement of the distribution of a specific radio-active element on a radiochromatogram.

(b) *Classification.* Class I.

§ 862.2485 Electrophoresis apparatus for clinical use.

(a) *Identification.* An electrophoresis apparatus for clinical use is a device intended to separate molecules or particles, including plasma proteins, lipoproteins, enzymes, and hemoglobulins on the basis of their net charge in specified buffered media. This device is used in conjunction with certain materials to measure a variety of analytes as an aid in the diagnosis and treatment of certain disorders.

(b) *Classification.* Class I.

§ 862.2500 Enzyme analyzer for clinical use.

(a) *Identification.* An enzyme analyzer for clinical use is a device intended to measure enzymes in plasma or serum by nonkinetic or kinetic measurement of enzyme-catalyzed reactions. This device is used in conjunction with certain materials to measure a variety of enzymes as an aid in the diagnosis and treatment of certain enzyme-related disorders.

(b) *Classification.* Class I.

§ 862.2540 Flame emission photometer for clinical use.

(a) *Identification.* A flame emission photometer for clinical use is a device intended to measure the concentration of sodium, potassium, lithium, and other metal ions in body fluids. Abnormal variations in the concentration of these substances in the body are indicative of certain disorders (e.g., electrolyte imbalance and heavy metal intoxication) and are, therefore, useful in diagnosis and treatment of those disorders.

(b) *Classification.* Class I.

§ 862.2560 Fluorometer for clinical use.

(a) *Identification.* A fluorometer for clinical use is a device intended to measure by fluorescence certain analytes. Fluorescence is the property of certain substances of radiating, when illuminated, a light of a different wavelength. This device is used in conjunction with certain materials to measure a variety of analytes.

(b) *Classification.* Class I.

§ 862.2680 Microtitrator for clinical use.

(a) *Identification.* A microtitrator for clinical use is a device intended for use in micronanalysis to measure the concentration of a substance by reacting it with a measure "micro" volume of a known standardization solution.

(b) *Classification.* Class I.

§ 862.2700 Nephelometer for clinical use.

(a) *Identification.* A nephelometer for clinical use is a device intended to estimate the concentration of particles in a suspension by measuring their light scattering properties (the deflection of light rays by opaque particles in their path). The device is used in conjunction with certain materials to measure the concentration of a variety of analytes.

(b) *Classification.* Class I.

§ 862.2720 Plasma oncometer for clinical use.

(a) *Identification.* A plasma oncometer for clinical use is a device intended to measure plasma oncotic pressure, which is that portion of the total plasma osmotic pressure contributed by protein and other molecules too large to pass through a specified semipermeable membrane. Because variations in plasma oncotic pressure are indications of certain disorders, measurements of the variations are useful in the diagnosis and treatment of these disorders.

(b) *Classification.* Class I.

§ 862.2730 Osometer for clinical use.

(a) *Identification.* An osmometer for clinical use is a device intended to measure the osmotic pressure of body fluids. Osmotic pressure is the pressure required to prevent the passage of a solution with a lesser solute concentration into a solution with greater solute concentration when the two solutions are separated by a semipermeable membrane. The concentration of a solution affects its osmotic pressure, freezing point, and other physiochemical properties. Osmometers determine osmotic pressure by methods such as the measurement of the freezing point. Measurements obtained by this device are used in the diagnosis and treatment of body fluid disorders.

(b) *Classification.* Class I.

§ 862.2750 Pipetting and diluting system for clinical use.

(a) *Identification.* A pipetting and diluting system for clinical use is a device intended to provide an accurately measured volume of liquid at a specified temperature for use in certain test procedures. This generic type of device system includes serial, manual, automated, and semi-automated dilutors, pipettors, dispensers, and pipetting stations.

(b) *Classification.* Class I.

§ 862.2800 Refractometer for clinical use.

(a) *Identification.* A refractometer for clinical use is a device intended to determine the amount of solute in a solution by measuring the index of refraction (the ratio of the velocity of light in a vacuum to the velocity of light in the solution). The index of refraction is used to measure the concentration of certain analytes (solutes), such a plasma total proteins and urinary total solids. Measurements obtained by this device are use in the diagnosis and treatment of certain conditions.

(b) *Classification.* Class I.

§ 862.2850 Atomic absorption spectrophotometer for clinical use.

(a) *Identification.* An atomic absorption spectrophotometer for clinical use is a device intended to identify and measure elements and metals (e.g., lead and mercury) in human specimens. The metal elements are identified according to the wavelength and intensity of the light that is absorbed when the specimen is converted to the atomic vapor phase. Measurements obtained by this device are used in the diagnosis and treatment of certain conditions.

(b) *Classification.* Class I.

§ 862.2860 Mass spectrometer for clinical use.

(a) *Identification.* A mass spectrometer for clinical use is a device intended to identify inorganic or organic compounds (e.g., lead, mercury, and drugs) in human specimens by ionizing the compound under investigation and separating the resulting ions by means of an electrical and megnetic field according to their mass.

(b) *Classification.* Class I.

§ 862.2900 Automated urinalysis system.

(a) *Identification.* An automated urinalysis system is a device intended to measure certain of the physical properties and chemical constituents of urine by procedures that duplicate manual urinalysis systems. This device is used in conjunction with certain materials to measure a variety of urinary analytes.

(b) *Classification.* Class I.

§ 862.2920 Plasma viscometers for clinical use.

(a) *Identification.* A plasma viscometer for clinical use is a device intended to measure the viscosity of plasma by determining the time period required for the plasma to flow a measured distance through a calibrated glass tube. Measurements obtained by this device are used to monitor changes in the amount of solids present in plasma in various disorders.

(b) *Classification.* Class I.

Subpart D—Clinical Toxicology Test System

§ 862.3030 Acetaminophen test system.

(a) *Identification.* An acetaminophen test system is a device intended to measure acetaminophen, an analgestic and fever reducing drug, in serum. Measurements obtained by this device are used in the diagnosis and treatment of acetaminophen overdose.

(b) *Classification.* Class II.

§ 862.3035 Amikacin test system.

(a) *Identification.* An amikacin test system is a device intended to measure amikacin, an aminoglycoside antibiotic drug, in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of amikacin overdose and in monitoring levels of amikacin to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3040 Alcohol test system.

(a) *Identification.* An alcohol test system is a device intented to measure alcohol (e.g., ethanol, methanol, isopropanol, etc.) in human body fluids (e.g., serum, whole blood, and urine). Measurements obtained by this device are used in the diagnosis and treatment of alcohol intoxication and poisoning.

(b) *Classification.* Class II.

§ 862.3050 Breath-alcohol test system.

(a) *Identification.* A breath-alcohol test system is a device intened to measure alcohol in the human breath. Measurements obtained by this device are used in the disgnosis of alcohol intoxication.

(b) *Classification.* Class I.

§ 862.3100 Amphetamine test system.

(a) *Identification.* An amphetamine test system is a device intended to measure amphetamine, a central

nervous system stimulating drug, in plasma and urine. Measurements obtained by this device are used in the diagnosis and treatment of amphetamine use or overdose and in monitoring levels of amphetamine to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3110 Antimony test system.

(a) *Identification.* An antimony test system is a device intended to measure antimony, a heavy metal, in urine, blood, vomitus, and stomach contents. Measurements obtained by this device are used in the diagnosis and treatment of antimony poisoning.

(b) *Classification.* Class I.

§ 862.3120 Arsenic test system.

(a) *Identification.* An arsenic test system is a device intended to measure arsenic, a poisonous heavy metal, in urine, vomitus, stomach contents, nails, hair, and blood. Measurements obtained by this device are used in the diagnosis and treatment of arsenic poisoning.

(b) *Classification.* Class I.

§ 862.3150 Barbiturate test system.

(a) *Identification.* A barbiturate test system is a device intended to measure barbiturates, a class of hypnotic and sedative drugs, in serum, urine, and gastric contents. Measurements obtained by this device are used in the diagnosis and treatment of barbiturate use or overdose and in monitoring levels of barbiturate to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3170 Benzodiazepine test system.

(a) *Identification.* A benzodiazepine test system is a device intended to measure any of the benzodiazepine compounds, sedative and hypnotic drugs, in blood, plasma, and urine. The benzodiazepine compounds include chlordiazepoxide, diazepam, oxazepam, chlorzepate, flurazepam, and nitrazepam. Measurements obtained by this device are used in the diagnosis and treatment of benzodiazepine use or overdose and in monitoring levels of benzodiazepines to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3200 Clinical toxicology calibrator.

(a) *Identification.* A clinical toxicology calibrator is a device intended for medical purposes for use in a test system to establish points of reference that are used in the determination of values in the measurement of substances in human specimens. A clinical toxicology calibrator can be a mixture of drugs or a specific material for a particular drug (e.g., ethanol, lidocaine, etc.). (See also § 862.2 in this part.)

(b) *Classification.* Class II.

§ 862.3220 Carbon monoxide test system.

(a) *Identification.* A carbon monoxide test system is a device intended to measure carbon monoxide or carboxyhemoglobin (carbon monoxide bound to the hemoglobin in the blood) in blood. Measurements obtained by this device are used in the diagnosis and treatment of or confirmation of carbon monoxide poisoning.

(b) *Classification.* Class I.

§ 862.3240 Cholinesterase test system.

(a) *Identification.* A cholinesterase test system is a device intended to measure cholinesterase (an enzyme that catalyzes the hydrolysis of acetylcholine to choline) in human specimens. There are two principal types of cholinesterase in human tissues. True cholinesterase is present at nerve endings and in erythrocytes (red blood cells) but is not present in plasma. Pseudo cholinesterase is present in plasma and liver but is not present in erythrocytes. Measurements obtained by this device are used in the diagnosis and treatment of cholinesterase inhibition disorders (e.g., insecticide poisoning and succinylcholine poisoning).

(b) *Classification.* Class I.

§ 862.3250 Cocaine and cocaine metabolite test system.

(a) *Identification.* A cocaine and cocaine metabolite test system is a device intended to measure cocaine and a cocaine metabolite (benzoylecgonine) in serum, plasma, and urine. Measurements obtained by this device are used in the diagnosis and treatment of cocaine use or overdose.

(b) *Classification.* Class II.

§ 862.3270 Codeine test system.

(a) *Identification.* A codeine test system is a device intended to measure codeine (a narcotic pain-relieving drug) in serum and urine. Measurements obtained by this device are used in the diagnosis and treatment of codeine use or overdose and in monitoring levels of codeine to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3280 Clinical toxicology control material.

(a) *Identification.* A clinical toxicology control material is a device intended to provide an estimation of the precision of a device test system and to detect and monitor systematic deviations from accuracy resulting from reagent or instrument defects. This generic type of device includes various single, and multi-analyte control materials.

(b) *Classification.* Class I.

§ 862.3300 Digitoxin test system.

(a) *Identification.* A digitoxin test system is a device intended to measure digitoxin, a cardiovascular drug, in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of digitoxin overdose and in monitoring levels of digitoxin to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3320 Digoxin test system.

(a) *Identification.* A digoxin test system is a device intended to measure digoxin, a cardiovascular drug, in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of digoxin overdose and in monitoring levels of digoxin to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3350 Diphenylhydantoin test system.

(a) *Identification.* A diphenylhydantoin test system is a device intended to measure diphenylhydantoin, an antiepileptic drug, in human specimens. Measurements obtained by this device are used in the diagnosis and treatment of diphenylhydantoin overdose and in monitoring levels of diphenylhydantoin to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3380 Ethosuximide test system.

(a) *Identification.* An ethosuximide test system is a device intended to measure ethosuximide, an antiepileptic drug, in human specimens. Measurements obtained by this device are used in the diagnosis and treatment of ethosuximide overdose and in monitoring levels of ethosuximide to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3450 Gentamicin test system.

(a) *Identification.* A gentamicin test system is a device intended to measure gentamicin, an antibiotic drug, in human specimens. Measurements obtained by this device are used in the diagnosis and treatment of gentamicin overdose and in monitoring levels of gentamicin to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3520 Kanamycin test system.

(a) *Identification.* A kanamycin test system is a device intended to measure kanamycin, an antibiotic drug, in plasma and serum. Measurements obtained by this device are used in the diagnosis and treatment of kanamycin overdose and in

monitoring levels of kanamycin to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3550 Lead test system.

(a) *Identification.* A lead test system is a device intended to measure lead, a heavy metal, in blood and urine. Measurements obtained by this device are used in the diagnosis and treatment of lead poisoning.

(b) *Classification.* Class II.

§ 862.3555 Lidocaine test system.

(a) *Identification.* A lidocaine test system is a device intended to measure lidocaine, an antiarrythmic and anticonvulsant drug, in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of lidocaine overdose or in monitoring levels of lidocaine to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3560 Lithium test system.

(a) *Identification.* A lithium test system is a device intended to measure lithium (from the drug lithium carbonate) in serum or plasma. Measurements of lithium are used to assure that the proper drug dosage is administered in the treatment of patients with mental disturbances, such as manic-depressive illness (bipolar disorder).

(b) *Classification.* Class II.

§ 862.3580 Lysergic acid diethylamide (LSD) test system.

(a) *Identification.* A lysergic acid diethylamide (LSD) test system is a device intended to measure lysergic acid diethylamide, a hallucinogenic drug, in serum, urine, and gastric contents. Measurements obtained by this device are used in the diagnosis and treatment of LSD use or overdose.

(b) *Classification.* Class II.

§ 862.3600 Mercury test system.

(a) *Identification.* A mercury test system is a device intended to measure mercury, a heavy metal, in human specimens. Measurements obtained by this device are used in the diagnosis and treatment of mercury poisoning.

(b) *Classification.* Class I.

§ 862.3610 Methamphetamine test system.

(a) *Identification.* A methamphetamine test system is a device intended to measure methamphetamine, a central nervous system stimulating drug, in serum, plasma, and urine. Measurements obtained by this device are used in the diagnosis and treatment of methamphetamine use or overdose.

(b) *Classification.* Class II.

§ 862.3620 Methadone test system.

(a) *Identification.* A methadone test system is a device intended to measure methadone, an addictive narcotic pain-relieving drug, in serum and urine. Measurements obtained by this device are used in the diagnosis and treatment of methadone use or overdose and to determine compliance with regulations in methadone maintenance treatment.

(b) *Classification.* Class II.

§ 862.3630 Methaqualone test system.

(a) *Identification.* A methaqualone test system is a device intended to measure methaqualone, a hypnotic and sedative drug, in urine. Measurements obtained by this device are used in the diagnosis and treatment of methaqualone use or overdose.

(b) *Classification.* Class II.

§ 862.3640 Morphine test system.

(a) *Identification.* A morphine test system is a device intended to measure morphine, an addictive narcotic pain-relieving drug, and its analogs in serum, urine, and gastric contents. Measurements obtained by this device are used in the diagnosis and treatment of morphine use or overdose and in monitoring levels of morphine and its analogs to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3645 Neuroleptic drugs radioreceptor assay test system.

(a) *Identification.* A neuroleptic drugs radioceptor assay test system is a device intended to measure in serum or plasma the dopamine receptor blocking activity of neuroleptic drugs and their active metabolites. A neuroleptic drug has anti-psychotic action affecting principally psychomotor activity, is generally without hypnotic effects, and is a tranquilizer. Measurements obtained by this device are used to aid in determining whether a patient is taking the prescribed dosage level of such drugs.

(b) *Classification.* Class II.

§ 862.3650 Opiate test system.

(a) *Identification.* An opiate test system is a device intended to measure any of the addictive narcotic pain-relieving opiate drugs in blood, serum, urine, gastric contents, and saliva. An opiate is any natural or synthetic drug that has morphine-like pharmocological actions. The opiates include drugs such as morphine, morphine glucoronide, heroin, codeine, nalorphine, and meperedine. Measurements obtained by this device are used in the diagnosis and treatment of opiate use or overdose and in monitoring the levels of opiate administration to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3660 Phenobarbital test system.

(a) *Identification.* A phenobarbitol test system is a device intended to measure phenobarbital, and antiepileptic and sedative-hypnotic drug, in human specimens. Measurements obtained by this device are used in the diagnosis and treatment of phenobarbital use or overdose and in monitoring levels of phenobarbital to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3670 Phenothiazine test system.

(a) *Identification.* A phenothiazine test system is a device intended to measure any of the drugs of the phenothiazine class in human specimens. Measurements obtained by this device are used in the diagnosis and treatment of phenothiazine use or overdose.

(b) *Classification.* Class II.

§ 862.3680 Primidone test system.

(a) *Identification.* A primidone test system is a device intended to measure primidone, an antiepileptic drug, in human specimens. Measurements obtained by this device are used in the diagnosis and treatment of primidone overdose and in monitoring levels of primidone to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3700 Propoxyphene test system.

(a) *Identification.* A propoxyphene test system is a device intended to measure propoxyphene, a pain-relieving drug, in serum, plasma, and urine. Measurements obtained by this device are used in the diagnosis and treatment of propoxyphene use or overdose or in monitoring levels of propoxyphene to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3750 Quinine test system.

(a) *Identification.* A quinine test system is a device intended to measure quinine, a fever-reducing and pain-relieving drug intended in the treatment of malaria, in serum and urine. Measurements obtained by this device are used in the diagnosis and treatment of quinine overdose and malaria.

(b) *Classification.* Class II.

§ 862.3830 Salicylate test system.

(a) *Identification.* A salicylate test system is a device intended to measure salicylates, a class of analgesic, antipyretic and anti-inflammatory drugs that includes aspirin, in human

specimens. Measurements obtained by this device are used in diagnosis and treatment of salicylate overdose and in monitoring salicylate levels to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3850 Sulfonamide test system.

(a) *Identification.* A sulfonamide test system is a device intended to measure sulfonamides, any of the antibacterial drugs derived from sulfanilamide, in human specimens. Measurements obtained by this device are used in the diagnosis and treatment of sulfonamide overdose and in monitoring sulfonamide levels to ensure appropriate therapy.

(b) *Classification.* Class I.

§ 862.3870 Cannabinoid test system.

(a) *Identification.* A cannabinoid test system is a device intended to measure any of the cannabinoids, hallucinogenic compounds endogenous to marihuana, in serum, plasma, saliva, and urine. Cannabinoid compounds include *delta*-9-tetrahydrocannabinol, cannabidiol, cannabinol, and cannabichromene. Measurements obtained by this device are used in the diagnosis and treatment of cannabinoid use or abuse and in monitoring levels of cannabinoids during clinical investigational use.

(b) *Classification.* Class II.

§ 862.3880 Theophylline test system.

(a) *Identification.* A theophylline test system is a device intended to measure theophylline (a drug used for stimulation of the muscles in the cardiovascular, respiratory, and central nervous systems) in serum and plasma. Measurements obtained by this device are used in the diagnosis and treatment of theophylline overdose or in monitoring levels of theophylline to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3900 Tobramycin test system.

(a) *Identification.* A tobramycin test system is a device intended to measure tobramycin, an aminoglycoside antibiotic drug, in plasma and serum. Measurements obtained by this device are used in the diagnosis and treatment of tobramycin overdose and in monitoring levels of tobramycin to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3910 Tricyclic antidepressant drugs test system.

(a) *Identification.* A tricyclic antidepressant drugs test system is a device intended to measure any of the tricyclic antidepressant drugs in serum. The tricyclic antidepressant drugs include imipramine, desipramine, amitriptyline, nortriptyline, protriptyline, and doxepin. Measurements obtained by this device are used in the diagnosis and treatment of chronic depression to ensure appropriate therapy.

(b) *Classification.* Class II.

§ 862.3950 Vancomycin test system.

(a) *Identification.* A vancomycin test system is a device intended to measure vancomycin, an antibiotic drug, in serum. Measurements obtained by this device are used in the diagnosis and treatment of vancomycin overdose and in monitoring the level of vancomycin to ensure appropriate therapy.

(b) *Classification.* Class II.

Dated: April 3, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-9858 Filed 4-30-87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 86N-0009]

Clinical Chemistry and Clinical Toxicology Devices; Proposed Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt from the requirement of premarket notification, with limitations, 21 class I clinical chemistry and clinical toxicology devices. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule classifying these and other clinical chemistry and clinical toxicology devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

DATES: Comments by June 30, 1987. FDA is proposing that the final rule based on this proposed rule become effective 30 days after its date of publication in the **Federal Register.**

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: Kaizer Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption allows manufacturers to introduce into commerical distribution devices of the generic type exempted without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did not routinely evaluate whether it should grant to manufacturers of such devices placed in class I an exemption from the requirement of premarket notification in section 510(k) of the act and 21 CFR Part 807, Subpart E. Generally, FDA considered such exemptions only when the advisory panels recommended the exemptions.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of premarket notifications on relatively innocuous devices while freeing agency resources for the review of more complex notifications.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal in FDA's July 1985 "A Plan for Action" (Ref. 1).

Criteria for 510(k) Exemptions

FDA is proposing to exempt a generic type of class I device from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may propose to grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes device will not be likely to result in a change of the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience with premarket notification and publicly available reports or studies on device performance. Based on the above criteria, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Application of the Criteria to Class I Clinical Chemistry and Clinical Toxicology Devices

In the proposed regulations of February 2, 1982 (47 FR 4802), FDA proposed to classify preamendments

clinical chemistry and clinical toxicology devices in accordance with the amendments. When FDA proposed to classify the 21 devices below, the agency did not propose exemptions from the requirement of premarket notification for these devices, and the Panel did not recommend exemptions from the requirement of premarket notification for these devices. FDA agrees that full exemption from premarket notification is unjustified for these devices; however, the agency, for the efficient enforcement of the act and consistent with its policy regarding exemptions from premarket notification, now is proposing to exempt from the requirement of premarket notification, with limitations, the 21 devices below.

Section	Device	Docket No.
862.1190	Copper test system	78N-2319
862.1210	Creatine test system	78N-2323
862.1255	2,3-Diphosphoglyceric acid test system.	78N-2332
862.1290	Fatty acids test system	78N-2339
862.1305	Formiminoglutamic acid (FIGLU) test system.	78N-2342
862.1320	Gastric acidity test system	78N-2345
862.1365	Glutathion test system	78N-2354
862.1380	Hydroxybutyric dehydrogenase test system.	78N-2357
862.1420	Isocitric dehydrogenase test system.	78N-2365
862.1470	Lipid (total) test system	78N-2375
862.1490	Lysozyme (muramidase) test system.	78N-2379
862.1515	Nitrogen (amino-nitrogen) test system.	78N-2384
862.1565	6-Phosphogluconate dehydrogenase test system.	78N-2394
862.1575	Phospholipid test system	78N-2396
862.1640	Protein-bound iodine test system.	78N-2409
862.1670	Sorbitol dehydrogenase test system.	78N-2415
862.1720	Triose phosphate isomerase test system.	78N-2425
862.1815	Vitamin E test system	78N-2437
862.2100	Calculator/data processing module for clinical use.	78N-2441
862.3750	Quinine test system	78N-2540
862.3850	Sulphanimide test system	78N-2542

Elsewhere is the issue of the **Federal Register**, FDA is publishing a final rule classifying the devices above in class I. FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above.

Reference

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). Under any final rule based this on the proposal, the devices would remain subject to such controls, other than premarket notification.

Interested persons may, on or before June 30, 1987, submit to the Dockets Management Branch (address above) 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 862

Clinical chemistry and clinical toxicology devices, Medical devices.

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 862 be amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR Part 862 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 862 is amended by adding new § 862.9, to read as follows:

§ 862.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 862.1190 by revising paragraph (b), to read as follows:

§ 862.1190 Copper test system.

* * * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

4. In § 862.1210 by revising paragraph (b), to read as follows:

§ 862.1210 Creatine test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

5. In § 862.1255 by revising paragraph (b), to read as follows:

§ 862.1255 2,3-Diphosphoglyceric acid test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

6. In § 862.1290 by revising paragraph (b), to read as follows:

§ 862.1290 Fatty acids test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

7. In § 862.1305 by revising paragraph (b), to read as follows:

§ 862.1305 Formiminoglutamic acid (FIGLU) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

8. In § 862.1320 by revising paragraph (b), to read as follows:

§ 862.1320 Gastric acidity test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

9. In § 862.1365 by revising paragraph (b), to read as follows:

§ 862.1365 Glutathione test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

10. In § 862.1380 by revising paragraph (b), to read as follows:

§ 862.1380 Hydroxybutyric dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

11. In § 862.1420 by revising paragraph (b), to read as follows:

§ 862.1420 Isocitric dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

12. In § 862.1470 by revising paragraph (b), to read as follows:

§ 862.1470 Lipid (total) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

13. In § 862.1490 by revising paragraph (b), to read as follows:

§ 862.1490 Lysozyme (muramidase) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

14. In § 862.1515 by revising paragraph (b), to read as follows:

§ 862.1515 Nitrogen (amino-nitrogen) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

15. In § 862.1565 by revising paragraph (b), to read as follows:

§ 862.1565 6-Phosphogluconate dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

16. In § 862.1575 by revising paragraph (b), to read as follows:

§ 862.1575 Phospholipid test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

17. In § 862.1640 by revising paragraph (b), to read as follows:

§ 862.1640 Protein-bound iodine test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

18. In § 862.1670 by revising paragraph (b), to read as follows:

§ 862.1670 Sorbitol dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

19. In § 862.1720 by revising paragraph (b), to read as follows:

§ 862.1720 Triose phosphate isomerase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

20. In § 862.1815 by revising paragraph (b), to read as follows:

§ 862.1815 Vitamin E test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

21. In § 862.2100 by revising paragraph (b), to read as follows:

§ 862.2100 Calculator/data processing module for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

22. In § 862.3750 by revising paragraph (b), to read as follows:

§ 862.3750 Quinine test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

23. In § 862.3850 by revising paragraph (b), to read as follows:

§ 862.3850 Sulphanimide test system.

* * * * *

(b) *Classification.* Class I. This device is exempt from the premarket notification procedures in Subpart E of Part 807.

Dated: April 3, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-9859 Filed 4-30-87; 8:45 am]

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federal register

Friday
May 1, 1987

Part VII

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to govern eligibility and entitlement determinations under section 2 of the Impact Aid program (Pub. L. 81–874). Changes in the general definitions relating to applications for financial assistance under sections 2, 3, and 4 of this program also are proposed. These regulations are intended to provide guidance to local educational agencies (LEAs) applying for maintenance and operations assistance under Pub. L. 81–874 (the Act) and will affect the Department's calculation of assistance amounts.

DATE: All comments must be received on or before June 15, 1987.

ADDRESS: Comments should be addressed to Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2119–A, FOB–6, Washington, DC 20202–6272.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, telephone: (202) 732–4052.

SUPPLEMENTARY INFORMATION:

A. General

Public Law 81–874, as amended, 20 U.S.C. 236 through 241–1 and 242 through 244, commonly referred to as the Impact Aid maintenance and operations assistance program, authorizes assistance for LEAs that are financially burdened due to a reduced local real property tax base resulting from Federal acquisition of real property, an increased student population associated with federally owned or leased real property, or both. Section 2 of the Act addresses the first type of burden by authorizing payments to those LEAs that experience a burden due to the Federal acquisition of a certain amount of real property since 1938. These payments supplement local real property tax revenue and assist the LEAs in meeting their maintenance and operations costs.

For an LEA to be eligible for section 2 assistance, the assessed value of federally acquired real property, as of the time it was acquired, must constitute an aggregate of 10 percent or more of the assessed value of all real property in the school district (including the Federal property). In addition, the Secretary must find (1) that the Federal acquisition of real property has placed a substantial and continuing financial burden on the LEA, and (2) that the LEA is not being substantially compensated for a loss in real property tax revenue by an increase in revenue resulting from Federal activity with respect to the Federal property.

The amount of an eligible LEA's entitlement reflects the continuing Federal responsibility for a burden imposed upon the LEA's ability to raise local revenue for current expenditures. The term "entitlement" is used here and in the proposed regulations to mean the amount of financial assistance that an eligible LEA receives if the appropriations for a fiscal year are sufficient to pay all claims fully.

In order to provide information and guidance regarding the operation of section 2 of the Act, the Secretary believes that it is desirable to describe in regulations how the Department determines eligibility and entitlement for all LEAs applying for section 2 assistance. The provisions of this notice of proposed rulemaking (NPRM) are based upon the eligibility and entitlement requirements in the Act. Unless otherwise indicated, the approach proposed in these regulations is that presently employed in practice. Of the proposed changes from present policy, a number are the result of nationwide changes in the structure of school finance. All changes are designed to serve and advance the purposes of the Impact Aid program.

In addition to proposed Subpart J, which relates specifically to section 2, existing regulatory provisions are amended as follows: In § 222.3, a number of definitions are added, and others are revised; § 222.20 is amended to clarify the section and to indicate that its provisions apply to section 2; and technical amendments are proposed to §§ 222.17, 222.40, and 222.42. The Secretary anticipates that, when published in final form, these regulations will have prospective effect only, and, except for Subpart J which relates to determinations under section 2, will govern all payments for fiscal years beginning with fiscal year (FY) 1987. The Secretary anticipates that Subpart J will govern all section 2 payments for fiscal years beginning with FY 1988.

B. Proposed amendments to § 222.3 (General definitions)

Eight amendments are proposed to the general definitions.

Current expenditures. A definition of the term "current expenditures" is added. This definition interprets the statutory exclusion for "expenditures made from funds granted under title I, II, or III of the Elementary and Secondary Education Act of 1965," in light of amendments to the Act, to mean expenditures made from funds granted for the purpose of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3801–3808, 3871–3876). Under this definition, expenditures made from all other Federal funds, including funds granted for the purpose of Chapter 2 of the ECIA, are included as "current expenditures." This amendment also clarifies that, for the purpose of Pub. L. 81–874, the Secretary will follow State accounting guidelines, law, or practice in determining whether the replacement of equipment is a current expenditure or a capital outlay.

Current fiscal year of the local educational agency. A definition of the term "current fiscal year of the local educational agency" is added. The term is defined as meaning the fiscal year of the LEA for which the LEA seeks assistance. An LEA's fiscal year frequently differs from the corresponding fiscal year of the Federal Government (defined in 34 CFR 77.1 as October 1 through September 30). It is necessary to define this term because an LEA applies for Impact Aid assistance for a particular Federal fiscal year, *e.g.*, FY 1987, but need-based entitlements under sections 2 and 3(d)(2)(B) of the Act are based upon final financial records from the corresponding fiscal year of the LEA (*e.g.*, July 1, 1986 through June 30, 1987).

Federal property: General definition. The current definition of the term "Federal property" is revised. Paragraphs (1) and (2) of this proposed definition explain the general meaning of the term "Federal property."

Under paragraph (1)(i) of this definition, certain types of real property will qualify as Federal property only if the Federal Government—by law, agreement, or policy—prohibits the State or local government from taxing that property. This is a significant change from present practice, which allows federally owned or leased property to qualify as Federal property if it is tax-exempt for any reason. This change better serves the purpose of the

Impact Aid program, which is to address federally created burdens.

The legislative history indicates that Congress enacted the Impact Aid law to provide compensation in instances in which *Federal* actions were placing financial burdens on school districts. Most federally owned or controlled real property is immune from local real property taxation. Therefore, schools generally were experiencing a loss of real property tax revenue when the Federal Government acquired ownership or control of real property. At the same time, schools frequently experienced increased educational costs due to an influx of new children connected with the Federal activity on that property. See H. Rept. 2287, 81st Cong., 2d Sess., 1 and 7 (June 20, 1950). In instances in which no Federal law, agreement, or policy prevents taxation of the real property, however, such as when real property is tax-exempt due to State law, the real property tax base of the school district is not reduced because of Federal action.

In practice, the Department anticipates that this change will have the following specific effects. First, real property that is tax-exempt due to State or local law and that is leased by the United States, such as municipally owned airport property leased by the United States for Federal Aviation Administration offices, will not qualify as Federal property. Second, off-base military family housing constructed under section 801 of Pub. L. 98–115 (10 U.S.C. 2828), the Military Construction Authorization Act of 1984, property may be tax-exempt in some instances, the tax-exempt status generally will not be due to Federal law, agreement, or policy.

Finally, also affected by this policy will be the Department's determinations regarding low-rent housing that is part of a low-rent housing project assisted under the United States Housing Act of 1937, as described in section 403(1)(C) (20 U.S.C. 244(1)(C)), which is a number of cases would no longer qualify as Federal property. Under this provision, children residing in low-rent housing receiving Federal assistance under section 8 of the United States Housing Act of 1937 ("section 8 housing") would no longer be eligible as federally connected children for the purpose of section 3 entitlements. In FY 1985, of the 2,840 LEAs that received section 3 payments, 305 LEAs—94 of them in Massachusetts—claimed some children associated with section 8 housing. For 233 of those LEAs, the payment on behalf of children associated with section 8 housing was less than $1,000.

Another type of real property that must meet the requirement under paragraph (1)(i) of this definition of not being subject to taxation is Indian lands, described in section 403(1)(A) of the Act (20 U.S.C. 244(1)(A)). This is a change from present policy, under which taxable Indian lands qualify as Federal property. The Secretary is making this change in order to adhere more closely to the purpose of the Impact Aid program and reserve Federal funds for LEAs that are truly burdened by Federal activities. When Indian lands are subject to local real property taxation, there is no financial burden imposed on the LEA by the Federal interest in that property. This provision is expected to have little or no effect on the eligibility and payments of applicant LEAs.

The requirement that property be tax-exempt due to Federal law, agreement, or policy does not apply to two types of tax-exempt real property treated differently under section 403(1) of the Act (20 U.S.C. 244(1)). Paragraph (1)(ii) of this definition contains the first exception, for certain tax-exempt low-rent housing projects, tax-exempt Air Force flight training schools, and tax-exempt real property owned by a foreign government or an international organization. Paragraph (1)(iii) of this definition contains the second exception, applicable to certain real property subject to a non-Federal interest as described in section 403(1) of the Act. Under this paragraph, Federal property that is subject to a non-Federal interest, such as an easement, lease, license, permit, or other arrangement, and improvements (except pipelines and utility lines) located on Federal property that is subject to such a non-Federal interest, qualify as Federal property even though the non-Federal interest or improvements are subject to real property taxation. The legislative history to the Act indicates that the types of taxable interests that were intended to be included under this provision are non-Federal possessory interests, such as commercial and residential leases of federally owned real property. Therefore, this paragraph clarifies that the Secretary does not include under the term "other arrangement" a non-Federal non-possessory interest in Federal property, such as a mortgage. This interpretation is consistent with long-standing Department program practice.

Finally, the following additional types of real property qualify as Federal property under paragraphs (1) (iv) and (v) of this definition, respectively: Consistent with long-standing program policy, Federal ships whose home ports are located on Federal property; and, under section 403(1) of the Act (20 U.S.C. 244(1)), for one year beyond the end of the fiscal year in which the sale or transfer occurs (or, if the transfer is to the United States Postal Service, for two years beyond the end of the fiscal year in which the transfer occurs), Federal property that is sold or transferred.

Paragraph (2) of this definition indicates that, notwithstanding the provisions of paragraph (1) of this definition, as provided in the Act, real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal service does not qualify as Federal property.

Federal Property: Limitations applicable to section 2 determinations. Paragraph (3) of the definition of "Federal property" describes further limitations regarding the types of Federal property that are considered for the purpose of determining eligibility and entitlement under section 2. The Act and its legislative history indicate that, with the exception of Indian lands described in section 403(1)(A) of the Act (20 U.S.C. 244(1)(A)), only real property that the United States owns in fee simple is considered for the purpose of section 2 eligibility and entitlement. See H. Rept. 2287, 81st Cong., 2d Sess. (June 20, 1950). Therefore, consistent with current program practice, with the exception of Indian lands, real property in which the United States holds less than a fee simple interest, such as an easement, lease, lease-purchase arrangement, license, permit, or trust, does not qualify as Federal property for the purpose of section 2.

Because they are not owned in fee simple by the United States, the following types of real property described in section 403(1) of the Act also are not included as Federal property for the purpose of determining section 2 eligibility and entitlement: Former Federal property, for one fiscal year beyond the year of sale or transfer (section 403(1)(B)); certain low-rent housing (section 403(1)(C)); certain tax-exempt Air Force training schools (section 403(1)(D)); and tax-exempt real property owned by a foreign government or an international organization (section 403(1)(E)) (20 U.S.C. 244(1)(B-E)). This policy is consistent with the legislative history of the Act, which indicates with respect to each of these types of property that they were added for a section 3 purpose, *i.e.*, compensation based upon the enrollment of federally connected children. *See, e.g.*, S. Rept. 2753, 84th Cong., 2d Sess. (July 21, 1956); S. Rept. 91–634, 91st Cong., 2d Sess. (January 21, 1970); and S. Rept. 95–856, 95th Cong., 2d Sess. (May 15, 1978).

Finally, as provided in the Act, paragraph (3) indicates that real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933, as amended, is not included as Federal property for the purpose of section 2.

Fiscally dependent and independent local educational agencies. Definitions of the terms "fiscally dependent local educational agency" and "fiscally independent local educational agency" are added. These terms, which will have general applicability, are defined in accordance with their generally accepted definitions. They are defined because it is necessary under Subpart J to determine a local real property tax rate for school purposes for both fiscally independent and fiscally dependent LEAs in order to establish their section 2 maximum entitlements. That tax rate is determined differently for the two types of LEAs.

Local real property tax rate for school purposes. A definition of the term "local real property tax rate for school (elementary and secondary education current expenditure) purposes" is added. Paragraph (1)(i) of this definition describes the meaning of the term for a fiscally independent LEA, which levies a local real property tax rate for school purposes. Paragraph (1)(ii) of this definition describes the meaning of the term for a fiscally dependent LEA, which does not have the authority to levy a local real property tax rate for school purposes because its revenues are controlled by the general government. The tax proceeds received by a fiscally dependent LEA are not usually derived entirely from real property within the school district, nor is there usually a portion of the local real property tax rate that is designated by the general government for school purposes. Therefore, the Secretary frequently must impute a local real property tax rate for school purposes for a fiscally dependent LEA.

Paragraph (1)(ii)(C) of this definition describes how the Secretary imputes a local real property tax rate for school purposes for a fiscally dependent LEA. That method is as follows:

$$\frac{\text{general government's total local real property tax revenue for current expenditures}}{\text{general government's total revenue from all local sources for current expenditures}} \times \frac{\text{revenue received by the LEA from the general government for current expenditures}}{\text{total actual current assessed value of real property in the school district}} = \text{imputed local real property tax rate for current expenditures}$$

The Secretary believes that this is the most reasonable method of imputing a tax rate because it assumes that revenues received by the LEA from the general government for current expenditures were derived from local taxation of real property within the school district in the same proportion that the general government's local real property tax revenues for current expenditures are of the general government's total revenues from all local sources for current expenditures.

Finally, paragraph (2) of this definition explains that in determining a local real property tax rate for school purposes the Secretary does not include as revenue any portion of a tax or revenue that is restricted to or dedicated for any specific purpose other than elementary or secondary education general current expenditures.

Real property. A definition of the term "real property" is added. This definition, which has general applicability, clarifies that the term includes land and improvements, such as buildings, railroad lines, utility lines, pipelines, and other permanent fixtures.

C. Proposed Amendment to § 222.20 (Changes Affecting Boundaries, Classification, Control, Governing Authority, or Identity of Applicants)

This amendment is proposed to clarify that the notification and payment requirements of this section (§ 222.20 (a), (b), and (c)) apply to a section 2, as well as to a section 3 or 4, applicant that is a party to an annexation consolidation, deconsolidation, merger, or other similar action affecting its boundaries, classification, control, governing authority, or identity. This amendment also clarifies and simplifies the existing provisions.

D. Proposed Amendment to § 222.42 (Adjustment for or Recovery of Overpayment)

This proposed amendment clarifies that the general provisions in § 222.42 relating to adjustment for and recovery of overpayments do not apply to LEAs under the circumstances described in proposed § 222.101 (that is, a section 2 overpayment resulting from a departmental error in computing or recomputing an LEA's need-based entitlement). Under those circumstances, as authorized by section 302 of the Education Amendments of 1984 (Pub. L. 98–511), an LEA may request to repay the overpayment at no more than 10 percent in any fiscal year.

E. Proposed Technical Amendments to §§ 222.3, 222.17 and 222.40

Amendments are proposed to these sections to conform a legislative citation to current format, to reflect a change made by these regulations, and to correct a typographical error, respectively.

F. Proposed Subpart J (Provisions for Section 2)

Subpart J contains regulations that relate only to LEAs that apply for assistance under section 2 of the Act.

Proposed § 222.91 defines terms that relate specifically to section 2. Those terms are " 'acquisition' or 'acquired by the United States' " and "assessed value."

The proposed definition of " acquisition' or 'acquired by the United States' " clarifies that, for the purpose of section 2, these terms refer only to the United States taking or receiving fee simple ownership of real property, as distinguished from taking or entering into less than a fee simple ownership interest, such as an easement, lease, or lease-purchase arrangement. An exception is made in the case of Indian lands, when the term refers to the United States receiving a trustee's interest in, or imposing a restriction on the the sale, transfer, or exchange of, real property. This definition is consistent with the Act, its legislative history, and the Department's long-standing program practice.

The proposed definition of "assessed value" explains that, for the purpose of section 2, the Secretary interprets this term to mean only the value assigned to real property for the purpose of generating local real property tax revenues for elementary or secondary education current expenditure ("school") purposes. That value must be assigned to the real property by a State or local official who is legally authorized to determine that assessed value. The term does not include a value assigned to tax-exempt real property or a value assigned to real property for purposes of generating revenues other than local real property tax revenues for school purposes, such as payments in

lieu of taxes (PILOTs). The Act and its legislative history indicate that payments under section 2 are to be made to an LEA only when the United States has imposed a substantial burden by removing a considerable portion of real property from the LEA's tax base. If the United States acquires property that is already tax-exempt, there is no new loss of tax base. This is the case even if the acquired property had an official assessed value for other purposes, or generated other revenues, such as PILOTs, prior to Federal acquisition.

Proposed § 222.92 explains that the Secretary determines section 2 eligibility and entitlement based upon final financial data from the LEA's current fiscal year, *i.e.*, the fiscal year of the LEA for which the LEA seeks assistance. Because an LEA's fiscal year period may differ from the Federal fiscal year, it is necessary to specify that the financial data for eligibility and entitlement relates to the LEA's current fiscal year.

Proposed § 222.93 describes the basic framework for section 2 eligibility. The Act and its legislative history indicate that an LEA must meet three requirements to be eligible for section 2 assistance: (1) The United States must have acquired, after 1938, Federal property comprising at least 10 percent of the assessed value of all real property in the school district; (2) the acquisition must have placed a substantial and continuing financial burden on the LEA; and (3) the LEA cannot be substantially compensated for a loss in real property tax revenue by an increase in revenue from Federal activity with respect to the Federal property.

Proposed § 222.94 explains the section 2 eligibility requirement regarding Federal acquisition since 1938 of an aggregate of 10 percent of the asssessed value of an LEA's real property. Paragraph (a) reflects current Department practice for determining an LEA's eligibility for section 2 assistance. Under this practice, the Department determines the percentage of assessed value of real property within the school district that has been acquired by the United States by comparing the assessed value of the federally acquired real property on the date of acquisition to the assessed value of all real property in the school district—including the Federal property—as of that date.

Paragraph (b) of this section provides that if the United States sells, transfers, is otherwise divested of ownership of, or relinquishes an interest in or restriction on, Federal property upon which an LEA's eligibility is based, the LEA's eligibility under this section is redetermined for the following fiscal year based upon the remaining Federal property. The eligibility requirement in this section is met for a fiscal year even if the requisite amount of Federal property is owned or held for only a portion of that year. The Secretary does not prorate the LEA's entitlement to reflect the portion of the fiscal year during which this eligibility criterion is met.

Section 222.49(c) specifies what records the Secretary uses as a basis for determining whether the eligibility criteria of this section are met. The Act requires eligibility to be based upon the assessed value of real property at the time the Federal property was acquired. The Secretary uses only original records (or their facsimiles) as of the time(s) of Federal acquisition of real property, prepared by a legally authorized official, to document the assessed value of that real property for tax purposes. This is the most accurate and uniform basis for verifying that assessed value in later years. The determination of eligibility under this section is not based upon secondary documentation or estimates, certifications, or appraisals. If official records (or their facsimiles) are no longer available, there is no fair and uniform basis upon which to determine eligibility. Under this provision, an LEA that cannot provide such records is ineligible to receive section 2 assistance. This paragraph also explains that a redetermination of an LEA's eligibility following a transfer of Federal property is based either upon official records (or their facsimiles) or upon Department records.

Proposed § 222.95 explains how the Secretary determines whether the Federal acquisition of real property has placed a substantial and continuing financial burden on the LEA. The Secretary considers that a substantial and continuing burden exists if an LEA has insufficient revenue, from other than local sources and section 2 payments, to meet its current expenditures. Although the Department believes that the Secretary has the authority to establish a payment threshold so that very small payments (*e.g.*, as low as $200) would not be made, this authority is not being exercised at this time.

In comparing revenues and expenditures for the purpose of this section, the Secretary excludes any revenues received for the purpose of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3801–3808, 3871–3876), because expenditures relating to those revenues are specifically excluded by statute from the definition of "current expenditures." Under this provision, the Secretary also proposes to exclude any carryover (opening) balance that is equal to, or less than, the carryover amount allowed by the State without a reduction in the LEA's State aid. This latter exclusion is a change from present policy. Under the present method of determining whether there is a financial burden, LEAs are allowed an automatic carryover balance which is defined as ten percent of their current expenditures for the application year. An LEA's actual carryover (opening) balance is counted as funds available. The effect of this present policy is to benefit districts that do not carry over funds, and to restrict the section 2 entitlements of those districts that do.

In the new method proposed in the NPRM, an LEA's financial need is determined based upon its actual current expenditures, and its opening balance (to the extent allowed by the State) is not included as funds available. The effect of this proposed change is to treat LEAs more uniformly by allowing all LEAs to carry a balance of funds to succeeding fiscal years without affecting their section 2 payment, as long as that balance does not exceed the carry-over allowed by the State without a reduction in State aid.

Section 222.95(d)(2) establishes that no substantial and continuing burden exists for an LEA in a State that has an equalized program of State aid qualifying under section 5(d)(2) of the Act when the State takes into consideration the LEA's section 2 payments in determining that LEA's eligibility for and amount of State aid. In such a case, the LEA would not be eligible for section 2 assistance. This is a change from existing policy. When State aid is reduced based upon an LEA's receipt of section 2 funds, the section 2 funds are not used for their intended purpose, *i.e.*, to increase a section 2 applicant's total revenues by supplementing other available revenue sources, including State aid. This provision does not prevent a State that qualifies under section 5(d)(2) of the Act from taking into consideration an LEA's section 3 payments.

Proposed § 222.96 explains how the Secretary determines whether an LEA is being substantially compensated by increases in revenue from the carrying on of Federal activities associated with the Federal property. The Secretary considers that an LEA is substantially compensated by increases in revenue with respect to Federal property if the LEA receives new or increased revenue directly generated from the Federal property, or activities in or on that property, and that revenue equals or exceeds the Federal share of the amount

of local revenue needed by the LEA for its current expenditures (determined under § 222.101(b)). This is a change from present policy under which increases in revenue from Federal activities are taken into consideration in a more general manner. This provision may disqualify a small number of LEAs that are presently eligible for section 2 assistance.

Proposed § 222.97 explains that an LEA receives the lesser of its maximum entitlement (determined under § 222.98) or its need-based entitlement (determined under § 222.101), except as limited by law or the amount of available funds.

Proposed § 222.98 establishes how an LEA's section 2 maximum entitlement is determined. That maximum entitlement is the amount of local tax revenue that, in the judgment of the Secretary, the Federal property would have produced in the current year, based upon its character and condition at the time of acquisition, and that the LEA would have had available for current expenditures. The Secretary determines that amount by first establishing an estimated current assessed value of the Federal property and then using one of two methods explained below to compute the maximum entitlement.

Section 222.99 explains how the Secretary establishes the estimated current assessed value of the Federal property. The Secretary's estimate is based upon the actual current assessed value of taxed properties within the same assessment district that are comparable in classification, character, and condition to the Federal property as it was when acquired, and that are similar to the Federal property in proximity to other taxed real property that is more highly developed than the comparable properties. It is reasonable to expect that the Federal property, if it had remained on the tax rolls, would have been assessed similarly to comparable property in the same assessment district.

The Act requires the Secretary to determine the amount that the LEA would have derived from the Federal property in the current year without regard to improvements or other changes made in or on that property after Federal acquisition. In estimating the current assessed value of the Federal property, the Secretary includes the assessed value of improvements on comparable property only to the extent that improvements existed on the Federal property at the time of Federal acquisition.

Section 222.100 describes the two proposed methods for computing maximum entitlement. The Secretary determines maximum entitlement under the first method (§ 222.100(b)(1)) if possible, by multiplying the estimated current assessed value of the eligible Federal property by the *unequalized* portion of the LEA's local real property tax rate for current expenditures. This is a major change from present policy, under which the Secretary determines maximum entitlement by multiplying the estimated current assessed value of the Federal property by the LEA's entire local real property tax rate for current expenditures. In most States, the State funding program has changed over the years so that the local real property tax rate for school purposes is "equalized" to some degree. To the extent that a local real property tax rate is equalized, an LEA receives compensation from State funds for any loss in local real property tax revenue. If the Federal Government also compensates an LEA under section 2 for this loss of local real property tax revenue, the LEA receives double compensation. Most applicants will experience a decrease in their section 2 payments due to this provision. This section 2 decrease, which will be greatest for those LEAs in the most highly equalized States, will be substantial in many cases.

This change is proposed because, to the extent that a local real property tax rate is equalized, the removal of the Federal property from the tax rolls does not create any burden for an LEA. The LEA would not derive any additional revenue with respect to the equalized portion of a local real property tax rate if the Federal property were taxed, because the LEA's State aid would be reduced by any increase in local revenue.

Because of the nature of State funding programs, it may not be possible in all cases for the Secretary to determine the unequalized portion of a local real property tax rate for school purposes. For example, in States with percentage equalizing programs, State aid is equalized through payment of differing percentages of each LEA's current expenditures, based upon the respective wealth of each LEA. This is in contrast to States with foundation equalizing programs, in which State aid is equalized by requiring LEAs to levy a certain minimum local real property tax rate or to generate a certain minimum amount of local real property tax revenue. For LEAs in percentage equalizing States, it is not possible for the Secretary to determine the unequalized portion of the local real property tax rate for school purposes. In such cases, the Secretary proposes to use the method described in § 222.100(b)(2) to determine maximum entitlement.

Under the method described in § 222.100(b)(2), the maximum is determined by first calculating the total State and local funds received by the LEA for current expenditures. That total is then subtracted from the total State and local funds that the LEA would have received for current expenditures if the Federal property had been assessed and taxed at the estimated current assessed value determined by the Secretary in accordance with § 222.99. The difference is the additional amount of revenue that the LEA would have had available for current expenditures if the Federal property had remained on the tax rolls.

Proposed § 222.101 describes the method used to compute an LEA's section 2 need-based entitlement. This provision establishes the level of the continuing Federal responsibility (subject to the statutory maximum) for the financial burden placed on the LEA by the Federal acquisition of real property. That level is the proportion of local real property tax revenue that the Secretary estimates the LEA would raise from the Federal property for current expenditures if the Federal property were on the tax rolls. This proportion is determined by comparing the estimated current assessed value of the Federal property to the total local real property tax base that the Secretary estimates the LEA would have if the Federal property were on the tax rolls (that is, the sum of the actual current assessed value of all other real property in the district and the estimated current assessed value of the Federal property). To determine the amount of current expenditures for which the Federal Government takes responsibility, the resulting proportion is then multiplied by the total amount of current expenditures for which the LEA needs local revenues. This method is similar to that presently used by the Secretary to determine a district's need-based entitlement.

Proposed § 222.102 describes the method used to determine eligibility and entitlement for consolidated districts. A consolidated district may elect to have its eligibility and entitlement determined either on the basis of the consolidated district as a whole, or on the basis of specific former school districts comprising the consolidated district. With respect to the latter basis, paragraph (b) of this section provides that only former school districts containing some eligible Federal property before consolidation may be used as the basis for eligibility. The

legislative history to the Act indicates that one of the purposes for allowing consolidated school districts to qualify for section 2 eligibility and entitlement on the basis of former school districts was to avoid discouraging consolidation. If a former school district had no Federal property before consolidation, no disincentive is created by requiring the consolidated district to qualify as a whole.

Proposed § 222.103 indicates that when an LEA's section 2 overpayment has resulted from an error by the Department in computing the LEA's need-based entitlement, the Secretary, as directed by statute, will require no more than 10 percent of a section 2 overpayment to be repaid or deducted from current payments in any fiscal year.

Executive Order 12291

These proposed 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.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Although these regulations, which propose general standards based on requirements in sections 2, 3, and 4 of Pub. L. 81–874, may affect a number of small entities, *i.e.*, LEAs with 1,500 pupils or less, the Secretary does not believe that the regulations will have a significant economic impact on a substantial number of these small LEAs. The most significant decrease in entitlements proposed by these regulations relates to section 2. In most cases, the section 2 entitlement of a small LEA comprises less than five percent of its total current expenditures.

Paperwork Reduction Act of 1980

Section 222.20 contains an information collection requirement. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this proposed regulation to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary is particularly interested in receiving information regarding specific factual situations that may be affected by these proposed regulations. Written comments and recommendations may be sent to the Department of Education address given at the beginning of this document.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2119–A, FOB–6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement for reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant program—education, Public housing, Reports and recordkeeping requirements.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations.)

Dated: March 30, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for Part 222 is revised to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

2. Section 222.3 is amended by removing the alphabetical paragraph designations; placing the existing definitions in alphabetical order; revising the existing definition of "Act"; revising the definition of "Federal property," and adding new definitions for "current expenditures," "current fiscal year of the local educational agency," "fiscally dependent local educational agency," "fiscally independent local educational agency," "local real property tax rate for school (elementary and secondary education current expenditure) purposes," and "real property" in alphabetical order, to read as follows:

§ 222.3 Definitions.

The following definitions apply to this part:

"Act" means Titles I (except Section 7) and IV of Pub. L. 874, 81st Congress (20 U.S.C. 236–241–1 and 242–244), as amended.

* * * * *

"Current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, plant operation and maintenance, fixed charges, and expenditures to cover deficits for food services and student body activities. The term does not include expenditures for community services, capital outlay, debt service, or any expenditures made from funds granted for the purpose of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3801–3808, 3871–3876). An expenditure for the replacement of equipment is considered to be either a current expenditure or capital outlay, whichever is in accordance with State accounting guidelines, law, or practice.

(Authority: 20 U.S.C. 244(5))

"Current fiscal year of the local educational agency" means the fiscal year of the local educational agency for which the local educational agency seeks assistance.

(Authority: 20 U.S.C. 237 and 238(d)(2)(B))

* * * * *

"Federal property."

(1) The term means the following:

(i) Real property that, because of Federal law, agreement, or policy, is exempt from taxation for elementary or secondary education current expenditure ("school") purposes by a State or political subdivision of a State or the District of Columbia, and—

(A) That the United States owns in fee simple or leases from another party;

(B) That is described in section 403(1)(A) of the Act (20 U.S.C. 244(1)(A)) (Indian lands), even if that real property is used for a low-rent housing project; or

(C) That is low-rent housing (whether or not owned by the United States) which is part of a low-rent housing project assisted under the United States Housing Act of 1937, as described in section 403(1)(C) of the Act (20 U.S.C. 244(1)(C)j.

(ii) Real property that is exempt from taxation for school purposes by a State or political subdivision of a State or the District of Columbia, and—

(A) That is low-rent housing (whether or not owned by the United States) which is a part of a low-rent housing project assisted under section 516 of the Housing Act of 1949 (42 U.S.C. 1486) or part B of title III of the Economic Opportunity Act of 1964 (42 U.S.C. 2861–2864), as described in section 403(1)(C) of the Act (20 U.S.C. 244(1)(C));

(B) That is described in section 403(1)(D) of the Act (20 U.S.C. 244(1)(D)) (certain Air Force flight training schools); or

(C) That is described in section 403(1)(E) of the Act (20 U.S.C. 244(1)(E)) (tax-exempt real property owned by a foreign government or an international organization).

(iii) Notwithstanding the foregoing provisions of paragraph (1) of this definition, any Federal property described in paragraph (1) that is subject to a non-Federal interest such as an easement, lease, license, permit, or other arrangement, and improvements (except pipelines and utility lines) located on Federal property that is subject to such a non-Federal interest, even if the interest or improvements are subject to taxation for school purposes by a State or political subdivision of a State or the District of Columbia. For the purpose of this paragraph, the term "other arrangement" does not include a non-possessory interest in Federal property, such as a mortgage.

(iv) Ships that are owned by the United States and whose home ports are located upon Federal property described elsewhere in paragraph (1) of this definition.

(v) For one year beyond the end of the fiscal year in which the sale or transfer occurred (or for two years, in the case of real property transferred to the United States Postal Service), any Federal property described in the foregoing parts of paragraph (1) of this definition that is sold or transferred by the United States.

(2) Notwithstanding paragraph (1) of this definition, the term does not include real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal service.

(3) For the purpose of determining eligibility and entitlements under section 2 of the Act, notwithstanding paragraph (1) of this definition, the term also does not include the following Federal property:

(i) Except for Indian lands described in section 403(1)(A) of the Act (20 U.S.C. 244(1)(A)), any real property that the United States does not own in fee simple, such as the following—

(A) Real property in which the United States holds an interest under an easement, lease, lease-purchase arrangement, license, permit, or trust;

(B) Low-rent housing property described in section 403(1)(C) of the Act (20 U.S.C. 244(1)(C)) that is not owned in fee simple by the United States;

(C) Real property described in section 403(1)(D) of the Act (20 U.S.C. 244(1)(D)) (certain Air Force flight training schools at State or municipally owned airports);

(D) Real property described in section 403(1)(E) of the Act (20 U.S.C. 244(1)(E)) (tax-exempt real property owned by a foreign government or an international organization); or

(E) After the end of the fiscal year in which the sale or transfer occurred, any Federal property described in the foregoing parts of this definition that is sold or transferred by the United States.

(ii) Any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933, as amended.

(Authority: 20 U.S.C. 237 and 244(1))

* * * * *

"Fiscally dependent local educational agency" means a local educational agency that does not have the final authority to determine the amount of revenue to be raised from local sources for school purposes.

(Authority: 20 U.S.C. 237(a), 238(d)(2)(B), and 242(b))

"Fiscally independent local educational agency" means a local educational agency that has the final authority to determine the amount of revenue to be raised from local sources for school purposes within limits established by State law.

(Authority: 20 U.S.C. 237(a), 238(d)(2)(B), and 242(b))

* * * * *

"Local real property tax rate for school (elementary and secondary education current expenditure) purposes."

(1) The term means the following:

(i) For a fiscally independent LEA, a tax levied by the LEA on real property, if the total proceeds from the tax levy are available to that LEA for current expenditures.

(ii) For a fiscally dependent LEA—

(A) A tax levied by the general government on real property, if the total proceeds from the tax levy on all real property within the LEA are available to that LEA for current expenditures;

(B) That portion of a local real property tax rate designated by the general government for school purposes; or

(C) If no real property tax levied by the general government meets the criteria in paragraphs (1)(ii)(A) or (B) of this definition, an imputed tax rate that the Secretary determines by—

(*1*) Dividing the total local real property tax revenue available to the general government for current expenditures by the total revenue from all local sources available to the general government for current expenditures;

(*2*) Multiplying the figure obtained in paragraph (1)(ii)(C)(*1*) of this definition by the revenue received by the LEA for current expenditures from the general government; and

(*3*) Dividing the figure obtained in paragraph (1)(ii)(C)(*2*) of this definition by the total current actual assessed value of all real property in the district.

(2) In determining the local real property tax rate for school purposes, the Secretary does not include any portion of a tax or revenue that is restricted to or dedicated for any specific purpose other than elementary or secondary education current expenditures.

(Authority: 20 U.S.C. 237(a) and 238(d)(2)(B))

* * * * *

"Real property" is defined as follows:

(1) "Real property" means—

(i) Land; and

(ii) Improvements (such as buildings and appurtenances thereto, railroad lines, utility lines, pipelines, and other permanent fixtures), except as provided in paragraph (2) of this definition.

(2) "Real property" does not include—

(i) Improvements that are classified as personal property under State law; or

(ii) Equipment and movable machinery, such as motor vehicles, movable house trailers, farm machinery, rolling railroad stock, and floating dry docks, unless that equipment or movable machinery is classified as real property or subject to local real property taxation under State law.

(3) The definition of "real property" in 34 CFR 74.132 (Administration of [ED] grants) does not apply to this part.

(Authority: 20 U.S.C. 237, 244(1))

* * * * *

3. Section 222.17 is amended by revising paragraph (a) to read as follows:

§ 222.17 Alternative methods for making membership counts.

* * * * *

(a) The applicant may conduct a parent-pupil survey to determine federally connected membership. Information that the applicant shall collect in the survey is described in § 222.3 under the definition of "parent-pupil survey."

* * * * *

4. Section 222.20 is revised to read as follows:

§ 222.20 Changes affecting boundaries, classification, control, governing authority, or identity of applicants.

(a) Any applicant that is a party to an annexation, consolidation, deconsolidation, merger, or other similar action affecting its boundaries, classification, control, governing authority, or identity must provide to the Secretary as soon as practicable—

(1) A description of the character and extent of the change;

(2) The effective date of the change;

(3) Full identification of all predecessor and successor local educational agencies (LEAs);

(4) Full information regarding the disposition of the assets and liabilities of all predecessor LEAs;

(5) Identification of the governing body of all successor LEAs; and

(6) The name and address of each authorized representative officially designated by the governing body of each successor LEA for purposes of Pub. L. 81–874.

(b) If a payment is made under sections 2, 3, or 4 of the act (hereinafter "sections 2, 3, or 4") to an LEA that, because of a change in boundaries or organization, has ceased to be a legally constituted entity during the regular school term, the LEA may retain that payment if—

(1) An adjustment is made in the entitlement of a successor LEA to account for the payment; or

(2)(i) The payment amount does not exceed the amount the former LEA would have been entitled to receive if the change in boundaries or organization had not taken place; and

(ii) A successor LEA is not an eligible applicant.

(c) Any portion of a payment made under sections 2, 3, or 4 to a former LEA that exceeds the amount allowed by paragraph (b)(2)(i) of this section must be returned to the Secretary.

(d)(1) Except as provided in § 222.21(d), a successor LEA that is eligible for section 3 or 4 assistance may elect to have the Secretary determine its section 3 or 4 entitlement for the entire fiscal year upon either of the following bases:

(i) The entire area within its jurisdiction on the last day of that fiscal year.

(ii) The area within the jurisdiction of one or more of the former LEAs that would have been entitled to receive payment under section 3 or 4 if the change in boundaries or organizaiton had not occurred.

(2) A successor LEA's section 2 eligibility and entitlement are determined in accordance with § 222.102.

(Authority: 20 U.S.C. 242(b))

5. The authority citation for § 222.40 is revised to read as follows:

§ 222.40 Maintenance of records.

* * * * *

(Authority: 20 U.S.C. 237, 238, 239, 240, 242(b))

6. The introductory text and authority citation in § 222.42 are revised to read as follows:

§ 222.42 Adjustment for or recovery of overpayment.

Except as otherwise provided in § 222.103, the Secretary adjusts for and recovers overpayments as follows:

* * * * *

(Authority: 20 U.S.C. 237, 240, 242(b), 1226a–1)

7. A new Subpart J is added to read as follows.

(Note.—The examples in this proposed regulation will not be shown in the Code of Federal Regulations.)

Subpart J—Provisions for Section 2.

Sec.

222.90 What are the scope and purpose of these regulations?
222.91 What definitions apply to this subpart?
222.92 What financial data are used to determine eligibility and entitlement under section 2?
222.93 Who is eligible for section 2 assistance?
222.94 What criteria must be met regarding Federal acquisition of real property in a school district?
222.95 What constitutes a substantial and continuing financial burden?
222.96 When is an LEA not substantially compensated from Federal activity?
222.97 What financial assistance is an LEA entitled to under section 2?
222.98 How is an LEA's section 2 maximum entitlement determined?
222.99 How is an estimated current assessed value established for Federal property?
222.100 How is an LEA's section 2 maximum entitlement computed?
222.101 How is an LEA's section 2 needed-based entitlement determined?
222.102 How are section 2 eligibility and entitlement determined for an LEA formed by consolidation of school districts?
222.103 How are section 2 overpayments recovered?

Subpart J—Provisions for Section 2

§ 222.90 What are the scope and purpose of these regulations?

The regulations in this subpart implement section 2 of the Act only (hereinafter "section 2"). The program authorized by section 2 provides financial assistance, under certain circumstances, to a local educational agency (LEA) that is financially burdened by the Federal acquisition, after 1938, of real property in the school district.

(Authority: 20 U.S.C. 236, 237)

§ 222.91 What definitions apply to this subpart?

The following definitions relating to section 2 apply only to this subpart:

"Acquisition" or "acquired by the United States."

(1) The term means—

(i) The receipt or taking by the United States of ownership in fee simple of real property by condemnation, exchange, gift, purchase, transfer, or other arrangement;

(ii) The receipt by the United States of real property as trustee for the benefit of individual Indians or Indian tribes; or

(iii) The imposition by the United States of restrictions on sale, transfer, or exchange of real property held by individual Indians or Indian tribes.

(2) The definitions of "acquisition" in 34 CFR 74.132 (Administration of [ED] grants) and 77.1(c) (Definitions that Apply to Department Regulations) of this Title do not apply to this subpart.

(Authority: 20 U.S.C. 237(a); 244(1))

"Assessed value."

(1) The term means the value that is assigned to real property, for the purpose of generating local real property tax revenues for elementary and secondary education current expenditure ("school") purposes, by a State or local official who is legally authorized to determine that assessed value.

(2) "Assessed value" does not include—

(i) A value assigned to tax-exempt real property;

(ii) A value assigned to real property for the purpose of generating other types of revenues, such as payments in lieu of taxes (PILOTs);

(iii) Fair market value, or a percentage of fair market value, of real property unless that value was actually used to generate local real property tax revenues for school purposes; or

(iv) A value assigned to real property in a condemnation or other court proceeding, or a percentage of that value, unless that value was actually used to generate local real property tax revenues for school purposes.

(Authority: 20 U.S.C. 237(a))

§ 222.92 What financial data are used to determine eligibility and entitlement under section 2?

The Secretary uses final financial data from an LEA's current fiscal year to determine final section 2 eligibility (§§ 222.93–222.96 and 222.102(b)) and entitlement (§§ 222.97–222.101, and 222.102(c)).

(Authority: 20 U.S.C. 237)

§ 222.93 Who is eligible for section 2 assistance?

An LEA is eligible for financial assistance under section 2 if the Secretary determines that the LEA meets the requirements of §§ 222.94, 222.95, and 222.96.

(Authority: 20 U.S.C. 237(a)(1), (2), and (3))

§ 222.94 What criteria must be met regarding Federal acquisition of real property in a school district?

(a) For an LEA to be eligible to receive financial assistance under section 2, the United States must own or acquire Federal property, within the school district of the LEA, that meets each of the following criteria:

(1) The United States has acquired the Federal property since 1938.

(2) The Federal property was not acquired by exchange for other Federal property that the United States owned within the school district before 1939.

(3) The Federal property that meets the criteria in paragraphs (a)(1) and (2) of this section has an aggregate assessed value of 10 percent or more of the assessed value of all real property in the school district, based upon the assessed values of the Federal property and of all real property (including that Federal property) on the date or dates of acquisition of the Federal property.

Example: An LEA first applies for section 2 assistance for Federal fiscal year (FY) 1980, based upon real property acquired by the United States within the school district in 1940 and 1945. Parcel A, a single parcel, had an assessed value of $90,000 at the time of Federal acquisition in 1940. At that time, all real property within the school district (including Parcel A) had a total assessed value of $1,000,000. To determine the percentage of assessed value of real property acquired by the United States within this school district in 1940, the Secretary divides the assessed value of the federally acquired real property at the time of acquisition ($90,000) by the assessed value of all real property in the school district at the time of acquisition ($1,000,000), obtaining a figure of .09 (9%). In 1945, the United States acquired ownership of Parcel B within the school district. At that time, Parcel B had an assessed value of $60,000. In 1945, the total assessed value of all real property within the school district (including Parcel B, but not Parcel A which was removed from the tax rolls in 1940) was $1,200,000. The Secretary determines the percentage of assessed value of real property acquired by the United States within the school district in 1945 by dividing the assessed value of Parcel B at the time of its acquisition ($60,000) by the assessed value of all real property within the school district at the time of acquisition ($1,200,000), obtaining a figure of .05 (5%). To determine whether the LEA meets the eligibility requirements of paragraph (a) of this section, the Secretary then aggregates the percentages of assessed value of real property acquired within the school district by adding the 5% for Parcel B to the 9% for Parcel A, obtaining a result of 14% of the total assessed value of real property within the school district having been acquired by the United States. This LEA would meet the eligibility requirements in paragraph (a) of this section for FY 1980.

(b) If, during any fiscal year, the United States sells, transfers, is otherwise divested of ownership of, or relinquishes an interest in or restriction on, Federal property upon which an LEA's eligibility is based, the Secretary redetermines the LEA's eligibility for the following fiscal year, based upon the remaining Federal property, in accordance with paragraph (a) of this section.

(c)(1) The Secretary bases the determination of an LEA's eligibility under paragraph (a) of this section only upon—

(i) Original records as of the time(s) of Federal acquisition of real property, prepared by a legally authorized official, documenting the assessed value of that real property; or

(ii) Facsimiles of those records such as microfilm or other reproduced copies.

(2) The Secretary bases the redetermination of an LEA's eligibility under paragraph (b) of this section only upon—

(i) Records described in paragraph (c)(1) of this section; or

(ii) Department records.

(3) The Secretary does not base the determination of an LEA's eligibility under this section upon secondary documentation such as estimates, certifications, or appraisals.

(Authority: 20 U.S.C. 237(a)(1))

§ 222.95 What constitutes a substantial and continuing financial burden?

(a) An LEA is eligible to receive section 2 assistance only if Federal acquisition of property meeting the criteria in § 222.94 places a substantial and continuing financial burden on the LEA.

(b) The Secretary determines whether a substantial and continuing financial burden exists by subtracting from the LEA's total current expenditures all local, State, and Federal revenues—except local real property tax revenue and section 2 payments—available to the LEA for current expenditures during the fiscal year of the LEA for which the LEA is applying for assistance. The resulting figure is the amount of current expenditures for which the LEA needs local revenue. For the purpose of this paragraph—

(1) All Federal assistance received by the LEA for maintenance and operations, except assistance received for the purpose of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3801–3808, 3871–3876), is included as revenue available to the LEA for current expenditures; and

(2) Any carryover (opening) balance on the first day of an LEA's fiscal year, that is equal to or less than the carryover amount allowed by the State without a reduction in the LEA's State aid, is not considered revenue available to the LEA for current expenditures.

(c) The Secretary determines that a substantial and continuing burden exists if the amount obtained in paragraph (b) of this section is greater than zero.

(d) The Secretary determines that a substantial and continuing burden does not exist if—

(1) The amount obtained in paragraph (b) of this section is zero or less; or

(2)(i) The LEA is in a State that has an equalized program of State aid meeting the requirements of section 5(d)(2) of the Act (20 U.S.C. 240(d)(2)); and

(ii) The State, in determining the LEA's eligibility for, or amount of, State aid, takes into consideration payments made to the LEA under section 2.

(Authority: 20 U.S.C. 237(2))

§ 222.96 When is an LEA not substantially compensated from Federal activity?

An LEA is eligible to receive section 2 assistance only if the LEA is not being substantially compensated, by increases in local revenue from Federal activities with respect to real property in the school district meeting the criteria of § 222.94(a) (1) and (2), for the loss of local revenue resulting from Federal acquisition of real property. The

Secretary considers that an LEA is being substantially compensated by increases in local revenue from the carrying on of Federal activities with respect to that Federal property if—

(a) The LEA receives new or increased local revenue that is generated directly from the Federal property or activities in or on that property; and

(b) The local revenue described in paragraph (a) of this section equals or exceeds the amount obtained in § 222.101(b) (the Federal share of the amount of local revenue needed by the LEA for its current expenditures).

(Authority: 20 U.S.C. 237(a)(3))

§ 222.97 What financial assistance is an LEA entitled to under section 2?

Except as otherwise limited by law or the amount of appropriated funds, an LEA that meets the requirements of § 222.93 is entitled to financial assistance under section 2 in an amount equal to the lesser of—

(a) The amount determined under § 222.98 (maximum entitlement); or

(b) The amount determined under § 222.101 (need-based entitlement).

(Authority: 20 U.S.C. 237(a))

§ 222.98 How is an LEA's section 2 maximum entitlement determined?

An LEA's section 2 maximum entitlement is the amount of local revenue that, in the Secretary's judgment, the LEA would have derived and had available for current expenditures from the eligible Federal property if that property had remained on the tax rolls. The Secretary determines that amount as follows:

(a) In accordance with § 222.99, the Secretary first establishes an estimate of what the total assessed value of the Federal property meeting the criteria in § 222.94(a) would be if it were on the tax rolls in the fiscal year for which assistance is sought ("estimated current assessed value"), based on the classification, character, and condition of that property as it was when acquired by the United States. The Secretary does not include in this figure any estimated current assessed value for improvements or other changes made in or on the Federal property after the Federal acquisition.

(b) The Secretary then computes the LEA's section 2 maximum entitlement in accordance with § 222.100.

(Authority: 20 U.S.C. 237(a))

§ 222.99 How is an estimated current assessed value established for Federal property?

(a) The following definitions apply to this section:

"Character" means the nature of the land, whether and to what extent the land has improvements, and how the land and any improvements are being used.

"Classification" means tax classification or category.

"Condition" means the quality of the land and the physical state of any improvements.

(b) The Secretary establishes the estimated current assessed value for Federal property by—

(1) Selecting, in accordance with paragraph (c) of this section, taxed real property within the same assessment district as the Federal property that the Secretary considers to be currently comparable to the Federal property as it was when acquired by the United States;

(2) Computing the average current assessed value per assessment unit of measure (*e.g.*, acre, square foot, linear foot, etc.) for the comparable property by dividing the total current assessed value of the parcels by the total number of units in those parcels; and

(3) Multiplying the average current assessed value per unit for the comparable property computed in paragraph (b)(2) of this section by the number of those units in the Federal property.

(c)(1) The Secretary considers as comparable, and selects, taxed real property within the same assessment district as the Federal property that currently—

(i) Is substantially similar in classification, character, and condition to the Federal property as it was when acquired by the United States; and

(ii) Is similar to the Federal property in proximity to other taxed real property that is more highly developed than the comparable property.

(2) The Secretary does not select all taxed real property within an assessment district or assessment classification as comparable unless every parcel of that taxed real property currently is substantially similar in classification, character, and condition to the Federal property as it was when acquired by the United States.

(3) If no taxed real property within the same assessment district as the Federal property currently is substantially similar to the Federal property as it was when acquired by the United States, the Secretary proceeds as follows:

(i) The Secretary considers as comparable, and selects, taxed real property within the same assessment district that currently—

(A) Is the next most similar in classification, character, and condition to the Federal property as it was when acquired by the United States; and

(B) Meets the criterion in paragraph (c)(1)(ii) of this section.

(ii) The Secretary then adjusts the assessed value of the selected property upward or downward to reflect differences in character and condition from the Federal property as it was when acquired by the United States.

(4) If the Secretary determines that the methods described in paragraphs (c)(1), (2), and (3) of this section do not provide an adequate basis for establishing an estimated current assessed value for the Federal property, the Secretary uses any such other method as the Secretary determines will reasonably accomplish the objective described in § 222.98(a).

(Authority: 20 U.S.C. 237(a))

Example: Three separate parcels of Federal property (Parcels A, B, and C) are currently included within the school district of an LEA.

Section 222.99(c)(1). Parcel A was a single 1,200-acre parcel of cultivated, medium-grade farmland when acquired by the United States in FY 1940. Farm buildings that were located on Parcel A at the time of Federal acquisition were in dilapidated condition when acquired. Although in FY 1940, property in the assessment district consisted totally of farmland and forest, the assessment district currently contains the following classifications of property: commercial, residential, farmland, and forest cropland. Thus, only a portion of the taxed real property within the assessment district is currently comparable in *classification* to Parcel A as it was when acquired by the United States. In addition, because the classification "farmland" currently includes both improved and unimproved farmland, only a portion of the taxed real property within the assessment classification is currently comparable in *character* to Parcel A as it was when acquired by the United States. Although the real property currently contiguous to Parcel A is farmland, a large commercial development is located one mile away.

In a case like this, under § 222.99(c)(1), the Secretary selects parcels of taxed real property that the Secretary considers to be currently substantially similar in classification (farmland), character (cultivated, improved farmland), and condition (medium-grade farmland and dilapidated farm buildings) to Parcel A as it was when acquired by the United States, and that are similar to the Federal property in proximity to more highly developed taxed real property (approximately one mile from the large commercial development). Because farm buildings existed on Parcel A when it was acquired by the United States, the Secretary includes the current assessed value both of land and comparable farm buildings in computing the average current assessed value for the comparable property. The Secretary divides the total current assessed value of the comparable parcels selected ($900,000) by the total acreage (6,000 acres) to obtain the average current assessed value per acre for the comparable property ($150 per acre). The Secretary then determines an

estimated current assessed value for the Federal property by multiplying that average current assessed value per acre for the comparable property ($150) by the acreage of the Federal property in Parcel A (1,200 acres), obtaining an estimated current assessed value for Parcel A of $180,000. See § 222.99(b).

Section 222.99(c)(2). Parcel B, a 1,500-acre parcel, was unimproved forest when acquired by the United States in FY 1945. All taxed real property in the assessment classification "forest cropland" is currently comparable in classification (forest cropland), character (unimproved land with standing timber), and condition (second-growth timber) to Parcel B as it was when acquired in FY 1945. The average current assessed value for all taxed real property in the classification "forest cropland" is $75 per acre. In a case like this, under § 222.99(c)(2), the Secretary determines an estimated current assessed value for the Federal property by multiplying the average current assessed value per acre of the taxed real property in that assessment classification ($75) by the acreage of Parcel B (1,500 acres), obtaining an estimated current assessed value for Parcel B of $112,500.

Section 222.99(c)(3). Parcel C, a 5,000 square foot parcel, was undeveloped commercial land when it was acquired by the United States in FY 1983. The assessment district currently contains real property in a substantially similar classification (commercial). However, because all of the commercial property in the assessment district is now developed, the district does not contain any property within that classification that currently is substantially similar in condition or character (unimproved commercial land) to the Federal property. Thus, the assessment district no longer contains any taxed real property that currently is comparable to Parcel C as it was when acquired by the United States.

In a case like this, under § 222.99(c)(3), the Secretary selects parcels of taxed real property in the same assessment district that currently are the next most similar in classification (commercial) and character and condition (improved commercial property) to the Federal property as it was when acquired, and that are similar to the Federal property in proximity to other, more highly developed, taxed real property (industrial property). The Secretary then adjusts the assessed value for the selected parcels to reflect differences in character and condition from the Federal property as it was when acquired, which in the case of unimproved property means including only that portion of the assessed value for the comparable property that relates to land. The Secretary divides the total current assessed value of the land for the selected parcels ($5,000,000) by the total land area in square feet (25,000) to obtain the average current assessed value per unit for the comparable property ($200 per square foot). The Secretary then determines an estimated current assessed value for Parcel C by multiplying that average current assessed value per square foot by the number of square feet in Parcel C (5,000), obtaining an estimated current assessed value for Parcel C of $1,000,000.

The Secretary determines the total estimated current assessed value of all of the Federal property in this LEA by adding the estimated current assessed values of Parcel A ($180,000), Parcel B ($112,500), and Parcel C ($1,000,000), obtaining a total estimated current assessed value of $1,292,500.

§ 222.100 How is an LEA's section 2 maximum entitlement computed?

(a) For the purpose of this section, "unequalized portion" of the local real property tax rate for school purposes means that portion of the local real property tax rate for school purposes that is not considered by the State in determining the amount of State aid an LEA will receive. The Secretary considers the unequalized portion to be the greater of—

(1) The portion of the local real property tax rate for school purposes that exceeds that part of the rate that an LEA must levy to qualify for State aid guarantees; or

(2) The portion of the local real property tax rate for school purposes that exceeds that part of the rate that will generate for the LEA an amount equal to the State aid guarantee.

(b) The Secretary computes an LEA's maximum entitlement using one of the following methods:

(1) If possible, the Secretary multiplies the total estimated current assessed value obtained in § 222.99 by the unequalized portion of the local real property tax rate for school purposes that is levied within the assessment district in which the Federal property is located for the fiscal year for which assistance is sought.

(2) If, because of the nature of the State funding program, the Secretary is unable to establish the unequalized portion of the local real property tax rate for school purposes in accordance with paragraph (a) of this section, the Secretary computes maximum entitlement by—

(i) Calculating the total State and local funds the LEA would have received from both the Federal and non-Federal property if the Federal property meeting the criteria in § 222.94(a) had remained on the tax rolls and been assessed at the estimated current assessed value determined by the Secretary in accordance with paragraph (a) of this section; and

(ii) Subtracting the total State and local funds actually received by the LEA for current expenditures from the figure obtained in paragraph (b)(2)(i) of this section.

(Authority: 20 U.S.C. 237(a))

Example: State law provides that, to obtain a State guaranteed amount of $3,000 per pupil in ADA, an LEA must levy a minimum of 22 mills. The LEA's local real property tax rate for school purposes is 35 mills. However, the LEA could have raised an amount equal to the guaranteed amount ($3,000 per pupil in ADA) by levying only 20 mills. The Secretary computes the amount under § 222.100(a)(1) by subtracting the portion of the rate required for the State guaranteed amount (22 mills) from the LEA's total local real property tax rate for school purposes (35 mills), obtaining a result of 13 mills. The Secretary computes the amount under § 222.100(a)(2) by subtracting the portion of the levy that is necessary to generate an amount equal to the State guarantee (20 mills) from the LEA's total levy (35 mills), obtaining a result of 15 mills. The unequalized portion of the LEA's local real property tax rate for the purpose of § 222.100(a), which is that portion of the local real property tax rate that is not considered by the State in determining the amount of the State aid the LEA will receive, is 15 mills because it is the greater of the two resulting figures.

To establish the LEA's section 2 maximum entitlement under § 222.100(b)(1), the Secretary then multiplies the total estimated current assessed value of the Federal property that meets the criteria in § 222.94(a), which under the previous example is $1,292,500, by the unequalized portion of the LEA's local real property tax rate (15 mills, or .015), obtaining a section 2 maximum entitlement of $19,387.50.

§ 222.101 How is an LEA's section 2 need-based entitlement determined?

The Secretary determines an LEA's need-based entitlement by computing the Federal share of the amount of local revenue needed by the LEA for its actual current expenditures. The Secretary computes this amount as follows:

(a) The Secretary divides the total estimated current assessed value (determined in accordance with § 222.99(b)) of Federal property meeting the criteria in § 222.94(a) by the sum of that estimated current assessed value and the actual current assessed value of all other real property within the school district of the applicant. The resulting figure is the approximate proportion of the LEA's local real property tax base that is comprised of Federal property.

(b) The Secretary then multiplies the figure obtained in paragraph (a) of this section by the amount obtained in § 222.95(b) (the amount of current expenditures for which the LEA needs local revenue).

(Authority: 20 U.S.C. 237(a))

Example: As in previous examples, the total estimated current assessed value of Federal property (meeting the criteria in § 222.94(a)) in an LEA is $1,292,500. The actual current assessed value of all other real property within the school district of this LEA is $10,000,000. The amount of local revenue that the LEA needs for its current expenditures, as determined under § 222.95(b), is $100,000.

The Secretary computes the need-based entitlement by first dividing the total estimated current assessed value of the Federal property ($1,292,500) by the sum of that estimated current assessed value and the actual current assessed value of all other real property within the school district

(sum=$11,292,500), obtaining a figure of .1145. This figure is the approximate proportion that the Federal property represents of the LEA's total local real property tax base. The Secretary then multiplies that figure (.1145) by the amount of local revenue that the LEA needs for its current expenditures ($100,000), resulting in a section 2 need-based entitlement of $11,450.00. Because the LEA's need-based entitlement ($11,450.00) is less than the LEA's section 2 maximum entitlement ($19,387.50), the LEA receives only the need-based entitlement (see § 222.97), to the extent of appropriated funds.

§ 222.102 How are section 2 eligibility and entitlement determined for an LEA formed by consolidation of school districts?

(a) *General.* An LEA formed after 1938 by consolidation of two or more former school districts may elect to have the Secretary determine its section 2 eligibility and entitlement upon either of the following bases:

(1) One or more of the former school districts that meet the criteria in paragraph (b)(1) of this section.

(2) The consolidated district as a whole.

(b) *Eligibility.* An LEA described in paragraph (a) of this section is eligible to receive section 2 assistance on the basis of a former school district if—

(1) The former school district upon which eligibility is based—

(i) At the time of consolidation contained some Federal property meeting the criteria in § 222.94(a)(1) (acquired by the United States since 1938) and § 222.94(a)(2) (not acquired by exchange for other Federal property that the United States owned within the school district before 1939); and

(ii) For the year of application, contains within its former boundaries Federal property meeting the criteria in § 222.94(a) (1) and (2), that has an aggregate assessed value of 10 percent or more of the assessed value of all real property (including the Federal property) in the former school district, based upon the assessed values of the Federal property and of all real property (including the Federal property) on the date or dates of acquisition of the Federal property; and

(1) The LEA meets the criteria in §§ 222.95 and 222.96.

(c) *Entitlement.* Except as otherwise limited by law or the amount of appropriated funds, an LEA that meets the eligibility criteria in paragraph (b) of this section is entitled to financial assistance under section 2 in an amount equal to the lesser of the maximum entitlement or the need-based entitlement, which are determined as follows:

(1) The Secretary determines maximum entitlement in accordance with § 222.98, except that the estimated current assessed value for Federal property upon which the maximum entitlement is based includes only the estimated current assessed value for the Federal property described in paragraph (b)(1)(ii) of this section.

(2) The Secretary determines need-based entitlement by—

(i) Dividing the total estimated current assessed value for the Federal property meeting the criteria in paragraph (b)(1)(ii) of this section, that is within a former school district meeting the criteria in paragraph (b)(1) of this section, by the sum of that estimated current assessed value and the actual current assessed value of all other real property within the consolidated LEA; and

(ii) Multiplying the figure obtained in paragraph (c)(2)(i) of this section by the amount obtained in § 222.95(b) (the amount of current expenditures for which the LEA needs local revenue).

(d) If an LEA elects to have its section 2 eligibility and entitlement determined on the basis of one or more former school districts, the LEA shall designate in its application the district or districts it selects.

(Authority: 20 U.S.C. 237(c))

§ 222.103 How are section 2 overpayments recovered?

(a) If a section 2 overpayment results from an error by the Department in computing or recomputing an LEA's need-based entitlement, the Secretary will—upon an LEA's request—arrange for no more than 10 percent of the original section 2 overpayment, with interest, to be repaid or deducted from current payments in any fiscal year.

(Authority: Pub. L. 98–511 (October 19, 1984, section 302))

(b) Except as provided in paragraph (a) of this section, adjustments for and recovery of section 2 overpayments are made in accordance with § 222.42.

(Authority: 20 U.S.C. 240, 242(b), 1226a–1)

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Part VIII

Environmental Protection Agency

40 CFR Part 262

Exception Reporting For Small Quantity Generators of Hazardous Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SWH-FRL-3157-8]

Exception Reporting for Small Quantity Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On March 24, 1986, the U.S. Environmental Protection Agency (EPA) promulgated final regulations for generators of between 100 kg and 1000 kg of hazardous waste in a calendar month (i.e., generators of 100–1000 kg/mo) under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). In the final regulations, the Agency exempted these generators from the requirement to file an exception report with EPA in instances where the generator does not receive confirmation of delivery of his hazardous waste shipment to the designated facility. As a result of a lawsuit filed by the Environmental Defense Fund (EDF) on this issue, the Agency has reconsidered this exemption and is today proposing to reinstate the exception reporting requirement in a modified form.

DATE: The Agency will accept public comments on this proposal through June 1, 1987.

ADDRESSES: The public docket for this rulemaking is located in Room S–212–C, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA RCRA Docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling Mia Zmud at 475–9327 or Kate Blow at 382–4675. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, (800) 424–9346, (in Washington, DC, call 382–3000), or the Small Business Hotline, (800) 368–5888. For information on specific aspects of today's notice, contact Mike Petruska, (202) 382–4769, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Proposal

On August 1, 1985, the U.S. Environmental Protection Agency (EPA) proposed regulation under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that would be applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month ("100–1000 kg/mo generators"). Based in large measure on the existing hazardous waste regulatory program, the proposed rules represented the Agency's efforts to balance the statutory mandate to protect human health and the environment with the statutory directive to keep burdensome regulation of small businesses to a minimum.

As a part of the proposed rules, EPA would have exempted 100–1000 kg/mo generators from the full hazardous waste manifest system as well as the requirement to file exception reports. Under 40 CFR 262.42, generators shipping waste off-site are required to file reports with EPA if a signed copy of the manifest is not received from the designated facility within 45 days of acceptance of waste shipment by the initial transporter. Since under the proposed rules there would have been only a single copy of the manifest, there would be no manifest copies for return to the generator, and, hence, no basis for exception report.

In the final rule issued March 24, 1986 (see 51 FR 10146), EPA determined that the full, multiple-copy manifest system was necessary to protect public health and the environment and that it would not impose a significant burden on 100–1000 kg/mo generators. See 51 FR 10155–10156. The Agency also concluded that the additional administrative burden associated with the exception reporting requirement outweighed the incremental environmental benefits that may be gained. 51 FR 10159–160.

On June 6, 1986, the Environmental Defense Fund (EDF) filed a petition in the United States Court of Appeals for the District of Columbia Circuit (Environmental Defense Fund v. Thomas, No. 86–1334) for review of EPA's decision to exempt 100–1000 kg/mo generators from the exception reporting requirement. On December 17, 1986, EPA and EDF agreed to defer the litigation pending EPA's reconsideration of the decision made in the final rule and additional rulemaking on the exception reporting exemption.

As a result of EPA's reconsideration of this issue, the Agency is proposing to reinstate the exception reporting requirement for 100–1000 kg/mo generators, but in a modified form. The Agency is also requesting comment on a number of other alternative modifications to the existing exception reporting requirement that were not considered in EPA's previous rulemaking.

II. Basis for Reconsideration

In the March 24, 1986 final rule, EPA examined the burden that might be imposed by retaining the full exception reporting requirement for small quantity generators. The Agency reasoned that compliance with the reporting provision would require a number of steps to be taken by generators:

(1) Determining within 45 days that a copy of the manifest signed by the treatment, storage or disposal (TSD) facility had not been returned;

(2) Contacting the transporter and TSD facility to determine the status or location of the waste and manifest;

(3) If unsuccessful, filing a report with a copy of the manifest and a cover letter describing his efforts to locate the waste and the results of his efforts.

EPA also considered the extent to which such reporting is necessary to protect health and the environment. While the Agency deemed exception reporting to be an important link in the manifest system because it is essential to alert EPA and states to lost shipments, the Agency concluded that the multiple copy manifest system would provide sufficient assurance that waste shipments reached their proper destination. It based this conclusion in large part on the fact that very few exception reports are received. In addition, EPA judged that the smaller quantities of waste involved did not require the same degree of double-checking as that required for large generators. Thus, the Agency concluded that the incremental environmental benefits to be gained from the reporting requirement were outweighed by the additional administrative burdens.

EDF has raised several agruments in its challenge to this decision that have convinced the Agency to reconsider its conclusions regarding the need for exception reports from these generators. First, the risks posed by a shipment of hazardous waste generated by one or several small quantity generators may be the same as that posed by a large quantity generator's shipment, for two resons: (1) Small generators may consolidate their wastes in fairly large quantities (6000 kg) before shipping offsite, and (2) transporters performing "milk runs" will aggregate wastes from multiple small quantity generators into one shipment to utilize their trucks efficiently. Thus, EPA is concerned that

the risks posed by any illegally diverted waste shipments may be substantial. In addition, even though the Agency believes that the round-trip manifest system by itself will operate to prevent mismanagement in most cases, the times when a manifest is not returned to the generator is when some type of notification to EPA or State enforcement authorities is needed the most.

With regard to the administrative burdens imposed by the reporting requirement, EPA had not previously considered whether the reporting requirement could be modified in such a way that the associated burdens could be reduced while retaining the underlying purpose of the exception report. Upon reconsideration of this issue, the Agency believes that it may be possible to retain the value of the reporting requirement in terms of protecting health and the environment while at the same time reducing any administrative burden imposed on small quantity generators. In particular, if the Agency were to modify the requirement in such a way that the paperwork and internal tracking burdens were reduced, the benefits gained from such reporting would not necessarily be outweighed by the burdens associated with it.

EPA is considering several modifications to the existing exception reporting approach. These alternative approaches, and the Agency's assessment of each, are discussed below. EPA is interested in receiving comments on these alternatives, as well as any suggested alternative options.

III. Proposed Modifications to Exception Reporting

The Agency is proposing to reinstate, for 100–1000 kg/mo generators, the exception reporting requirement, but in a modified form designed to reduce any burdens associated with the requirement as it is presently applicable to large quantity generators.

There are a number of ways that the administrative burdens of an exception reporting requirement could be reduced. One way would be to reduce the frequency of reporting. Another would be to reduce or eliminate the double-checking that a generator would have to conduct to attempt to track down the lost shipment. A third way would be to change the method of reporting. Each of the alternatives discussed below meets one or more of these criteria; however, the Agency must also consider the extent to which any modification reduces protection to human health and the environment. EPA's authority to vary the requirements in effect for large quantity generators is circumscribed by the mandate that the variation still protect human health and the environment. See RCRA section 3001(d)(2).

A. Biannual Reporting

If EPA had failed to promulgate by March 30, 1986 final regulations for 100–1000 kg/mo generators, RCRA section 3001(d)(9) would have required these generators to file exception reports on a biannual basis (*i.e.*, twice a year). Arguably, Congress believed that exception reporting was an important part of the manifest system, and that biannual reporting would be sufficient to protect health and the environment and not impose undue burden on these generators.

EPA is not proposing to adopt biannual exception reporting. First, it is not clear that Congress deemed biannual reporting to be sufficient to protect health and the environment since it was required only as an interim measure until EPA adopted final regulations. Moreover, in EPA's view, it would not make sense to adopt an exception reporting requirement that would allow six months to elapse from the time a shipment is sent to the time a report on its loss must be filed. The further removed in time that the notification is made, the less likely it is that the generator or enforcement authorities could track down the lost shipment. In view of the limited utility of such reporting, EPA deems the burden imposed on generators to go through the steps necessary for the report to be unnecessary. Thus, while the biannual reporting scheme may have served some limited purpose as an interim requirement, EPA believes that its benefits in terms of protecting health and the environment are outweighed by its burden.

B. Reporting by Telephone

In order to reduce the paperwork associated with exception reporting, the requirement could be modified to allow generators to phone in the report rather than mailing in a copy of the unreturned manifest with a cover letter. This would save the generator the need to write a cover letter describing his efforts to track down the waste or the need to photocopy and mail in a copy of the manifest.

EPA is not proposing to adopt such a modification for several reasons. First, it is important for enforcement authorities to obtain a copy of the manifest in order to determine the types and quantities of waste involved, the name and ID number of the transporter, and other information which is essential to tracking down the waste shipment. Relaying this information by telephone could lead to many errors, and the time it would take to describe the necessary details could become more burdensome than that needed to mail in a manifest copy. In addition, the cost of long-distance telephone calls could become prohibitive, thereby discouraging generators from reporting.

C. Requiring Only Submission of Manifest Copy

In view of the importance of EPA or the state receiving timely notification, in writing, that the generator has not received his return copy of the manifest, EPA believes that the basic outline of the exception reporting provision should be retained. The generator should be required to send in a copy of the manifest within a reasonable time period after he ships his waste offsite. However, it appears that the other tasks associated with the reporting requirement could be modified or eliminated without compromising the underlying purpose of the requirement. For example, if small quantity generators were not specifically required to take certain actions to locate potentially lost shipments and to document and report on those efforts, the total burden would be significantly reduced.

The Agency is proposing to limit the regulatory obligation of these generators to notifying the Agency of potentially lost shipments. Specifically, generators of 100–1000 kg/mo would be required to mail in a copy of the unreturned manifest, accompanied by a note (either typed or handwritten on the manifest copy itself or on an attached piece of paper) stating that the return copy was not received from the TSD facility. Under this proposal, the generator would not be required to take any other specific action with respect to exception reporting. Nevertheless, the Agency would strongly encourage generators to attempt to locate a missing manifest or waste shipment on their own so as to minimize any potential long term liability as well as to avoid the need to file an exception report.

To ensure that EPA or the State have a realistic opportunity to track down the lost shipment, the generators would be required to mail the manifest copy if the return copy is not received within 60 days. This would allow small quantity generators an additional 15 days to notify the enforcement authorities, but would also allow rapid follow-up action by EPA or the States.

The Agency believes that this approach would best meet both goals of protecting human health and the environment and reducing burdens on these generators. The Agency is therefore proposing that 40 CFR 262.42 be amended to reflect this modified requirement. However, the Agency will consider adopting an alternative approach based on comments received from interested persons.

IV. Executive Order 12291—Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement to perform a Regulatory Impact Analysis. Today's proposal would require that generators of 100–1000 kg/mo report potentially lost shipments of hazardous waste to EPA or the appropriate State authority. However, because of the infrequent need to file such a report and the very low costs involved, I have determined that this proposed rule would not constitute a major rule subject to the Regulatory Impact Analysis requirements of Executive Order 12291.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This proposal reflects the Agency's evaluation of the paperwork burden which would be imposed on generators of 100–1000 kg/mo and reduces such burden to the minimum deemed necessary to protect human health and the environment. The exception report is not routinely required, and in fact will never be required of most generators, nor does the Agency require that an additional form be utilized for exception reporting.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis for all rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Today's proposed rule will affect approximately 100,000 small businesses, but will not result in significantly increased compliance costs for these businesses. This is because an exception report, costing less than $19/report, may only be required, on average, once every ten years.

Therefore, I hereby certify, pursuant to 5 U.S.C. 601(b), that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 262

Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

Dated: April 24, 1987.

Lee M. Thomas,

Administrator.

PART 262—[AMENDED]

For the reasons set forth in the preamble, it is proposed to amend the Code of Federal Regulations as follows:

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986, as amended (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

2. Section 262.42 is amended by revising paragraph (a) and adding a new paragraph (c), to read as follows:

§ 262.42 Exception reporting.

(a) A generator of greater than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(b) * * *

(c) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.

3. Section 262.44 is revised to read as follows:

§ 262.44 Special requirements for generators of between 100 and 1000 kg/mo.

A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirements of this Subpart, except for the recordkeeping requirements in paragraphs (a), (c), and (d) in § 262.40 and the requirements of §§ 262.42 and 262.43.

[FR Doc. 87-9909 Filed 4-30-87; 8:45 am]

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federal register

Friday
May 1, 1987

Part IX

Department of Health and Human Services

Family Support Administration

Availability of Funds and Request for Applications Under the Office of Community Service's Demonstration Partnership Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

[Program Announcement No. OCS-87-3]

Availability of Funds and Requests for Applications Under the Office of Community Service's Demonstration Partnership Program

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for applications under the Office of Community Service's Demonstration Partnership Program.

SUMMARY: The Office of Community Services announces that applications will be accepted for new grants pursuant to the Community Services Block Grant Act of 1981 as amended by section 408 of the Human Services Reauthorization Act of September 30, 1986, Pub. L. 99-425. This program announcement consists of four parts. Part I describes the Demonstration Partnership Program and indicates who is eligible to apply, the funding available, matching requirements, and maintenance of effort; Part II contains program description elements; Part III contains application requirements; and Part IV contains the review, selection and award process.

DATE: The closing date for receipt of applications is June 30, 1987. Late applications will be returned without consideration.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Family Support Administration, Office of Community Services, 330 C Street, SW.—Room 2054 Switzer Building, Washington, DC 20201; telephone (202) 475-0339.

I. General Information

A. *The purpose of the Demonstration Partnership Program* is to stimulate eligible entities to develop new approaches to provide for greater self-sufficiency of the poor and to demonstrate and evaluate the new approaches so that they can be appropriately replicated.

B. *Legislative authority.* 1. Section 408(a)(1) of the Human Services Reauthorization Act of 1986 authorizes the Secretary of the Department of Health and Human Services, "In order to provide for the self-sufficiency of the Nation's poor, the Secretary may make grants from funds appropriated under subsection (e) to eligible entities for the development and implementation of new and innovative approaches to deal with particularly critical needs or problems of the poor which are common to a number of communities. Grants may be made only with respect to applications which—

(A) Involve activities which can be incorporated into or be closely coordinated with eligible entities' ongoing programs;

(B) Involves significant new combinations of resources or new and innovative approaches involving partnership agreements; or

(C) Are structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act."

C. *Eligible applicants.* 1. Eligible applicants are those "eligible entities" as defined in section 673(1) of the Community Services Block Grant Act as amended, and whose eligibility status and capability have been certified by the appropriate State.

2. Organizations, including eligible entities, that address the needs of the poor that are common to a number of communities in a state, to an entire state, or to areas in more than one state, may choose to form a consortium. In such cases the applicant must be an eligible entity.

D. *Availability of funds.* 1. The Office of Community Services expects to award $1,000,000 to five to eight applicants, generally in the $150,000 to $250,000 range.

2. No single grant will exceed $250,000 in Federal funds, and no more than one grant will be made to any eligible entity.

E. *Match requirements.* 1. OCS will accept as a match Federal monies from State administered block grants with compatible purposes when those programs do not prohibit their use as matching funds. Our presumptive list includes Community Services Block Grants, Social Services Block Grants, and the Low Income Home Energy Assistance Program. Any applicant proposing to use other block grant funds must document the legality of such use. When offering other federally supplied funds as matching funds, organizations should pay additional attention to explaining how they can divert those other funds to this project while maintaining previous antipoverty efforts.

2. The Federal grant may not exceed 50% of the total cost of the approved project.

3. The match contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, or services.

4. The match must constitute an integral part of the approved project (to be used only during the grant period).

5. Documentation of the availability of the match must be submitted with the application.

F. *Maintenance of effort.* 1. The activities funded under this program must be in addition to, and not in substitution for, activities previously carried on without Federal assistance; and

2. Funds or other resources devoted to activities within a community, area, or state will not be diminished in order to provide the required matching contributions.

II. Program Description Elements

A. *Definitions.* 1. Innovative Project(s)—one that has rarely been applied to a poverty population by eligible entities.

2. Hypothesis—a proposition forwarded for the purpose of testing.

3. Intervention—any planned activity within a project that is designed to produce intended changes in a target population.

B. *Prohibitions on the use of funds.* 1. Applications submitted under OCS Program Announcements 87-1 and 87-2 (the OCS Discretionary Program) will not be considered for funding under this announcement.

2. The use of funds for the purchase, construction or improvement of real property is prohibited. This restriction also applies to weatherization and home repairs.

C. *Population to be served.* 1. Projects proposed for funding under this announcement must serve low-income persons at or below 125% of the DHHS poverty guidelines. The applications' attention is directed to the attached Annual Revision of Poverty Income Guidelines.

D. *Program description.* 1. OCS is seeking to support new projects, new components of existing projects, or the evaluation of existing projects which meet the program requirements of this announcement.

2. Such project must:

(A) Involve activities which can be incorporated into or be closely coordinated with eligible entities' ongoing programs;

(B) Involve significant new combinations of resources or new and innovative approaches involving partnership agreements; or

(C) Be structured in a way that will, within the limits of the type of assistance or activities contemplated,

most fully and effectively promote the purposes of the Community Services Block Grant Act as amended.

3. While OCS will not predetermine the program categories, population groups, or strategies which applicants may choose to address, it calls to the attention of potential applicants several poverty related issues that are receiving increased national attention: These include teen-age pregnancy, substance abuse, school drop-out and illiteracy, the preparation of "at-risk" youth to become self-sufficient, economic dislocation in rural areas, and inadequate service delivery systems.

4. OCS is seeking to fund projects that will have applicability to other localities with similar problems and will have potential for widespread replication by eligible entities throughout the nation.

5. Completely new and innovative interventions are relatively rare and are usually modifications of existing practices. Those projects are usually small in scope and not formally evaluated. OCS intends that projects funded under this announcement will be conducted on a broader scale and will be objectively evaluated.

E. *Project Design must include:* 1. A statement of the problem being addressed, including its significance for the poverty population;

2. A testable hypothesis that permits measurement of the extent to which the target population has achieved greater self-sufficiency as a result of the proposed interventions;

3. The rationale for the approach being proposed to overcome this problem;

4. A thorough description of the intervention(s) that will be carried out to test the hypothesis;

5. A definition of the target group(s), including the number of participants and beneficiaries and their major characteristics that are relevant to the hypothesis;

6. A description of all partnership/consortium agreements;

7. Plans for a methodologically sound third-party evaluation of the demonstration project that will yield, with as much certainty as possible, the extent to which planned interventions produced the intended outcomes. The evaluation component of the project must include procedures that compare information about participants and non-participants and be able to isolate and systematically assess competing explanations for the observed outcomes; and

8. A plan for disseminating project findings and products to other eligible entities and states.

F. *Duration of awards.* 1. The period of the grant award will be determined by the nature of the individual project and the justification presented in the application.

2. However, no grant period shall exceed 24 months.

G. *General terms.* 1. Grantees are subject to the provisions of Office of Management and Budget Circulars A–102 or A–110 (as appropriate), and A–122, and to the provisions of 45 CFR Parts 74, 80, 84, 86, 90, and 91. Federal anti-discrimination regulations also apply. These are not the only requirements, but grantees will be specifically informed of any others.

2. Grantees will be required to submit quarterly financial reports, quarterly narrative reports, a final narrative report, a final audit, and the final evaluation report.

3. Administrative costs may not exceed 10% of the total grant award. Costs for conducting the final audit and the third-party evaluation may be charged to the grant but will not be considered part of the administrative costs.

III. Application Requirements

A. *Where to get forms.* 1. Applications for awards under this program must be submitted on this Standard Form (SF) 424. The Appendix to this Announcement contains all forms and instructions required for submittal of applications. Additional copies of the announcement may be obtained by writing or telephoning: Department of Health and Human Services, Family Support Administration, Office of Community Services, 330 C Street, SW.—Room 2054, Switzer Bldg., Washington, DC 20201, RE: OCS 87–3–DP, Telephone: (202) 475–0339.

B. *Where to send applications.* 1. The closing date for receipt of applications submitted under this program announcement is June 30, 1987.

2. Applications may be hand-delivered during normal working hours (8:45 a.m. to 5:30 p.m., Monday through Friday) or by mailing them sufficiently in advance to assure their receipt prior to the deadline, or the application may be sent by registered or certified mail or by private commercial carrier no later than the closing date.

Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late applications will be returned to the senders without consideration. Applications may be mailed or hand-delivered to: Department of Health and Human Services, Family Support Administration, Office of Grants Management, 330 C Street, SW., Room 2222 Switzer Bldg., Washington, DC 20201.

C. *The application package*—Each application package must include:

1. An original and two copies of the application. The original copy must contain the original signature of an official of the eligible entity having legal authority to obligate the applicant. *The application must be submitted on 8½ by 11 inch paper and may not exceed fifty (50) single-spaced pages.* Do not include items, such as annual reports, promotional brochures, slides, tapes, film clips, etc. They will be discarded.

2. A self-addressed, franked postcard so that acknowledgement of receipt of application packages can be provided. This requirement applies even if the application is accompanied by a "Return Receipt Requested" card. All applications will be assigned an identification number which will be noted on the acknowledgement. This number must be referred to in all subsequent communication with OCS. Applicants who have not received an identification number within three (3) weeks after the deadline date should notify OCS by telephone at (202) 245–0901.

D. *Application content*—All applications must include a cover page followed by a Table of Contents with page numbers for each section, subsection, and attachment(s). Each page of the application, including any attachment(s), must be numbered consecutively. The Table of Contents should list the following items and the applications should present material in the following order:

1. Standard Form 424, Parts I–IV; necessary assurances; and Intergovernmental Review. This program is covered by Executive Order 12372. Therefore, applicants are subject to the clearance procedures and requirements established by the states in which their projects will operate. Applicants are reminded that they must initiate clearance action through appropriate state clearinghouses prior to submittal of their proposals to OCS. These initial actions must be reported on standard Form 424, page 1 when it is submitted to OCS. Clearance actions need not be completed by states before applications are submitted to OCS. However, clearinghouse comments should be forwarded to the Office of Grants Management.

2. **Note.**—The applicant must attach a certification from the State Director of

the Community Services Block Grant Program stating that the applicant is (1) an eligible entity under section 673(a) of the CSBG Act as amended and (2) that the applicant has the administrative and programmatic capability to conduct anti-poverty projects.

3. *Project narrative:* For each item below, the applicant should provide a thorough but succinct statement.

a. *Organizational capability:* (If this application involves a partnership(s) arrangement, also provide the following information for each of the partners.)

(1) Description of applicant's organizational structure, mission and strategy, and any accomplishments in innovative programming.

(2) History of experience relevant to this announcement.

(3) Portions of the most recent agency plan that relate specifically to the project being proposed.

(4) Key staff resumes for this project, identification of the Chief Executive Officer, and the proposed project manager.

(5) A listing for Fiscal Year 1986 of all sources of funds and projects operated.

b. *Problem definition and analysis.* (1) Discussion of the nature and extent of the poverty problem to be addressed and provision of a brief history of the attempts to deal with the problem.

(2) The discussion in (1) must include an analysis of the causes of this poverty problem. Provide supportive documentation.

c. Project design. (1) A discussion of a testable hypothesis that must be stated in a way that permits measurement.

(2) The rationale for the approach being proposed to overcome this problem.

(3) A description of the interventions that will be conducted to test the hypothesis.

(4) A description of the target group(s) including the number of participants and their major characteristics that are relevant to the hypothesis.

(5) Inclusion of measurable objectives, intended project outcomes, and intended impact on the problem(s) that are being addressed.

(6) Inclusion of target dates in the chronological order by which the major events will occur.

(7) A concise description of all partnership agreements that "involve significant new combinations of resources or new and innovative approaches" to solve the problems addressed in the application.

(8) Discussion of the methodology of the third-party evaluation of the project and the ways in which it will determine, with as much certainty as possible, the extent to which planned interventions produced the intended outcomes; discussion of the tracking and data collection system to be used.

(9) A description of the methods to be used to share project experiences and findings with other eligible entities and the states. A discussion, also, of the steps to be taken to disseminate and promote the utilization of project products and findings.

d. *Resources needed to continue project if the demonstration is successful.* Explain why one of the following applies:

(1) This demonstration if successful, will show how to use existing anti-poverty resources more efficiently.

(2) Services provided under this demonstration, if successful, could be continued after completion of a demonstration project with non-Federal funds.

IV. Review, Selection and Award Process

All applications that meet the published deadline for receipt at FSA will be screened to determine completeness and conformity to the requirements of this announcement. Only complete and conforming applications will be reviewed and rated.

A. *Screening requirements:* In order for an application to be processed, it must meet all of the following requirements:

1. Length limitation: must not exceed 50 single spaced pages, excluding the SF–424 and its attachments, and any appendices.

2. SF–424: This form must be completed according to its instructions, and Item 23b of Part I must be signed by an official of the eligible entity having legal authority of obligate the applicant.

3. Number of copies: A signed original application and two copies must be submitted.

B. *Pre-rating review:* Applications which pass the initial screening will be reviewed by the program office to verify that they comply with this program announcement in the following areas:

1. OCS target population: The applicant must specifically target the benefits of the project to low-income beneficiaries eligible at 125%, or below, of the DHHS Annual Revision of Poverty Income Guidelines.

2. State certification: The application must contain a certification from the state agency administering the Community Services Block Grant program that the applicant is an eligible entity and that it possesses the administrative and programmatic capability to conduct anti-poverty projects.

3. Evaluation: The applicant has described its third party evaluation component.

4. Grant amount: No application shall be considered for funding in excess of $250,000 in OCS funds.

5. Match: The application must contain documentation for all of the proposed match.

6. Project duration: No application shall be considered for funding if the funding period exceeds 24 months.

Applicants must meet all the above requirements to be considered for funding.

C. *Rating criteria:* Applications which pass initial screening and pre-rating review will be rated by DHHS employees who will conduct a review of the proposals. Each reader will give a numerical score for each proposal reviewed. These scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement. This review and rating process will use the following criteria:

1. Organizational Capabilities (0 to 15 points):

a. Management History (0 to 5 points):

(1) The applicant has the administrative and programmatic capability to conduct anti-poverty projects;

(2) The application demonstrates that the applicant has competence in developing and operating innovative projects that utilize a variety of resources; and

(3) The application demonstrates and documents that the applicant has experience in designing either staff conducted or third party evaluations.

b. Staffing and resources (0 to 10 points):

(1) The applicant's proposed key staff are well qualified and their professional experiences are relevant to the successful implementation of this project;

(2) The applicant's description of how the assigned responsibilities of staff are appropriate to the tasks identified for this project is clear and logical and shows that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project; and

(3) The applicant includes information that shows the ways in which it will incorporate the project into its existing organizational structure and shows how the new activities will result in changes, if any, to current projects.

2. Problem Definition and Needs Assessment (0 to 15 points):

a. The application clearly describes the poverty problem and identifies the factors that contribute to the perpetuation of the poverty problem;

b. The application documents the extent to which the problem exists in the local community, discusses known examples of this problem in other localities and regions, and analyzes the impact of the problem nationwide; and

c. The application discusses past efforts to solve this problem and how the proposed project builds upon any previous work.

3. Project Design and Methodology (0 to 35 points):

a. The project (0 to 20 points):

(1) The hypothesis is significant, relevant, and permits measurement;

(2) The application includes relevant demographic characteristics of the target population and shows that the choice of target groups is relevant to the hypothesis;

(3) The application clearly demonstrates the extent to which the intervention(s) are relevant and appropriate to the hypothesis and to the population to be served; and

(4) The applicant describes specific plans for conducting the project, proposes realistic time frames, identifies the key activities in chronological order that are necessary to accomplish the goals and activities of this project.

b. The evaluation component (0 to 15 points):

(1) The evaluation plan proposed is methodologically sound and will yield the extent to which the planned interventions produced the intended outcomes;

(2) This methodology includes procedures that will be used to compare information about participants and non-participants and, also, isolates and systematically assesses competing explanations for the observed outcomes; and

(3) The data collection component of the evaluation plan identifies the data, data sources, and the data analysis to be done.

4. Work Program and Budget (0 to 10 points): The application demonstrates that the resources requested for the project are reasonable and adequate.

a. The match resources are necessary and logical for the proposed project;

b. The partnership arrangements fully describe how they relate to the objectives of the proposed project; and

c. The total cost is reasonable and consistent with the anticipated results.

5. Federal Budget Impact:

a. The project, if successful, will be self-sustaining in one of the following ways (0 to 10 points):

(1) It will result in the more efficient use of existing anti-poverty resources; or

(2) Non-Federal resources would be available to continue services after completion of the demonstration project.

b. The extent to which matching funds are from non-Federal sources, with one point to be given for each 20 percentage points of matching money that is not derived from Federal sources (0 to 5 points).

6. Expected Outcomes (0 to 20 points):

a. The proposed project will result in a measurable and substantial increase in the self-sufficiency of the poor; and

b. The anticipated results and products are specified and the expected benefits for the target groups are delineated.

7. Dissemination of Results (0 to 5 points): The application includes a realistic plan for disseminating the project findings to other eligible entities and to states upon request.

D. *Selection and award process:* 1. The results of the rating process will be used to assist the Director and OCS staff in considering competing applications. Rating scores will weigh heavily in funding decisions but will not be the only factors considered, and highly ranked applications are not guaranteed funding.

2. The Director may also consider other factors, including, but not limited to, comments of staff rating panels and public officials; program staff quality review; geographical distribution of projects; prior program performance of applicants; audit and investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal grants.

3. The Office of Community Services reserves the option to discuss these applications with other funding sources to determine an applicant's performance record.

4. The official award document is the Notice of Grant Award, which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is approved, and the total match required.

The Catalog of Federal Domestic Assistance Number for this Office of Community Services Demonstration Partnership Program is 13.793.

David J. Kirker,

Director, Office of Community Services.

1987 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,500
2	7,400
3	9,300
4	11,200
5	13,100
6	15,000
7	16,900
8	18,800

For family units with more than 8 members, add $1,900 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,860
2	9,240
3	11,620
4	14,000
5	16,380
6	18,760
7	21,140
8	23,520

For Family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,310
2	8,500
3	10,690
4	12,880
5	15,070
6	17,260
7	19,450
8	21,640

For family units with more than 8 members, add $2,190 for each additional member.

Appendix A

BILLING CODE 4150-04-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
☐ NOTICE OF INTENT (OPTIONAL)
☐ PREAPPLICATION
☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
a. NUMBER
b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER
NOTE: TO BE ASSIGNED BY STATE
a. NUMBER
b. DATE ASSIGNED *Year month day* 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code.
h. Contact Person *(Name & Telephone No.)*

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
a. NUMBER | | | * | | | |
MULTIPLE ☐
b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State
B—Interstate
C—Substate Organization
D—County
E—City
F—School District
G—Special Purpose District
H—Community Action Agency
I—Higher Educational Institution
J—Indian Tribe
K—Other *(Specify):*
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant
B—Supplemental Grant
C—Loan
D—Insurance
E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

15. PROJECT START DATE *Year month day* 19

16. PROJECT DURATION *Months*

18. DATE DUE TO FEDERAL AGENCY ► *Year month day* 19

14. TYPE OF APPLICATION
A—New
B—Renewal
C—Revision
D—Continuation
E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars
B—Decrease Dollars
C—Increase Duration
D—Decrease Duration
E—Cancellation
F—Other *(Specify):*
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED
☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT►
To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► *Year month day* 19

30. STARTING DATE *Year month date* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month date* 19

33. REMARKS ADDED
☐ Yes ☐ No

OMB NO 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, ousinesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____Yes _____ No
See instructions for additional information to be provided.

OMB NO 0348-0008

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

OMB NO 0348-0006

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

BILLING CODE 4150-04-C

General Instructions for the SF–424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A–102. It will be used by the Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process have been given an opportunity to review the applicant's submission.

Applicant Procedures for Section I

Applicant will complete all items in Section I with the exception of Box 3, "State Application Identifier." If an item is not applicable, write "NA." If additional space is needed, insert an asterisk "*," and use Section IV. An explanation follows each item:

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A–102 and Federal agency program instructions. Use of this form as a Notice of Intent is at State option. Federal agencies do not require Notice of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared (at applicant's option).

3a. Number assigned by State.

3b. Date assigned by State

4a–4h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance (CFDA) number assigned to program under which assistance is requested. If more than one program (e.g., joint funding), check "multiple" and explain in Section IV. If unknown, cite Public Law or U.S. Code.

6b. Program title from CFDA. Abbreviate if necessary.

7. Use Section IV to provide a summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

10. Estimated number of persons directly benefiting from project.

11. Check the type(s) of assistance requested.

A. Basic Grant—an original request for Federal funds.

B. Supplemental Grant—a request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

E. Other. Explain in Section IV.

12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of the change. for decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 12a—amount requested from Federal Government. 12b—amount applicant will contribute. 12c—amount from State, if applicant is not a State. 12d—amount from local government, if applicant is not a local government. 12e—amount from any other sources, explain in Section IV.

13b. The district(s) where most of action work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."

14. A. New. A submittal for project not previously funded.

B. Renewal. An extension for an additional funding/budget period for project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project with a projected completion date.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

16. Estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augmentations (item 14e).

18. Date preapplication/application must be submitted to Federal agency in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise, write "NA."

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

Applicant Procedures for Section II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).

22b. Check if application is not subject to E.O. 12372.

23a. Name and title to authorized representative of legal applicant.

Federal Agency Procedures for Section III

Applicant completes only Section I and II. Section III is completed by Federal agencies.

26. Use to identify award actions.

27. Use Section IV to amplify where appropriate.

28. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 28a—amount awarded by Federal Government. 28b—amount applicant will contribute. 28c—amount from State, if applicant is not a State. 28d—amount of local government, if applicant is not a local government. 28e—amount from any other sources, explain in Section IV.

29. Date action was taken on this request.

30. Date funds will become available.

31. Name and telephone number of agency person who can provide more information regarding this assistance.

32. Date after which funds will no longer be available for obligation.

33. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

Assurance of Compliance With the Department of Health and Human Services Regulation Under Title VI of the Civil Rights Act of 1964

(hereinafter called the "Applicant")

Name of Applicant (type or print)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88–352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the

Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____

_____

_____

Applicant's mailing address

_____

Applicant (type or print)

By _____

Signature and Title of Authorized Official

NOTE.— If this form is not returned with the application for financial assistance, return it the DHHS, Office of Civil Rights, 330 Independence Ave., SW., Washington, DC 20201

Department of Health and Human Services

Assurance of Compliance With Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 CFR 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contract and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 CFR 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 CFR 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

_____

Name of Designee(s) (Type or Print)

_____

Name of Recipient (Type or Print)

_____

(IRS) Employer Identification Number

_____

Street Address or P.O. Box

_____

City

_____

State Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____

Date

_____

Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, SW., Washington, DC 20201.

Part V

Assurances

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments", and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage. It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services, or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency (EPA) list of Violating

Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal finacial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93–234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a–1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94–135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by the educational institution).

17. It will comply with Pub. L. 93–348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

[FR Doc. 87–9911 Filed 4–30–87; 8:45 am]

BILLING CODE 4150–04–M

federal register

Friday
May 1, 1987

Part X

Office of Personnel Management

5 CFR Parts 110 and 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations; Interim Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 110 and 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is reissuing its interim regulations governing solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations under the authority of Executive Order 12353 (March 23, 1982), Charitable Fund-Raising, 47 FR 12785 (March 23, 1982), and Executive Order 12404 (February 10, 1983), Charitable Fund-Raising, 48 FR 6685 (February 15, 1983). These regulations are intended to be consistent with the restrictions placed on OPM by section 619, Pub. L. 99–500 and Pub. L. 99–591. They will provide a system for administering the fall 1987 charitable solicitation campaign to be conducted by Federal personnel in their Government workplaces and set forth ground rules under which charitable organizations may receive contributions from Federal personnel through the Combined Federal Campaign (CFC).

DATES: Interim rules effective on May 1, 1987. Comments must be received on or before June 1, 1987.

ADDRESS: Send or deliver comments to Hugh Hewitt, General Counsel, Office of Personnel Management, Room 7354, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jerry Barrett, (202) 632–5564.

SUPPLEMENTARY INFORMATION: OPM finds itself in the extraordinary and ironic position of recognizing numerous flaws in the regulations it is herein issuing, but, due to a unique combination of circumstances, prevented from correcting these deficiencies. The CFC exists only by order of the President and thus must be conducted in accord with the President's instructions. At the same time it must faithfully implement the President's directives, Congress has declared that OPM may not issue new regulations to do just that. Rather, Congress has ordered OPM either to disregard the content of E.O. 12404 or reissue the regulations used during the 1984 and 1985 campaigns. We cannot and will not comtemplate, much less implement, the former; thus we must do the latter.

We reissue the 1984 regulations with a great deal of regret. These regulations do not serve the Government well. More important, however, they do not serve the poor and needy of this country and indeed of the world. In the more than a quarter-century since the CFC began, it has grown from a noble idea well-launched into a bureaucratic nightmare, a maze of conflicting rules, rulings, and guidance that increasingly combine and operate to blur the honorable intentions of Federal employees everywhere to contribute to the alleviation of human suffering and need.

Were OPM free to do so, we would aggressively attack this collection of regulatory inequities. We would, among other things:

—Rationalize "local presence" rules that annually result in the expenditure of hundreds of thousands of dollars by national charities that must cobble together a patchwork of indices of community involvement despite their pursuit of a national mission holding out benefits to all Americans.

—Make clear that Principal Combined Fund Organization's (PCFO) enjoy a position of trust vis-a-vis the Federal employee that may not be compromised by the delegation of decision-making authority to the burgeoning corps of private "consultants" that operate far removed from the scrutiny of local Federal Coordinating Committees.

—Establish a fair and easy-to-administer formula for the distribution of contributions that employees do not designate to a particular charity. Such a formula would meet the concerns expressed by the General Accounting Office and recognized by OPM that the current arrangement which allows PCFO's an unlimited authority over the distrubution of these contributions produces at least the appearance of a conflict of interest in every local campaign.

—Eliminate the option currently available to employees of "writing-in" charities not listed in the campaign brochure. This option increases the overhead of campaign operation, thereby depriving beneficiaries of additional receipts. Furthermore, when an employee writes in an organization that is not eligible to receive a charitable contribution, this results in the nullification of the employee's intent to contribute.

—Permit the acknowledgement of the employee's gift by the recipient charity, thus ending the annual outcry from employees that they are uncertain if their contributions ever reach the charity for which they are intended.

—Establish a mechanism within OPM to increase oversight of PCFO operations to ensure fairness in the eligibility process, campaign planning, and campaign operation.

—Strengthen and clarify protection that prevent employee coercion.

All of these reforms should be done. None of them can be done. Congressional restrictions conflict with Presidential directive. OPM cannot abandon the Executive Order, but the agency can continue to study the future shape of the CFC. It is the agency's desire to produce such a compelling argument in favor of reform of the CFC so as to convince all of the Campaign's many interested parties and critics—and especially the Federal Government—of the need for a coherent new approach.

To this end Director Constance Horner will be announcing the formation of a five-member task forced to address the question of the future direction of the CFC. To provide the task force with the necessary expertise and institutional support for its efforts, it will be chaired by OPM's General Counsel. The other four members will be drawn from the private sector and will possess the credentials to ensure that the report of the task force will be objective and thorough. OPM invites comments on these proposals and the interim regulations, and requests that all interested parties take this opportunity to comment not only upon the interim rules but also to provide the task force with background relevant to its deliberations.

Scope

This part governs all fundraising by private voluntary charitable agencies among Federal employees and members of the uniformed services of the United States at their places of work or duty. Thus, it is applicable to civilan and uniformed personnel in all Executive departments and agencies throughout the world.

E. O. 12291, Federal Regulation

After a careful review of the interim rule including the analysis set forth below for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule for purposes of Executive Order 12291, Federal Regulation, because it will not result in—

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

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

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

Regulatory Flexibility Act

(1) *Reasons why action by agency is being considered.* These regulations are being published in response to the necessity to prescribe rules for the CFC that conform to recent legislative and judicial developments, in particular the passage of the Act, described above.

(2) *Objectives of and legal basis for rule.* These regulations are issued under Executive Orders 12353 and 12404. The objective of these regulations is to provide for a system of administering the annual charitable solicitation drives among Federal civilian and military employees in a CFC, and to set forth ground rules under which charitable organizations receive gifts through the CFC, in the light of recent legislative and judicial developments.

(3) *Number of small entities covered under rule.* The rule applies to all organizations in the United States qualified under 26 U.S.C. 501(c)(3).

(4) *Reporting, recordkeeping, and other compliance requirements of the rule.* The rules would significantly decrease reporting, recordkeeping, and other requirements. Under the principle of self-certification, each affected entity would determine itself whether it meets the requirements set forth in the rule. This would significantly decrease—indeed practically eliminate—any regulatory or paperwork burden, especially as compared with former requirements. Charitable organizations will also not need to present detailed documentary evidence and register with the Government to receive funds, so that charities will be subject to no additional requirements by the Government.

In place of the Government-subsidized listing of charitable agencies and descriptions of their purpose, charities may then undertake the cost of their own advertising, which results in income to themselves. It is neither unjust nor a departure from present practice in charitable campaigns outside the Federal workplace to have the beneficiaries of fundraising bear all or some of its costs. It cannot be argued that by removing a Government subsidy the Government is adversely affecting any small entities, as it is merely continuing the status quo for some organizations—those who were previously beneficiaries—and minimizing the Government's regulatory burden on all charitable entities in return.

In doing this, the rule complies and conforms with the purposes of the Regulatory Flexibilty Act to minimize the regulatory burden on small entities.

To facilitate the presentation of charitable organizations' messages to Federal employees, the Government again opens its internal U.S. mail system to these charitable agencies. By permitting direct mail communications, cheap unit cost advertising is made available. Moreover, the regulations specifically allow for joint appeals and brochures, by federations of charitable organizations, or other combinations of charitable organizations, to allow efficient cost-sharing by small entities that could result in greater volumes of contributions. The rules merely remove the Government from the regulatory process to the maximum extent possible—removing its subsidy and providing an efficient means by which entities may appeal to Federal employees for contributions to their charities. The decision as to which charities shall receive funds is left wholly in the hands of the Federal employee, where it belongs. The rules assure the free choice of the employee, rather than guarantee any entity a right to a subsidized special appeal to the employee. Certainly, the Government has no obligation to subsidize what it need not regulate, nor to guarantee monetary gain; but it merely must allow access to compete for the employee's donation. This is provided by the rule. As a result, a regulatory burden is lifted, and a means is substituted that gives all entities, small and large, cost-efficient and unregulated access to the audience of Federal employees.

(5) *Relevant Federal rules duplicating, overlapping, or conflicting with the rule.* By using the definition of the Internal Revenue Code under 26 U.S.C. 501(c)(3), existing rules, familiar to all because of the pervasive influence of the tax laws, are utilized to avoid unnecessary duplication, overlap, and conflict with other Government regulations.

(6) *Clarification, consolidation, and simplification of compliance and reporting requirements.* As has been noted, the new rules would simplify compliance and reporting requirements for small entities as compared with existing rules.

(7) *Use of other standards.* Appropriate alternative standards are not available that would impose less burdensome regulations.

(8) *Exemption of small entities from coverage.* Exemptions from coverage for small entities is not practical, because few restrictions exist for either large or small entities. As a result of the above Regulatory Flexibility Analysis, I have determined that the rule will not have any significant detrimental economic impact on a substantial number of small entities. Indeed, the regulations greatly advance the purposes of the Regulatory Flexibility Act by significantly reducing regulatory burdens on the public.

Paperwork Reduction Act

The reporting requirements contained in this interim rule (§§ 950.211 (h) and 950.211(m)) have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3235, Washington, DC 20503; Attention: Desk Officer for the Office of Personnel Management. A copy should be submitted to Hugh Hewitt, General Counsel, Office of Personnel Management, 1900 E Street, NW., Room 7353, Washington, DC 20415.

List of Subjects

5 CFR Part 110

Governmental employees, Reporting and recordkeeping requirements.

5 CFR Part 950

Charitable contributions, Government employees, Nonprofit organizations.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Parts 110 and 950 of Title 5 of the Code of Federal Regulations as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 110 continues to read as follows:

Authority: 5 U.S.C. 1103; Section 110.201 is also issued under 5 U.S.C. 1104, 5 CFR Part 5.2 (c) and (d); 44 U.S.C 3507(f); 5 CFR Part 1320.

2. The amendment to § 110.201(b), published at 51 FR 36176, Oct. 8, 1986, is republished as follows:

§ 110.201 OMB control numbers.

(b) * * *

5 CFR citation	OMB control number
* * * * *	
Part 950	3206-0131

3. Part 950 is revised to read as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—Administration and General Provisions

Sec.
950.101 Definitions.
950.103 Summary description of the program.
950.105 Federal policy on civic activity.
950.107 Preventing coercive activity.

Subpart B—Organization and Functional Responsibilities

950.201 Development of policy and procedures.
950.203 Program administration.
950.205 Program coordination.
950.207 Local voluntary agency representatives.
950.209 Local Federal agency heads.
950.211 Local Federal Coordinating Committees.
950.213 Avoidance of conflicts of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

950.301 Types of voluntary agencies.
950.303 Types of fundraising methods.
950.305 Considerations in making Federal arrangements.
950.307 Definition of terms used in Federal arrangements.
950.309 Federated and overseas campaigns.
950.311 Off-the-job solicitation at places of employment.

Subpart D—Requirements for National Voluntary Agencies

950.401 Purpose.
950.403 General requirements for national agencies.
950.405 Specific requirements for national agencies.

Subpart E—The Local Combined Federal Campaign

950.501 Local voluntary agencies.
950.503 Participation in Federal campaigns by local unaffiliated agencies.
950.505 Responsibility of local Federal Coordinating Committees.
950.507 Local CFC plan.
950.509 Organizing the local campaign: The Principal Combined Fund Organization.
950.511 Basic local CFC groundrules.
950.513 Contributions.
950.515 Dollar goals.
950.517 Suggested giving guides and voluntary giving.
950.519 Receipt and accounting for contributions.
950.521 Campaign and publicity materials.
950.523 Payroll withholding.
950.525 National coordination and reporting.

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR, 1982 Comp., p. 139, and E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983).

Subpart A—Administration and General Provisions

§ 950.101 Definitions.

(a) The terms "voluntary agency," "voluntary health and welfare agency," "voluntary charitable agency," and "voluntary charitable health and welfare agency" mean an organization that is organized and operated for the purpose of rendering, or of materially or financially supporting the rendering of, one or more of the following services directly to, and for the direct benefit of, human beings.

(1) Delivery of health care to ill or infirm individuals;

(2) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(3) Health research for the benefit of ill or infirm individuals;

(4) Delivery of education, training, and care to physically and mentally handicapped individuals;

(5) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(6) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(7) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, education, opportunities, and job training;

(8) Legal aid services that are provided to needy, poor, and indigent individuals solely because of their inability to afford legal counsel and without a policy or practice of discrimination for or against the kind of cause, claim, or defense of the individual:

(9) Protection of families that, on account of need, poverty, indigence, of emergency, are in long-term or short-term need of family, child-care, and maternity services; child and marriage counseling; foster care; and guidance or assistance in the management and maintenance of the home and household;

(10) Relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(11) Relief of needy, poor, and indigent adults and of the elderly;

(12) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(13) Assistance, consistent with the mission of the Federal agency or facility involved, to members of its staff or service who, by reason of geographic isolation, emergency condition, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs;

(14) Lessening of the burdens of government with respect to the provision of any of the foregoing services; or

(15) Any other health and welfare service rendered by a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3).

(b) Campaign terms:

(1) "Director" shall mean the Director of the United States Office of Personnel Management, or her delegate;

(2) "Employee" shall mean any person employed by the Government of the United States of any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniformed services;

(3) "Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fundraising program established and administered by the Director pursuant to Executive Order 12353, as amended by Executive Order 12404, and any subsidiary units of such program.

(4) "Community" shall mean a community that is defined either by generally recognized bounds or by its relationship to an isolated Government installation;

(5) "Direct contributions" shall mean gifts, in cash or in donated in-kind material given by individuals and/or non-governmental sources directly to the spending health and welfare organization.

(6) "Indirect contributions" shall mean gifts, in cash or in donated in-kind material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues or others funds from affiliated organizations or government, which are not to be considered as public "contributions."

(c) The term "Principal Combined Fund Organization" or "PCFO" means the organization in a local Combined Federal Campaign that has been selected and charged pursuant to § 950.509 to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal Coordinating Committee and the Director. All of its

Campaign duties shall be conducted under the title "Principal Combined fund Organization for ———— (local CFC)" and not under the corporate title of the qualifying federation.

§ 950.103 Summary description of the program.

(a) *Assigned campaign periods.* In the United States, Combined Federal Campaigns are held when set by the Director, usually in the fall; the DOD Overseas Combined Federal Campaign is also usually held during the fall. The solicitation period for a Combined Federal Campaign is normally limited to 6 weeks, but may be extended for good cause by the local Federal Coordinating Committee.

(b) *Combined Federal Campaign.* At locations where there are 200 or more Federal personnel, all campaigns must be consolidated into a single, annual drive, known as the Combined Federal Campaign. The campaign is managed by the organization designated as the Principal Combined Fund Organization, in accord with § 950.509, under the supervision of the local Federal Coordinating Committee and the Director. Such campaigns are conducted under administrative arrangements that provide for allocation of contributions in accordance with specific designations by doners. Solicitations are conducted exclusively by Federal personnel and only Federal personnel are solicited.

(c) *Decentralized operations.* The federalism principle shall guide Campaign organization. Following designation of a Principal Combined Fund Organization, local representatives of that organization initiate campaigns in their local community by direct contact with the heads of Federal offices and installations. Each Federal agency conducts its own solicitation among its employees, using campaign materials, supplies, and speakers furnished by or through the Principal Combined Fund Organization, under the direction of the local Federal Coordinating Committee and the Director.

(d) *Solicitation methods.* Employee solicitations are conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing any gift or keeping it confidential.

(e) *Off-the-job solicitation.* Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility. Such voluntary agencies may solicit Federal employees at their homes as they do other citizens of the community, or appeal to them through union, veteran, civic, professional, political, legal defense, or other private organizations. In addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings.

(f) *Prohibited discrimination.* The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the Government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the Government must be proscribed in the Campaign. Accordingly, discrimination for or against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of management and execution of the Campaign. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this part to participate in the Campaign, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

§ 950.105 Federal policy on civic activity.

Federal personnel are encouraged to participate actively in the work of voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with Federal agency policy and prudent use of official time. They are encouraged also to devote private time to such volunteer work.

§ 950.107 Preventing coercive activity.

True voluntary giving is basic to Federal fundraising actitivies. Actions that do not allow free choices or even create an appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fundraising policy. The following activities are not in accord with the intent of Federal fundraising policy and, in the interest of preventing coercive activities in Federal fundraising are not permitted in Federal fundraising campaigns:

(a) Supervisory solicitation of employees supervised;

(b) Setting 100 percent participation goals;

(c) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

(d) Establishing personal dollar goals and quotas; and

(e) Developing and using lists of noncontributors.

Subpart B—Organization and Functional Responsibilities

§ 950.201 Development of policy and procedures.

Director, U.S. Office of Personnel Management. Under Executive Order 12353 (March 23, 1982), Charitable Fundraising, and Executive Order 12404 (February 10, 1983), Charitable Fundraising, the Director is responsible for establishing charitable fundraising policies and procedures in the Executive branch. With the advice of appropriate interested persons and organizations and of the Executive departments and agencies concerned, she makes all basic policy, procedural, and eligibility decisions for the program. The Director may authorize the conduct of demonstration projects in one or more CFC locations to test alternative arrangements differing from those specified in this part for the conduct of fundraising activities in Federal agencies.

§ 950.203 Program administration.

(a) *Federal agency heads.* The head of each Federal Executive department and agency is responsible for:

(1) Seeing that voluntary fundraising within the Federal department or agency is conducted in accordance with the policies and procedures prescribed by this part;

(2) Designating a top-level representative as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fundraising program with the Federal agency;

(3) Assuring full participation and cooperation in local fundraising campaigns by all installations of the Federal agency;

(4) Assuring that the policy of voluntary giving and clear employee choice is upheld during the fundraising campaign; and

(5) Providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fundraising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper organization channels for pursuing such complaints.

(b) *Fundraising Program Coordinators.* The responsibilities of Federal agency Fundraising Program Coordinators are to:

(1) Cooperate with the Director, the local Federal Coordinating Committee, and the Principal Combined Fund Organization in the development and operation of the program;

(2) Maintain direct liaison with the Office of the Director in the administration of the program;

(3) Publicize program requirements throughout the Federal department or agency;

(4) Answer inquiries about the program from officials and employees and from external sources; and

(5) Investigate and arrange for any necessary corrective action on complaints that allege violation of fundraising program requirements within the Federal agency.

§ 950.205 Program coordination.

The Director coordinates the Federal agencies administration of the fundraising program and maintains liaison with voluntary agencies.

§ 950.207 Local voluntary agency representatives.

Federated and national voluntary agencies provide their state and local representatives with policy and procedural guidance on the Federal program. The local representatives are responsible for furnishing educational materials, speakers, and campaign supplies as may be required and appropriate to the Federal program.

§ 950.209 Local Federal agency heads.

The head of the Federal department or agency provides the heads of the local Federal offices and installations with copies of the Federal fundraising regulations. The local Federal agency heads are responsible for:

(a) Cooperation with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization, and local Federal officials in organizing local Federal campaigns;

(b) Undertaking official campaigns within their offices or installations and providing active and vigorous support with equal emphasis for each authorized campaign;

(c) Assuring that personal solicitations, on the job are organized and conducted in accordance with the procedures set in these regulations; and

(d) Assuring that authorized campaigns are kept within reasonable administrative limits of official time and expenses.

§ 950.211 Local Federal Coordinating Committees.

(a) *Summary of duties and powers.* When there are a number of Federal agency offices and installations in the same local area, some interagency coordination is necessary in order to achieve effective community-wide campaigns and to improve general understanding and compliance with the fundraising program. The Director assigns the responsiblility for local coordination to existing organizations of Federal agency heads whenever possible and to special committess where needed. The local Federal Coordination Committee is authorized to make all decisions within the provisions and policies established in this part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund Organization. Such decisions may be appealed, however, to the Director.

(b) *Authorized local Federal Coordinating Committee.* Coordinating responsiblity is assigned by the Director to one of the following organizations.

(1) Federal Executive Boards. The boards exist in principal cities of the United States for the purpose of improving interagency coordination. They are composed of local Federal agency heads who have been designated as Board members by the heads of their departments and agencies under Presidential authority.

(2) Federal Executive Associations and Federal Business Associations, self-organized associations of local Federal officials, and the Department of Defense National Policy Coordinating Committee.

(3) Fundraising Program Coordinating Committee. These committees are established in communities where there is no Federal Coordinating Committee in existence. Leadership in organizing such a committee is the responsibility of the head of the local Federal installation that has the largest number of civilian and uniformed services personnel. Local Federal agency heads or their designated representatives serve on the committee and determine all organizational arrangements.

(c) *Employee union representation.* In order to ensure employee participation in the planning and conduct of the CFC, employee representatives from the principal employee unions of local Federal installations should be invited to serve in whatever organization exercises local coordinating responsibilities.

(d) *Fundraising responsibilities.* Within the limits of the policies, procedures, and arrangements made nationally, the fundraising responsibilities of local Federal Coordinating Committees are to:

(1) Facilitate local campaign arrangements. The Federal Coordinating Committee.

(i) Names a high-level chairman for the authorized Federal campaigns;

(ii) Provides lists of Federal activities and their personnel strength;

(iii) Cooperates on interagency briefing sessions and kick-off meetings; and

(iv) Supports appropriate publicity measures needed to assure campaign success.

(2) *Administer program requirements.* The Federal Coordinating Committee is responsible for organizing the local Combined Federal Campaign, supervising the activities of the Principal Combined Fund Organization, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the Federal fundraising program.

(3) Develop understanding of campaign program policies and procedures and voluntary agency programs. The local Federal Coordinating Committee serves as the central medium for communicating programs, policies and procedures of the Campaign and for understanding the organizations employees are being asked to support and how employees can obtain services they may need from these organizations.

(e) *Principal Combined Fund Organization.* The local Federal Coordinating Committee will supervise a local Principal Combined Fund Organization. The Principal Combined Fund Organization will receive money from Federal employees and administer the local campaign, under the direction of the local Federal Coordinating Committee.

(f) *Communication and resolution procedures through the Director, Office of Personnel Management.* Each local Federal agency head will receive fundraising directions through his Federal agency channels and will raise questions that pertain to fundraising activities within his Federal agency by the same means. However, the local Federal Coordinating Committee refers unresolved local fundraising questions or problems that are common to several Federal agencies directly to the Director. The Director communicates directly with the chairman of the local Federal Coordinating Committee for information about the local fundraising situation.

(g) *Integrity of local Federal Coordinating Committee.* A local Federal Coordinating Committee may not serve as a Principal Combined Fund Organization.

(h) *Universal eligibility.* All health and welfare charities organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3) are eligible to receive designations in any local CFC. The local Federal Coordinating Committee shall permit all such agencies to have an opportunity, as provided in the rules of the Campaign, to receive contributions from Federal employees.

(i) *Local lists.* At its option, a local Federal Coordinating Committee may publish a list of health and welfare charities eligible to receive contributions through the local CFC. Any such list shall consist of all entities qualifying under section 950.101(a) that meet the provisions of section 950.211(m), that certify that they meet all applicable provisions of Subparts D and E of this part, and that make timely application for inclusion on the local list.

(j) *Notice of local list; open meeting.* Where the local Federal Coordinating Committee elects to publish a list, it shall make a public announcement to that effect not later than 60 days prior to the commencement of the local campaign. The announcement shall invite applications from all qualified entities for inclusion on the local list and shall specify a date by which applications must be submitted to the local Federal Coordinating Committee. If such a process is provided, then local eligibility decisions shall be made at an open meeting of the local Federal Coordinating Committee upon giving reasonable notice to interested parties.

(k) *Notice of LFCC decisions.* The local Federal Coordinating Committee shall give applicants reasonable notice, in accordance with local CFC practice, of the dispositions made of their applications.

(l) *Appeals.* Applicants denied listing may petition the local Federal Coordinating Committee to reconsider its denial. Such petition for reconsideration may be dismissed as untimely unless it is received by the local Federal Coordinating Committee within 10 days after the petitioning party has received actual or constructive notice of the decision of which reconsideration is sought. A petition for reconsideration shall be supported by facts justifying reversal of the original decision. If the local Federal Coordinating Committee unanimously refuses to reconsider its decision, or reconsiders its decision and unanimously affirms the denial of admission, then its decision shall be final. If at least one member of the local Federal Coordinating Committee believes that the decision merits further review, or if the local Federal Coordinating Committee, having received a petition for reconsideration, fails to act thereon within 10 days of its actual receipt thereof, then the matter may be appealed, pursuant to the provisions of section 950.525(e), to the Director, whose decision shall be final.

(m) *Standards of eligibility for local listing.* Any entity qualifying under § 950.101(a), notwithstanding its location or geographic area of service, may receive a gift designate to it in writing on a prescribed CFC pledge card by an individual donor. To be manageable, however, the optional local list, if any, as permitted under § 950.211(i), must be limited to charities that actively render their services in the local CFC area. Accordingly, any local list will include only entities that have a direct and substantial presence in the local campaign community, meaning that Federal employees and their families are able to receive, within a reasonable distance from their duty stations or homes, services that are directly provided by the voluntary agency or that demonstrably depend upon, or derive from, the specific research, educational, support, or similar activities of the particular voluntary agency. Demonstration of direct and substantial presence in the local campaign community, including adequate documentation thereof, shall at all times, and for all purposes, be the burden of the voluntary agency. Such direct and substantial presence shall be determined in the light of the totality of the circumstances in each case, including, but not necessarily limited to, consideration of the following factors:

(1) The availability of services, such as examinations, treatments, inoculations, preventative care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, shelter, and clothing, to persons working or residing in the local campaign community.

(2) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services are rendered or through which they may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider, or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof.

(3) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.

(4) Awareness within the local Federal community of the existence, activities, and services of the voluntary charitable agency. Provided, that voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the criteria set forth in this part except for the requirement of direct and substantial presence in the local campaign community, shall be eligible for inclusion on the local list in each local campaign area of the Combined Federal Campaign.

§ 950.213 Avoidance of conflicts of interest

Any Federal employee who serves on the Eligibility Committee, a local Federal Coordinating Committee, or as a Federal agency fundraising program coordinator, must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

§ 950.301 Types of voluntary agencies

Voluntary agencies are private, nonprofit, self-governing organizations financed primarily by contributions from the public. Some are national in scope, with a national organization that provides services at localities through state of local chapters or affiliates. Others are primarily local, both in form of organization and extent of services.

§ 950.303 Types of fundraising methods.

(a) The methods used by voluntary agencies in public fundraising shall be either federated or independent. A national federated group shall meet the same eligibility criteria as a voluntary agency, and have at least 10 local voluntary agency presences in each of at least 300 local combined campaigns. In federated campaigns, local voluntary agency representatives join contractually into a single organization for fundraising purposes. A local United Way, united fund, community chest, or other local federated group may be considered and supported as a single agency. Local chapters or affiliates of national agencies may form local federations or be admitted as additional participating members of national federated groups.

(b) An independent campaign is one conducted by a local unit of a national voluntary agency through its own fundraising organization, or by a local nonaffiliated agency which otherwise

meets established eligibility criteria. Voluntary agencies may conduct independent campaigns or participate in a federation.

§ 950.305 Considerations in making Federal arrangements.

(a) *On-the-job solicitation.* In order to have only one on-the-job solicitation by Federal personnel and of Federal personnel, i.e., a Combined Federal Campaign, individual appeals must be combined into a single joint campaign on behalf of charitable purposes in conformance with the policies and procedures prescribed in this part.

(b) *Campaign arrangements established nationally.* Basic campaign arrangements are established by the Director. Local Federal agency heads and Coordinating Committees are not authorized to vary from the established arrangements except to the extent that local variations are expressly provided for in this part.

(c) *Number of solicitations.* Not more than one on-the-job solicitation of Federal personnel on behalf of charitable purposes will be made in any year at any location, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Responsible conduct.*—In the event a voluntary agency fails to adhere to the requirements or to the policies and procedures of the Federal program, its privilege to receive gifts through the Combined Federal Campaign may be withdrawn by the Director at any time after due notice of the voluntary agency and opportunity for consultation.

§ 950.307 Definition of terms used in Federal arrangements.

(a) *Domestic area.* The 50 United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *Overseas area.* All other points in the world where Federal employees or members of the uniformed services are stationed.

(c) *Federated community.* A federated community is a geographical location within the domestic area where a federated fundraising program exists. In a federated community, recognized national voluntary agencies may join a federated campaign group or participate individually. However, voluntary agencies "supported primarily through United Ways, united funds, and community chests' shall be recognized for participation in a federated community only as participating members of the local United Way, fund, or chest.

(d) *Local non-affiliated voluntary health and welfare agency.* Local voluntary agencies that provide health and welfare services in the local area, and otherwise meet the criteria of this part, may be non-affiliated.

§ 950.309 Federated and overseas campaigns.

(a) *Authorized federated groups.* (1) United Way of America and any local United Way, united fund, community chest, or other local federated group that is a member in good standing of, or is recognized by, United Way of America and that meets the requirements in these regulations shall be recognized in its local campaign area as the federated group consisting of, and representing, its member voluntary agencies that also meet these requirements. Certifications as to the requirements on behalf of local United Ways, united funds, and community chests and each member voluntary agency will be made by United Way of America.

(2) The American Red Cross, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups which shall meet the standards under this part, shall be recognized as the federated group consisting of, and representing, their respective member voluntary agencies that also meet all requirements of this part.

(3) Member agencies of federated groups are responsible for furnishing to their respective federated groups adequate evidence of their compliance with all requirements of this part, and federated groups are responsible for ensuring that such adequate evidence is properly furnished and, as needed, revised, in accordance with the principles set forth at § 950.401. In a local campaign where an optional official list of voluntary agencies is published, pursuant to § 950.521(e)(2), then federated groups and unaffiliated voluntary agencies applying for local listing shall seasonably furnish to the local Federal Coordinating Committee their respective written certificates of compliance with all requirements of this part. In all other cases, such certificate shall be required as provided in § 950.521(e)(2)(v).

(b) *Local federated agencies.* To be eligible for participation in the Federal frund-raising program, the local federated group must be broadly representative in its board and committee membership of the community and must be making bona fide efforts to meet community needs. Requirements for participation in a local federated group must be in writing, available to the public, reasonable, and applied fairly and uniformly to all local voluntary agencies requesting participation. Procedures must be provided by the federated group for at least one review of any decision denying participation requested by a local voluntary agency. The review must be conducted by a committee or other body within the federated group that did not participate in the original decision. A written statement of the reasons for denial must be provided to the applicant voluntary agency.

(c) *"Causes."* Solicitation for a health or other "cause," e.g., for "Mental Health" or "Heart Disease," without identification of the specific voluntary agency for which the funds are sought, is prohibited. All funds collected from Federal personnel must be allocated only to specific voluntary agencies.

(d) *Designation of federated area.* The recognition of a local Federal Coordinating Committee by the Director designates the community served by that Committee as a recognized local campaign site. Two or more authorized local Federal Coordinating Committees are authorized to develop coordinated solicitations best suited to the needs of their localities.

(e) *Overseas campaign.*—(1) *DOD Overseas Combined Federal Campaign.* (i) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a 6 week period in the fall. Any national voluntary agency that the local Federal Coordinating Committee for the DOD Overseas CFC determines, in its discretion, most likely meets the definitions and standards set forth in this part for the Principal Combined Fund Organizations shall be eligible to be designated as the Principal Combined Fund Organization for the DOD Overseas CFC. The American Red Cross, the International Service Agencies-Overseas, the National Health Agencies, the United Service Organization, and such other federated groups that meet the standards under this part shall be authorized privileges on behalf of their member voluntary agencies that also meet all requirements of this part. The local Federal Coordinating Committee for the DOD Overseas CFC shall designate the Principal Combined Fund Organization for the Overseas Campaign, which may be the National Voluntary Organizations Campaign Committee.

(ii) Contributors to the DOD Overseas Combined Federal Campaign designate their gifts to one or more agencies or the Principal Combined Fund Organization. The Principal Combined Fund Organization for the overseas campaign shall pay the amounts collected directly

to the designated voluntary agencies, less "shrinkage" and the processing percentage, if any, that is approved in advance of the campaign by the Federal official in the overseas area responsible for the local campaign arrangements.

(2) *Local voluntary agency campaigns.* The heads of overseas offices and installations may, at their discretion, permit their military and civilian personnel to solicit each other on behalf of local voluntary agencies. Such campaigns will be conducted in accordance with the basic policies and procedures of the Federal program and at times which do not conflict with the DOD overseas Combined Federal Campaign period. The standards in this part will be used as guidelines. Federal leadership in organizing such campaigns will be assumed by the head of the overseas Federal establishment that has the largest number of Government personnel in the campaign area.

(3) *Optional participation by certain civilian agencies.* Federal civilian departments and agencies that have traditionally considered their overseas personnel as members of the National Capital Area for fund-raising purposes may continue this practice.

(4) *On-base health and welfare activities.* On-base morale, welfare and recreational activities may be supported from CFC funds.

§ 950.311 Off-the-job solicitation at places of employment.

Voluntary agencies may be authorized off-the-job solicitation privileges at places of Federal employment under such reasonable conditions as may be specified by the local head of the Federal installation involved, provided that such conditions are not inconsistent with the part. Dual solicitation conflicts with the objective of a combined campaign and is not authorized. Accordingly, this privilege shall be extended only under the following circumstances:

(a) *Family quarters on military installations.* Voluntary agencies may be permited to solicit at private residences or at similar on-post family public quarters in unrestricted areas of military installation at the descretion of the local commander. However, such solicitation may not be conducted by military or civilian personnel in their official capacity during duty on non-duty hours, nor may such solicitation be conducted as an official command-sponsored project. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in voluntary agency activities during their off-duty hours.

(b) *Public entrances of federal buildings and installations.* Voluntary agencies that engage in limited or specialized methods of solicitation—for example, the use of "poppies" or other similar tokens by veterans organizations—may be permitted to solicit at entrances or in concourses or lobbies of Federal buildings or installations normally open to the general public. Solicitation privileges will be governed by the rules issued by the General Services Administration pursuant to the Public Buildings Cooperative Use Act of 1976, as amended, or other applicable Government legal authority.

Subpart D—Requirements for National Voluntary Agencies

§ 950.401 Purpose.

These requirements are established to ensure that the funds contributed by Federal personnel will be used for the stated purposes of the recipient voluntary agencies. The Office of Personnel Management acknowledges the voluntary agencies are regulated, as to the integrity of their operations and financies, by State and local governments, by the federated groups of which they may be members, and by the discipline of the markeplace. OPM and local Federal Coordinating Committees will therefore be guided by the principle of self-certification and will accord a presumption of validity to the written representations of voluntary agencies and federated groups that the requirements of this part are satisfied.

§ 950.403 General requirements for national agencies.

(a) *Type of agency.* Only nonprofit, tax-exempt, charitable organizations, supported by voluntary contributions from the general public and providing direct and substantial health and welfare services through their national organization, affiliates or representatives are eligible for approval. All such services must be consistent with the policies of the United States Government.

(b) *Integrity of operations.* Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposed of the voluntary agency.

(c) *National scope.* A national voluntary agency is one that:

(1) Is organized on a national scale with a national board of directors that represents its constituent parts, and exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates;

(2) Has earned goodwill and acceptability throughout the United States, particulary in cities or communities within which or near which are Federal offices or installations with large numbers of personnel; and

(3) Has national scope, that is, scale, goodwill, and acceptability, which may be demonstrated as follows:

(i) By a voluntary agency's provision of a service in many (c. one quarter) States, or in several foreign countries, or in several parts of one large foreign nation;

(ii) By derivation of contributor support from many parts of the Nation;

(iii) By the extent of public support and the number and the geographical spread of contributors; and

(iv) By the national character of any public campaign, which may be shown by an applicant having at least 200 local chapters, affiliates, or representatives that promote its campaign.

(d) *Type of campaign.* Approval will be granted only for fundraising campaigns in support of current operations. Capital fund campaigns are not authorized.

§ 950.405 Specific requirements for national agencies.

(a) *Corporate and tax status.* A voluntary agency must be one;

(1) That is a voluntary charitable health and welfare agency as defined in section 950.101;

(2) This is voluntary and broadly supported by the public, meaning

(i) That it is organized as a not-for-profit corporation or association under the laws of the United States, a state, a territory, or the District of Columbia;

(ii) That it is classified as tax-exempt under 26 U.S.C. 501(c)(3), and is eligible to receive tax deductible contributions under 26 U.S.C. 170; and

(iii) That, with exception of voluntary agencies whose revenues are affected by unusual or emergency circumstances, as determined by the Director, it has received at least 50 percent of its revenues from sources other than the Federal Government or at least 20 percent of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign;

(3) That is directed by an active board of directors, a majority of whose members serve without compensation;

(4) That it adopts and employs generally accepted accounting principles and was audited by a certified public accountant in the year immediately preceding any year in which it applies for admission to, or certifies its

eligibility to receive donations from, the Combined Federal Compaign;

(5) That can demonstrate, if its fundraising and administrative expenses is in excess of 25 percent of total support and revenue, that is actual expense for those purposes is reasonable under all the circumstances in its case;

(6) That ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts.

(b) *Fundraising practice.* The voluntary agency's publicity and promotional activities must assure protection against unauthorized use of its contributors lists; must permit no payment of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fundraising; and must permit no general telephone solicitation of the public.

(c) *Reports (a) Annual report.* The voluntary agency must prepare an annual report to the general public that includes a full description of the voluntary agency's activities and accomplishments and the names of chief administrative personnel.

(2) *Combined reports.* Voluntary agencies that represent more than one subunit must prepare a combined annual financial report to the general public in accordance with generally accepted accounting principles. The combined report shall include all income and expenditures for the national operations and all chapters, committies, affiliates, or satellites.

(d) *Reporting by American Red Cross.* For purposes of this part, the American Red Cross and its chapters are recognized as operating an accounting and financial system in substantial compliance with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations and certificate to this effect by local chapters is not required.

Subpart E—The Local Combined Federal Campaign

§ 950.501 Local voluntary agencies.

(a) A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope. Each voluntary agency shall cerify to its compliance with these criteria, or shall have such certification submitted on its behalf by the federated group, if any, of which it is a member, in accordance with the principles of internal integrity set forth in § 950.401.

(b) An on-base morale, welfare and recreational activity authorized by a military base commander may be supported from CFC funds.

§ 950.503 Participation in Federal campaigns by local unaffiliated agencies.

Arrangements shall be made by the Central Receipt and Accounting Point to distribute contributions to local unaffiliated voluntary agencies, after appropriate adjustments are made for "shrinkage" and approved administrative costs.

§ 950.505 Responsibility of local Federal Coordinating Committees.

Each local Federal Coordinating Committee is required to organize a Combined Federal Campaign in the local area for which it has fund-raising responsibility. The heads of Federal departments and agencies will request their local officials to cooperate fully with the decisions of the Federal Coordinating Committee in all aspects of CFC arrangements. The local Federal Coordinating Committee makes all final decisions on the local campaign, subject to appeal to the Director.

§ 950.507 Local CFC plan.

(a) *CFR as uniform fund-raising method.* The Combined Federal Campaign is the only authorized fundraising method in all areas in the United States in which 200 or more Federal employees are located. All voluntary agencies wishing to participate in fundraising within the Federal service must do so within the framework of a local Combined Federal Campaign.

(b) *Non-participation.* In the event that any voluntary agency does not follow these provisions of this part for participation in a local CFC, fundraising privileges in local Federal establishments are forfeited during that fiscal year.

(c) *Red Cross participation.* In local communities where the American Red Cross is not a participating member of the local United Way, it will be regarded as a separate campaign organization in the combined campaign. American Red Cross chapters have independent authority with respect to fund-raising policy, so responsibility for deciding on participation in the CFC rests with the local chapter board of directors. As with the other national organizations, in the event local American Red Cross chapters choose not to participate in the CFC, they are not authorized to have a separate campaign in Federal offices or installations during the fiscal year involved, except in the case of an emergency of disaster appeal for which specific prior approval has been granted by the Director.

(d) *Exceptions in areas of fewer than 200 Federal employees.* Where there are fewer than 200 Federal employees in the local campaign area, it may not be practicable to hold a Combined Federal Campaign. Therefore, in such areas local Federal officials are not required to arrange for a Combined Federal Campaign. However, if they believe that it would be desirable from the standpoint of the local community or the Federal Government to have such a campaign, they may contact the Director to arrange a Combined Federal Campaign regardless of the number of employees involved. Where a CFC is not conducted because of lack of sufficient Federal employees, the local united fund is authorized to solicit within the Federal establishment during the fall of the year and other federated groups are authorized to conduct a separate spring campaign. Where the American Red Cross is not a member of the local united fund and the area will not have a CFC, then the Red Cross may conduct an independent campaign during the month of March. However, payroll deductions for charitable contributions are only authorized in conjunction with Combined Federal Campaigns.

§ 950.509 Organizing the local campaign: The Principal Combined Fund Organization.

The local Federal Coordinating Committee shall organize the local community campaign. It will appoint a campaign chairman who will carry out campaign duties in conformance with the policies and pb'ocedubes prescribed in this part. From among the federations with national scope, the local Federal Coordinating Committee shall select a Principal Combined Fund Organization to manage the campaign and serve as fiscal agent. In doing so the Federal Coordinating Committee shall select whichever applicant organization it finds to be the local federated group in the CFC geographic area that provides through one specific, annual public solicitation for funds the greatest support for charitable agencies that depends on public subscriptions for support; and that, in the judgment of the Federal Coordinating Committee, can most effectively provide the necessary campaign services and administrative support for the successful campaign.

(a) *Qualifications of PCFO.* In deciding whether an organization is the Principal Combined Fund Organization in the CFC geographic area, the Federal Coordinating Committee will consider:

(1) The number of local charitable voluntary agencies or affiliates in the CFC geographic area that rely on the applicant organization for financial

support and that meet the prescribed eligibility criteria for participation in the CFC;

(2) The number of dollars raised by the applicant organization in the CFC geographic area during its last completed annual public solicitation for funds;

(3) The percentage of such dollars disbursed to the charitable voluntary agencies;

(4) The local capacity of the applicant organization to provide the necessary campaign services and administrative support (including operation of the Central Receipt and Accounting Point) to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this part; and

(5) Whether the organization meets the requirements specified in sections 950.401, 950.403, and 950.405.

(b) *Obligations of PCFO.* An organization seeking to be designated the Principal Combined Fund Organization in a CFC area shall submit its application for such designation to the local Federal Coordinating Committee for approval. All such applicants must pledge to manage the campaign fairly and equitably; to conduct organization operations separate from other voluntary agency operations; to consider advice from, be responsible to reasonable requests for information from, and to consult with other agencies; and to be subject to the decisions and supervision of the local Federal Coordinating Committee and the Director. Upon submission of a complaint by a local Federal Coordinating Committee or a federated or national voluntary agency, the Director may revoke the designation as a Principal Combined Fund Organization if in her discretion she finds these pledges are not fulfilled.

(c) *Contents of PCFO application.* Applications shall include the following:

(1) The names of the voluntary agencies in the area that rely on the applicant organization for financial support and that meet the eligibility criteria set in this part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the CFC geographic area by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the charitable agencies;

(5) Agreement to transmit contributions, as designated by Federal employees, to charitable organizations in the local CFC (minus only "shrinkage"—that is, uncollectible pledges and gifts—and the approved percentage for administrative cost reimbursement);

(6) Certification that it, and its participating member organizations, are in compliance with all applicable requirements specified in this part;

(7) Percentage, if any, proposed to be charged by the applicant organization for reimbursement for administrative costs; and

(8) Statement that the applicant organization is organized to provide the necessary campaign services and support to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this part.

(d) *Right to receive donations.* Federated groups, member agencies of federations, and other voluntary agencies shall be eligible to receive designations.

(e) *Reimbursement of PCFO.* The Principal Combined Fund Organization shall provide a form for the contributor to indicate any amounts he may wish to designate to affiliated and unaffiliated beneficiaries. The Principal Combined Fund Organization shall pay the amount collected to the employee-designated beneficiary agency less "shrinkages" and the amount necessary to reimburse the Principal Combined Fund Organization for administrative expenses.

(f) *Approval of PCFO.* The percentage, if any, charged for administrative cost reimbursement must be approved in advance by the local Federal Coordinating Committee and published in the campaign literature.

(g) *Deemed designated donations.* All contributions not designated to specific voluntary agencies or specific federated groups shall be deemed to have been designated to the Principal Combined Fund Organization. A statement of that fact shall be clearly printed in a distinctive typeface in ink of a distinctive color on the face of each pledge card, which shall also state the name of the federated group that is the Principal Combined Fund Organization in that local Campaign.

(h) *PCFO report.* The Principal Combined Fund Organization shall issue a report to the local Federal Coordinating Committee and other interested parties within a reasonable time following the campaign setting forth the following information:

(1) Amounts contributed and pledged;

(2) Number of contributors;

(3) Amounts designated to each participating federated group and voluntary agency;

(4) Amount designated to the Principal Combined Fund Organization;

(5) Amounts of gifts and pledges cancelled and returned; and

(6) Costs of administering the campaign, including the Receipt and Accounting Point.

(i) *CFC Committee.* Where necessary, the local Federal Coordinating Committee may designate a committee from among its principal members, called the CFC Committee, to give top leadership and direction to the planning, conduct and evaluation of the local combined campaign. The Federal Coordinating Committee, however, may not redelegate any final authority for the campaign to the CFC Committee. The Chairman of the Campaign need not be the Chairman of the organization designated as the local Federal Coordinating Committee.

(j) *Action steps by the local Federal Coordinating Committee.* The Chairman of the local Federal Coordinating Committee is not authorized to establish a Local Joint Work Group of Federal representatives and representatives of the Principal Combined Fund Organization. The Chairman shall direct the Principal Combined Fund Organization to assemble necessary information and data, and to submit a plan detailing materials and a timetable for campaign arrangements. This shall include the dates for preparation, printing and distribution of materials, kick-offs, training sessions, report meetings and award ceremonies. All of these, including the specific materials to be used, shall be submitted to the full local Federal Coordinating Committee for approval on a day to be announced broadly to participating voluntary agencies and federated groups and to the Director. An adequate opportunity shall be provided for participating federated groups and voluntary agencies to review and comment on all proposals.

(k) *Loaned Executive Program.* One or more loaned Federal executives may be used in a Combined Federal Campaign. The Loaned Executive Program was authorized by President Nixon in a memorandum to heads of departments and agencies dated March 3, 1971. A Loaned Executive may be detailed from his agency on a full- or part-time basis, for a specific period of time, to conduct or assist in the operation of a Combined Federal Campaign. The employing agency will decide who will serve as a Loaned Executive, if anyone, and the length of the detail. Executives may not be loaned or assigned to any specific

voluntary organization but only to the official Combined Federal Campaign group. When assigned to the CFC, the executive shall be placed on administrative leave.

§ 950.511 Basic local CFC groundrules.

(a) The arrangements outlined in §§ 950.511 through 950.525 constitute basic groundrules for the local Combined Federal Campaign. Certain local variations are permissible if specifically authorized in this subpart. However, any modification of groundrules in specific instances must be requested by Federal Coordinating Committees from the Director. Modifications will be granted only in the most exceptional circumstances.

(b) The Local Federal Coordinating Committee will approve the:

(1) Campaign name. The name will include the words "Combined Federal Campaign;" the year for which contributions are solicited; and approximate identification of the locality; as for example: "1984 San Antonio Area Combined Federal Campaign."

(2) Campaign period. The solicitation period may be any time between September 1 and November 30.

(3) Campaign area. The exact geographical area to be covered by a local campaign will be determined by the Director, taking into account past practice and the feasible scope for a single, coordinated campaign. The jurisdiction of the organization named as the local Federal Coordinating Committee will set the basic area of the Campaign, based upon past practices. Any changes in campaign area must be approved by the Director.

§ 950.513 Contributions.

(a) *Contributor's information leaflet.* The contributor's information leaflet will clearly state that the Federal employee is encouraged to direct his gift to specific voluntary agencies. A single form of pledge card and leaflet-brochure will be produced under standards set in this part, and approved by the Director. The leaflet will explain that when such gifts are earmarked to a specific recipient, the Principal Combined Fund Organization will remit such funds, less approved administrative costs, in accordance with the donor's wishes as those funds are collected. The leaflet will also clearly state that when the Federal employee decides not to designate, the gift will be deemed designated to the Principal Combined Fund Organization for distribution by it. The leaflet should contain no text stating or implying that any Government official will determine the distribution of any gifts deemed designated to the Principal Combined Fund Organization.

(b) *Pledge form.* Several boxes will be provided on the pledge form so that donors may indicate their choices, if any, to contribute to one or more voluntary agencies or federations. A minimum of three boxes, each no less than 1½ inches in length and no less than ⅛th of an inch in height, will be printed on the face, and on all copies, of the pledge form. Separate designation slips are not authorized under any circumstances. The pledge form must be arranged so that each Federal employee receives the pertinent CFC information and the pledge card as a single package (as examples, inserted in a slot, or a pocket in the contributor's information leaflet). In addition to the statement required by § 950.509(g), a statement in bold and distinctive type will be printed to read: "Any health and welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated in the box provided on this card." In the event that a donor attempts to contribute to an entity that is not a voluntary agency within the meaning of § 950.101(a), that is not tax-exempt under 26 U.S.C. 501(c)(3), or that cannot, with minimal reasonable effort, be identified or located, then the donation shall be cancelled and the funds collected, if any, shall be promptly returned to the donor.

§ 950.515 Dollar goals.

(a) A dollar goal for the overall local combined campaign is recommended. Generally, it provides a focus for group spirit and unity of purpose that contributes materially to success. By apportioning the goal equitably among the Federal offices and installations, each Federal agency shares responsibility in the team effort and has a mark by which to gauge its progress.

(b) In developing the proposed goal, the local Federal Coordinating Committee should take into account past giving experience in local Federal campaigns, the needs and reasonable expectations of the voluntary agencies in the current campaign situation, and the probability of a substantial increase in the level of giving due to the single campaign and payroll payment plan. The objective should be to set a goal that is attainable, which can be exceeded in an enthusiastic and purposeful campaign.

(c) Dollar goals are not required. An alternative approach is to rely on "suggested giving" as the principal incentive. For example, the "goal" could be 75 percent participation at the suggested giving level.

§ 950.517 Suggested giving guides and voluntary giving.

(a) Suggested giving guides for contributions are authorized for local campaigns. Guides for cash giving or direct-payment pledges may be included in terms of percent of annual income, number of hours pay, or suggested size of gift in relation to various income levels. Guides may be printed in the contributor's leaflet or on the pledge form. They will be accompanied by a statement explaining that the guide is provided because employees often ask for one, but that the decision to give and the amount is up to each employee.

(b) Federal agencies are not authorized to furnish individual employee suggested giving guides based upon the employee's specific pay or grade; a guide of this kind is comparable to an individual quota or assessment, which is prohibited.

(c) The contributor's leaflet or the pledge form must include the express statement that the employee has the right to make his gift confidentially in a sealed envelope which will be delivered unopened to the Combined Federal Campaign headquarters.

§ 950.519 Receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall provide and administer the Receipt and Accounting Point or it may arrange for an appropriate financial institution to provide such service on its behalf, under the direction of the local Federal Coordinating Committee. Any charges by such institution to provide the necessary services are the responsibility of the principal Combined Fund Organization and should be included in the latter organization's administrative costs factor.

(b) The Receipt and Accounting Point will tabulate all contributions designated to specified agencies on the pledge cards and then tabulate the contributions designated to the Principal Combined Fund Organization. The amounts payable to the specified voluntary agencies are subject to deduction of "shrinkage" and of the approved percentage, if any, for reimbursement of administrative costs to the Principal Combined Fund Organization.

(c) Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over $100,000, an audit must be performed by a certified public accountant. Copies of the audits must be submitted to appropriate local Federal officials and made available for

inspection by any voluntary agency or federation participating in the CFC.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding is authorized for members of the uniformed services and civilian personnel at CFC locations. Local voluntary agencies may decide whether or not to provide for direct payment of pledges; however, cash contributions must be permitted. Keyworker collection of installment pledges is prohibited.

§ 950.521 Campaign and publicity materials.

(a) Campaign and publicity materials will be developed in the local area under direction of the local Federal Coordinating Committee, and will be printed and supplied by the Principal Combined Fund Organization. All disputes over materials will be resolved by the local Federal Coordinating Committee, except that failure to conform to this part or to any other directive of the Director may be appealed to the Director. All publicity materials must have the approval of the local Federal Coordinating Committee before being used.

(b) Distribution of any bona fide education material of the voluntary agencies or provision of other services to employees at Federal establishments must be handled through Federal agency personnel, or occupational health, or other appropriate units, and not the CFC coordinators. Voluntary agencies are encouraged to publicize their activities outside Federal facilities, to broadcast messages aimed at Federal employees in an attempt to solicit their contributions, through media and other outlets, and to communicate with Federal personnel in writing through the United States Mail addressed to them at their Federal workplaces, as long as these do not interfere with Federal Government activities. Federated groups participating in a local campaign are authorized and encouraged to publish informational brochures accurately describing the organizations and activities of their respective member voluntary agencies, and to send such brochures through the United States Mail to Federal personnel at Federal workplaces. Local Federal Coordinating Committees are further authorized to permit the distribution by voluntary agencies of brochures to Federal personnel in public areas at or near Federal workplaces in connection with the local CFC, provided that the manner of distribution accords equal treatment to all voluntary agencies furnishing such brochures for local use, and further provided that no such distribution shall utilize Federal personnel or interfere with Federal Government activities. Nothing herein shall be construed to require a local Federal Coordinating Committee to distribute or arrange for the distribution of any material other than the contributor leaflet and pledge form required by this part.

(c) A single Contributor's Information Leaflet, and a single, joint Pledge Form and Payroll Withholding Authorization (the latter preferably to be placed in an insert slot or otherwise assembled in the former) are to be distributed by keyworkers to each potential contributor. The Pledge Form and Payroll Withholding Authorization must be one form. All CFC literature, keyworker solicitors, and materials released as a part of the campaign must inform employees of their right to make a choice. Employees will be informed that while the Federal Government encourages its employees to make a choice, it does not mandate that they choose.

(d) Campaign materials must constitute a simple and attractive package that has fundraising appeal and essential working information. Treatment should focus on the combined campaign and homogeneous appeal without undue use of voluntary agency symbols or other distractions that compete for the contributor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors, etc., which are primarily for keyworkers, must be avoided.

(e) Specific campaign and publicity materials.

(1) *Contributor's leaflet.* (i) The leaflet will be the only informational material distributed to individual contributors. It will describe the CFC arrangement, explain the payroll deduction privilege, and will include the information required by § 950.513. The leaflet should be constructed to contain a pocket or a slot to hold the CFC pledge form.

(ii) The leaflet will provide instructions about how an employee may obtain more specific information about voluntary agencies participating in the campaign, their programs, and their finances. It will also inform employees of their right to pursue complaints of undue pressure or coercion in Federal fundraising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agency.

(iii) A Privacy Act notice must be printed on the leaflet.

(iv) Every leaflet shall also contain the following statement: "All contributions not designated to specific voluntary agencies, or specific federated groups, shall be deemed to have been designated to the Principal Combined Fund Organization, which shall, through its eligibility committee of local citizens, choose charities to receive these funds base upon its best perception of community, national and international needs."

(v) The contributor information leaflet must also state that any health or welfare agency organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3), is eligible for a contribution; that the contributor must clearly identify the beneficiaries and amounts of his gifts; that his gifts are tax deductible; that he has the right not to be influenced improperly in making his decisions regarding the making or withholding of contributions in the CFC; and that he must make his gifts, if any, using the prescribed CFC pledge form. Other than the name of the Principal Combined Fund Organization, which must be stated in the contributor information leaflet in the same limited manner required by § 950.509(g) with respect to the pledge form, and shall not otherwise be stated, the contributor information leaflet shall not contain the name of any voluntary charity nor shall it otherwise contain any material that might influence the donor's choice of particular beneficiaries. The leaflet may contain general words of encouragement of the support of private charity, including quotations of the President of the United States, the Director, other Federal officials, and prominent personalities, provided that no personality who is not a Federal official shall be featured in the leaflet if he would be, under all the circumstances, reasonably associated by a donor with any particular voluntary agency.

(2) *Optional local list (LFCC list).* At its option, the local Federal Coordinating Committee may include a list of voluntary agencies. This will strictly be at its own option if, in its view, it would facilitate donor understanding. If this option is chosen, the following rules apply:

(i) The leaflet will list the voluntary agencies approved by the local Federal Coordinating Committee, with only the title of the organization printed and without any statement about, or on behalf of, any agency. Opposite the name of each voluntary agency, a number will be provided beginning with the number 101 so that contributors desiring to indicate a choice of an

agency or agencies to which they wish their gift to be directed may insert such number or numbers in the designation boxes provided for that purpose on the pledge form. Each voluntary agency that is a member of a federated group shall be entitled, at its local option, to have that group's initial noted in parentheses following the name of the voluntary agency.

(ii) The listing of voluntary agencies shall be exclusively in strict alphabetical order, beginning with the letter "A," by name of voluntary agency.

(iii) Federated groups shall be listed, in an order set by lot each year, at the end of the list of voluntary agencies, under the title "campaign groups," with their respective identification numbers. The federated group that is the Principal Combined Fund Organization shall be so identified.

(iv) The following statement shall be printed, following the list of federated groups, in bold letters and distinctive type: "The above list is not an exhaustive list of the voluntary health and welfare charities to which you may designate all or part of your contribution. The list is illustrative only. Any health or welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated on the blank space provided on the pledge card. You must write the full and correct name of the charity that you designate as the recipient of your gift. Please be sure that your writing is legible. If you write in the name of an unqualified organization or of an organization that cannot be located, or if your writing cannot be read, then your pledge or gift will be cancelled and returned to you."

(v) The Principal Combined Fund Organization upon receiving pledge forms containing designations to specified agencies whose names are written in by contributors shall request each agency so designated to certify in writing that it is a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3) and that it complies with all standards of integrity of operations and reporting required by this part. Such certification by an employee-designated beneficiary agency shall be sufficient basis for the Principal Combined Fund Organization to proceed with the payment process. This process of self-certification comports with the principles set forth at § 950.401.

(3) *PCFO report in lieu of optional local list*—(i) *Contents.* In the event, and only in such event, that the local Federal Coordinating Committee elects not to provide an optional local list as permitted by § 950.521(e)(2), the Principal Combined Fund Organization shall provide a report of all organizations that were designated by donors or by the Principal Combined Fund Organization to receive funds from the local campaign held in the preceding year. Such report shall consist of a roster of the beneficiary organizations, grouped by category of service, listed within each category in strict alphabetical order, and accompanied by a description (not to exceed 25 words and figures) of each organization's charitable programs; an organization may, at its election, note in parentheses after its name the initials of the participating federated group, if any, to which it belongs. Such report shall clearly state that it is a list of the recipients of all valid donations made in the immediately preceding campaign; that it is not an exhaustive list of organizations eligible to receive gifts through the CFC; and that the presence or absence of the name of any organization implies neither governmental approval nor governmental disapproval of any group or program. Such report shall conform, in all respects not inconsistent with the express provisions of this subsection, with the requirements of fairness and the safeguards against coercion and undue influence that are set forth in § 950.521(e)(1).

(ii) *Transmittal or communication of report.* The Principal Combined Fund Organization shall endeavor to transmit a copy of such report individually to each Federal employee in the local campaign area; in the event, however, that such form of distribution would not be cost effective or timely or would be impracticable, then the Principal Combined Fund Organization shall provide such report to Federal employees in the local campaign area by, at a minimum, publishing such report at least once within the 10 days immediately preceding the commencement of the local campaign in a newspaper of general circulation within the local Federal community; making such report available to each key-worker to assist individual donees; and maintaining copies of the report available for public inspection during reasonable business hours at every office of the Principal Combined Fund Organization in the local campaign area.

(iii) *LFCC approval.* The Principal Combined Fund Organization shall submit the report to the local Federal Coordinating Committee for its review and approval prior to any publication or issuance thereof.

(4) *Pledge form and payroll withholding authorization.* (i) A copy of the pledge form shall be used to inform the Receipt and Accounting Point for the local area of the designation decisions. The format for the pledge card is prescribed by the Director and is available from the Office of Personnel Management.

(ii) One copy of this form will be used as the Payroll Withholding Authorization. When completed, this copy will go to the contributor's payroll office. Since there are some 1,400 separate payroll offices serving Federal personnel, the withholding authorization must be in a standard format and bear adequate identification of the local campaign.

(iii) The name and mailing address of the local CFC Receipt and Accounting Point will be printed at the top of the form. The name must be the same as that for the campaign and include the year: for example, "1984 San Antonio Area Combined Federal Campaign."

(iv) The box entitled "Identification No." will be used for the contributor's social security number, except in the case of Federal agencies that have a separate payroll identification numbering system. There is no requirement to use this space and it should only be used when it aids in accounting or campaign management.

(f) *Other campaign materials.* Other campaign materials that are authorized include:

(1) *Chairman's guide.* For use of campaign chairmen in individual Federal installations;

(2) *Keyworker's guide.* Instructions for keyworkers about CFC arrangements, solicitation methods, and forwarding procedures;

(3) *Keyworker's report envelope.* With tally sheets (which may be printed on the envelope) on which the keyworker will list the names of contributors or the number of confidential envelopes enclosed;

(4) *Miscellaneous campaign items.* Contributor's receipts, window stickers, posters, progress charts, awards, etc;

(5) *Publicity items.* News stories and fillers for the local press and house organs, employee letters, speeches of campaign leaders, division chairmen, films, television and radio material supporting the campaign; and

(6) *Awards.* To recognize campaign achievements by Federal agencies, Federal agency chairmen, etc. Awards should be identified as "Combined Federal Campaign" awards. The presentation of awards and plaques by individual voluntary agencies or categories of voluntary agencies for CFC accomplishments is not permitted.

(g) *National materials.* National materials provided and made available for use by local CFCs will be developed by an organization named by the Director. The Director will provide opportunity for comment on such materials by interested parties prior to approval. She must approve all material prior to use.

§ 950.523 Payroll withholding.

The following policies and procedures are authorized for payroll withholding operations in accordance with Office of Personnel Management Pay Administration regulations in Part 550 of this chapter.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local Combined Federal Campaign organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a Combined Federal Campaign when an appropriate official of the employing Federal agency determines the employee will continue his employment for a period sufficient to justify an allotment. (This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months). (The Department of Defense has modified its military pay allotment regulations to authorize allotments for CFC charitable contributions by uniformed service members.)

(c) *Authorization.* (1) Allotments will be wholly voluntary and will be based upon contributors' individual written authorizations.

(2) Authorization forms in standard format will be printed by the Principal Combined Fund Organization at each location. The forms and other campaign materials will be distrubuted to employees when charitable contributions are solicited.

(3) Completed payroll withholding authorization forms should be transmitted to the contributors' servicing payroll offices as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by payroll offices.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24 or 12 pay periods depending upon the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. (The standardization of beginning and ending dates, except for individual discontinuances, is intended to simplify payroll operations and minimize costs.) However, the fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make the allotment practicable. Three months or more would be considered a reasonable period of time for which to accept an allotment.

(e) *Amount.* (1) Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimun amount for allotment will be determined by the local Federal Coordinating Committee but will be not less than $1 bi-weekly, with no restriction on size of increment above that minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) For the purpose of simplicity and economy in payroll operations, no deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment will be made in subsequent periods to make up for deductions missed.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Receipt and Accounting Point at each location for which the payroll office has received allotment authorizations.

(2) The check will be accompanied by a statement identifying the agency and the number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Allottments will be discontinued automatically:

(i) On expiration of the 1-year withholding period; or

(ii) On death, retirement, or separation of allotter from the Federal service, whichever is earlier.

(2) The allotter may revoke his authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit-served by a different payroll office in the same CFC location, whether in the same office or a different department or agency, his allotment authorization will be transferred to the new payroll office.

(2) When there is a delay in receiving the transferred authorization in the new payroll office, or when the allotter moves to a location covered by another CFC, the allotter should be permitted to complete a new authorization for the remainder of the 1-year withholding period, which will supersede and revoke his previous authorization.

(3) When the allotter moves to a location not covered by a CFC, the allotment will automatically be terminated unless expressly continued by the individual.

(i) *Accounting.* (1) Federal payroll offices will oversee establishment of individual allotment accounts, deductions each pay period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization is responsible for the accuracy of transmittal of contributions. It shall transmit at least monthly for campaigns of $100,000 or more or quarterly if less than that amount, minus only the shrinkage factor and approved percentage for administrative cost reimbursement. It shall remit contributions, less approved administrative costs and shrinkage, to each agency or to the federated group, if any, of which the agency is a member if all member agencies of that federated group, participating in the local campaign, agree. It shall notify the federated groups, as soon as practicable after the completion of the campaign (but in no case more than 60 days thereafter), of the amounts, if any, designated to them and their member agencies and of the amounts of deemed-designated contributions, if any, allocated to them and their member agencies.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for:

(i) The accuracy of distribution among the voluntary agencies of remittances from the Principal Combined Fund Organization; and

(ii) Arrangements for independent audit agreed upon by the participating voluntary agencies.

§ 950.525 National coordination and reporting.

(a) The Office for Regional Operations, U.S. Office of Personnel Management, is responsible under the Director for CFR arrangements.

(b) Each local Federal Coordinating Committee shall notify the Office for Regional Operations of OPM of its campaign areas, chairman's name, address, and telephone number, and the address of its Receipt and Accounting Point.

(c) All chairman of local Federal Coordinating Committees shall furnish reports of campaign results to the Office of Regional Operations of OPM no later than January 15 of each year. OPM will furnish a reporting format to local Federal Coordinating Committees prior to that date requesting information on the results of the campaign, including the following:

(1) Basic data (number solicited, number of contributors);

(2) Payroll deductions (number authorizing, total pledged);

(3) Designations;

(4) Returned or cancelled gifts or pledges;

(5) Amount of undesignated receipts received by Principal Combined Fund Organization;

(6) Campaign costs; and

(7) Narrative summary evaluation of CFC arrangement based upon campaign experience. Copies of the report will be furnished to the local Federal Coordinating Committee, the Principal Combined Fund Organization, and participating federated groups. A copy will be made available for inspection by participating voluntary agencies and Federal employees.

(d) All local activities will be coordinated with the national campaign under guidance and procedures issued by the Director through the Federal Personnel Manual system and a handbook of instructions (or other appropriate issuance) for use by participating voluntary organizations.

(e) *Appeals.*

(1) *Substantial question; burden.* Any decision of a local Federal Coordinating Committee that is appealed to the Director by any charitable agency or charitable federated group shall be given due weight by the Director. Any such appeal shall be looked upon with disfavor unless it raises a substantial question of fairness, construction of these regulations, or application of the policies, procedures, directives, and guidance of the Director. Unless the Director orders otherwise, all burdens of proof, of persuasion and of going forward shall be borne by the appellant.

(2) *Time.* An appeal may be dismissed as untimely unless it is received by the Director within the 10 days next following after the appellant has received actual or constructive notice of the decision from which the appeal is taken.

(3) *Contents.* Every appeal shall be submitted in writing; shall set forth a concise statement of the decision from which the appeal is taken, the grounds for the appeal, and the relief sought by the appellant; and shall be accompanied by written proof that copies thereof have been served upon the local Federal Coordinating Committee and any other proper party in interest whose participation in the appeal may be appropriate for the just disposition thereof. Except in extraordinary circumstances, the Director shall not consider any evidence or argument that was not first presented to the local Federal Coordinating Committee.

(4) *LFCC, other response.* The local Federal Coordinating Committee and any other proper party in interest may respond to the appeal. Every response, to be timely, shall be received by the Director within the 5 days next following after the respondent has received actual or constructive notice of the appeal. Every response shall be submitted in writing; shall set forth a concise statement of the facts and arguments that the respondent believes are material; and shall be accompanied by written proof that copies thereof have been served upon the appellant and any other proper party in interest.

(5) *Director's authority.* The Director may, for good cause, extend or shorten the time limits herein set forth and waive requirements for written submissions and proofs of service. The Director may, in her sole discretion, and on her own motion, review any decision of a local Federal Coordinating Committee and stay any decision of a local Federal Coordinating Committee pending her review thereof. All decisions of the Director shall be final, and shall be executed forthwith by the local Federal Coordinating Committee or by such other person or entity as the Director may direct to do so, in the manner and within the time directed by the Director.

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Friday
May 1, 1987

Part XI

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 100, 103, 109, 210, 211, 212, 234, 242, 245a, 264, 274a, 299

Implementation of the Immigration Reform and Control Act; Final Rules

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 103, 211, 212, 234, 242, 264, and 299

[INS Number: 1020-87]

Applicant Processing for Special Agricultural Worker and Legalization Programs; Conforming Amendments, etc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule sets forth conforming amendments to existing regulations to be published elsewhere in this issue. These provisions relate to the processing of applicants for lawful temporary resident status under the Special Agricultural Worker and Legalization programs, as authorized by the enactment of the Immigration Reform and Control Act of 1986, also known as the Simpson/Rodino bill.

This rule sets forth the lines of authority and organization for the Legalization and Special Agricultural Worker programs; sets procedures for appeals, motions, and certifications on applications for adjustment of status under sections 210 and 245A of the Immigration and Nationality Act; sets fees and form numbers and titles for legalization and special agricultural worker applications; establishes documentary requirements and conditions governing the travel of temporary residents and the entry into the United States of prospective applicants or legalization for special agricultural worker status; and provides for the designation of additional civil surgeons to accommodate the large number of applicants anticipated.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: William S. Slattery, Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the Immigration Reform and Control Act of 1986, Pub. L. 99-603 was enacted to provide the opportunity for certain aliens to apply for temporary resident status in the United States, and, under certain conditions, to subsequently apply for permanent resident status.

8 CFR 100.2(c)(3)(vi) adds Legalization as a program falling under the direction of the Associate Commissioner for Examinations.

8 CFR 100.4(f) is added to provide a list of legalization offices which have been opened by the Service to accommodate applicants for the Legalization and Special Agricultural Worker Programs.

8 CFR 103.1(f)(1)(vi) is added to reflect that authority is delegated to the Associate Commissioner for Examinations for the general direction and supervision of the Assistant Commissioner, Legalization.

8 CFR 103.1(f)(2) is amended to reflect that the appellate jurisdiction of the Associate Commissioner, Examinations, is expanded to include decisions on applications for lawful temporary or permanent resident status under section 245A of the Act, applications for lawful temporary resident status under section 210 of the Act, termination of temporary resident status under section 210 or 245A of the Act, and applications for waiver of grounds of excludability under sections 210 and 245A of the Act.

Numerous comments were received concerning the appellate review authority resting with the Administrative Appeals Unit. Although the Administrative Appeals Unit will be the Service's designated appellate review authority, a separate branch within the Administrative Appeals Unit has been established to handle appeals under sections 210 and 245A of the Act.

8 CFR 103.1(n) is amended to provide that an application for temporary residence may be approved at a legalization office after a second interview, and that an application may be denied at a legalization office if the alien is clearly statutorily ineligible or admits fraud.

8 CFR 103.1(q) is amended to add Chief Legalization Officers, Supervisory Legalization Officers, Legalization Adjudicators, Legalization Officers and Legalization Assistants to those positions designated as "Immigration Officers."

8 CFR 103.1(t) is added establishing the authority and responsibilities of regional processing facility directors.

8 CFR 103.2(c) is added, providing specific language regarding procedures to follow for applications filed for Legalization and Special Agricultural Worker status. Language is included which expressly recognizes that designated entities are permitted to assist aliens in the preparation of applications for the Legalization and Special Agricultural Worker programs. Provisions are also made to require designated entities to have an alien's documented authorization to forward the application to the Service.

8 CFR 103.3(a)(2) provides procedures for issuing denials and processing appeals to denials of applications for Legalization and Special Agricultural Worker status. The same procedures apply to cases where the lawful temporary resident status, granted under section 210 or 245A of the Act, is terminated.

8 CFR 103.4 is amended by providing that a Regional Processing Director may certify a decision to the Administrative Appeals Unit.

8 CFR 103.5 is amended by providing that the Regional Processing Facility director may *sua sponte* reopen and reconsider an appealed adverse decision, and establishing time frames during which any new decision must be served on the appealing party. The Associate Commissioner, Examinations, or the Chief, Administrative Appeals Unit, may *sua sponte* reopen any proceeding conducted and reconsider any decision rendered by that Unit. No motion to reopen a proceeding or reconsider a decision shall be considered.

8 CFR 103.7(b)(1) is amended to include applications relating to Legalization and Special Agricultural Worker status, and respective fees that will be charged for each application. The cost of the legalization program is to be self funding through application fees. If the revenue collected through the Form I-687 application fee is not sufficient to cover the costs of the legalization program, an additional fee would be charged to file Form I-698.

Numerous comments were received concerning the fee schedule. Of the total 418 comments received, 247 were supportive of the fees proposed. After careful review and consideration, the Service will retain the fee schedule as published in the March 19, 1987 Federal Register.

8 CFR 211.1(d) establishes documentary requirements for aliens granted lawful temporary resident status under sections 210 and 245A of the Act and prescribes the authorized length of temporary absences abroad while in such status.

8 CFR 211.5 adds language to permit aliens granted lawful temporary resident status under section 210 of the Act to reside in foreign contiguous territory and commute to employment in the United States.

8 CFR 212.5(b) provides for denial of parole for certain aliens seeking admission into the United States for the sole purpose of applying for adjustment of status under the Legalization and Special Agricultural Worker Programs.

8 CFR 212.5(d)(2) provides that an alien granted parole into the United States after November 6, 1986 for any purpose other than applying for adjustment of status under the

Legalization program shall not be permitted to apply for Legalization.

8 CFR 234.2(b) is amended to include local, county and state health departments' civil surgeons qualified to perform physical and mental examinations of applicants for benefits under the Act and allows the district director, as needed, to authorize physicians meeting the criteria established in 8 CFR Part 234 to perform the aforementioned examinations to designate physicians with less than 4 years professional experience under unusual circumstances.

8 CFR 242.21(b) is added to limit the appeal to a finding of deportability in specific cases where the alien failed to file an application for temporary resident status under section 210 or 245A of the Act within a defined thirty day period.

8 CFR 264.1 is amended to include documents relating to the Legalization and Special Agricultural Worker programs as registration forms and evidence of registration. Additionally, specific procedures are outlined for processing applications for replacement of Form I-688, Temporary Resident Card.

8 CFR 299.1 is amended to include forms to be used in the Legalization and Special Agricultural Worker programs.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of EO 12291.

The information collection requirements contained in this regulation have been cleared by OMB under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Authority delegations (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

8 CFR Part 211

Reporting and recordkeeping requirements, Visas.

8 CFR Part 212

Administrative practice and procedure, Parole, Reporting and recordkeeping requirements, Visas.

8 CFR Part 234

Public health.

8 CFR Part 242

Administrative practice and procedure, Deportation proceedings.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 is revised to read as follows:

Authority: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103.

2. Section 100.2(c)(3) is amended by removing the word "and" from paragraph (iv); removing the period from the end and inserting ", and" in paragraph (v); and adding paragraph (vi) as follows:

§ 100.2 Organization and functions.

* * * * *

(c) * * *

(3) * * *

(vi) Legalization.

* * * * *

3. In § 100.4 a new paragraph (f) is added to read as follows:

§ 100.4 Field Service.

* * * * *

(f) District Legalization Offices are local offices of the Immigration and Naturalization Service under the authority of the district director in whose district such offices are located. Legalization Offices have been opened specifically to accommodate applicants for the Legalization and Special Agricultural Worker programs. Legalization Offices may be opened and closed, at the discretion of the Commissioner, as the need arises.

Legalization Offices

Eastern Region

BAL—Baltimore, MD (XBL)
BOS—Boston, MA (XBT); New Haven, CT (XNH); Springfield, MA (XSP)
BUF—Buffalo, NY (XBU); Syracuse, NY (XSY)
NEW—Camden, NJ (XCN); Jersey City, NJ (XJC); Paterson, NJ (XPT)
NYC—South Long Island City, NY (XBK); Manhattan, NY (XMA); Hempstead, NY (XNS)
PHI—Lima, PA (XLM); Pittsburgh, PA (XPI); Charleston, WV (XCR)
SAJ—San Juan, PR (XSJ)
WAS—Arlington, VA (XAR)

Northern Region

ANC—Anchorage, AK (XAN)
CHI—Aurora, IL (XEG); Chicago, IL (XBI); Chicago, IL (XLS); Forest Park, IL (XLI); Indianapolis, IN (XIN); Greenfield, WI (XNI)
CLE—Cincinnati, OH (XCI); Cleveland, OH (XCL)
DEN—Denver, CO (XDE); Grand Junction, CO (XGI); Pueblo, CO (XPU); Salt Lake City, UT (XSK)
DET—Detroit, MI (XDT)
HEL—Boise, ID (XBO); Helena, MT (XHE); Idaho Falls, ID (XIF)
KAN—Garden City, KS (XGC); Kansas City, MO (XKA); Bridgeton, MO (XSL); Wichita, KS (XWI)
OMA—Davenport, IA (XDV); Des Moines, IA (XDM); Omaha, NE (XOM); Gering, NE (XSB)
POO—Pendleton, OR (XPL); Portland, OR (XPD)
SEA—Pasco, WA (XPA); Seattle, WA (XSE); Wenatchee, WA (XWE); Yakima, WA (XYA)
SPM—Bloomington, MN (XTW)

Southern Region

ATL—Decatur, GA (XAT); Charlotte, NC (XCH)
DAL—Arlington, TX (XDA); Lubbock, TX (XLU); Oklahoma City, OK (XOK)
ELP—Albuquerque, NM (XAL); El Paso, TX (XEL)
HLG—Harlingen, TX (XHA)
HOU—Houston, TX (XHU)
MIA—Jacksonville, FL (XJA); Miami, FL (XMI); Miami, (Hialeah), FL (XOP); Miami, (Coral Gables), FL (XSW); Miami, (Okeechobee), FL (XWP); Tampa, FL (XTA); Fort Lauderdale, FL (XWS)
NOL—Memphis, TN (XME); New Orleans, LA (XNO)
SNA—Austin, TX (XAU); Corpus Christi, TX (XCO); Laredo, TX (XLR); San Antonio, TX (XSN)

Western Region

HHW—Agana, GU (XAG); Honolulu, HI (XHL)
LOS—Garden Grove, CA (XAH); Los Angeles, CA (XLA); El Monte, CA (XEM); Los Angeles, CA (XHO); Huntington Park, CA (XHP); Indio, CA (XID); Bellflower, CA (XLB); Buena Park, CA (XNK); Oxnard, CA (XOX); Pomona, CA (XPO); Riverside, CA (XRV); Sepulveda, CA (XSR); Santa Ana, CA (XSA); Gardena, CA (XTO); North Hollywood, CA (XVN)
PHO—Las Vegas, NV (XLV); Phoenix, AZ (XPH); Reno, NV (XRO); Tucson, AZ (XTU); Willcox, AZ (XWX); Yuma, AZ (XYU)
SND—El Centro, CA (XCA); Escondido, CA (XES); San Diego, CA (XSD)
SFR—Bakersfield, CA (XBA); Eureka, CA (XEU); Fresno, CA (XFR); Oakland, CA (XOA); Redding, CA (XRE); Sacramento, CA (XSC); Salinas, CA (XSI); San Francisco, CA (XSF); San Jose, CA (XSO); Stockton, CA (XST)

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

4. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 166.

5. Section 103.1 is amended by removing the word "and" from paragraph (f)(1)(iv), inserting ", and" at the end of paragraph (f)(1)(v) and adding a new paragraph (f)(1)(vi); adding new paragraphs (f)(2)(xxvii) through (xxxii); designating existing text in paragraph (n) as (n)(1) and adding a new paragraph (n)(2); inserting "Chief Legalization Officer, Supervisory Legalization Officer, Legalization Adjudicator, Legalization Officer and Legalization Assistant" after the term "contact representative," in paragraph (q); and adding new paragraph (t) to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(1) * * *

(vi) Assistant Commissioner, Legalization.

(2) * * *

(xxvii) Application for status as temporary or permanent resident under § 245a.2 or § 245a.3 of this title;

(xxviii) Application for status as temporary resident under § 210.2 of this title;

(xxix) Termination of status as temporary resident under § 210.4 of this title;

(xxx) Termination of status as temporary resident under 245a.2 of this title;

(xxxi) Application for waiver of grounds of excludability under Parts 210 and 245a of this title; and

(xxxii) Application for replacement of Form I–688 (Temporary Resident Card).

* * * * *

(n) * * *

(2) Applications filed for Special Agricultural Worker or Legalization status pursuant to sections 210 and 245A, respectively, may be approved by the district director having jurisdiction of the legalization office where a second interview is required by the regional processing facility, if the alien in the second interview can establish eligibility for approval. District directors may deny applications for Special Agricultural Worker or Legalization status at legalization offices under their jurisdiction if the alien clearly fails to meet statutory requirements or the alien admits fraud or misrepresentation in the application process.

* * * * *

(t) *Regional Processing Facility Directors.* Under the direction of their respective regional commissioners, regional processing facility directors have program, administrative and supervisory responsibility for all personnel assigned to their facilities. Regional processing facility directors are delegated the authority and responsibility to approve or deny applications for adjustment of status and for waivers of grounds of excludability under section 210 and section 245A of the Act.

6. In § 103.2, a new paragraph (c) is added to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(c) *Filing of applications for adjustment of status under sections 210 and 245A of the Act, as amended.* (1) The filing of an application for temporary resident status under section 245A(a) of the Act must conform to the provisions of § 245a.2 of this chapter. The filing of an application for permanent resident status under section 245A(b)(1) of the Act must conform to the provisions of § 245a.3 of this chapter. The filing of an application for adjustment of status to that of a temporary resident under section 210(a) of the Act must conform to the provisions of § 210.2 of this chapter.

(2) An application for adjustment to temporary or permanent resident status pursuant to section 245A (a) or (b)(1) or section 210(a) of the Act may be accepted on behalf of the Attorney General by designated state, local and community organizations as well as designated voluntary organizations and persons. Each such application shall contain a certification signed by both the alien and the preparing member of the designated organization or entity, that the applicant has approved transmittal of the application to the Service for adjudication.

(3) An application accepted by any of the designated entities shall be stamped with an endorsement as to the date of preparation and authorization for transmittal, and may be brought to the legalization office with the applicant as an application ready for adjudication. However, such application shall not be considered as complete until accepted for adjudication by and until the appropriate fee has been paid to the Immigration and Naturalization Service.

7. In § 103.3(a), existing text is designated (a)(1) and a new paragraph (a)(2) is added to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

(a) * * *

(2) *Denials and appeals of special agricultural worker and legalization applications and termination of lawful temporary resident status under sections 210 and 245A.* (i) Whenever an application for legalization or special agricultural worker status is denied or the status of a lawful temporary resident is terminated, the alien shall be given written notice setting forth the specific reasons for the denial or termination on Form I–692, Notice of Denial. Form I–692 shall also contain advice to the applicant that he or she may appeal the decision and that such appeal must be taken within 30 days after service of the notification of decision accompanied by any additional new evidence, and a supporting brief if desired. The Form I–692 shall additionally provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I–692 will serve as a final notice of ineligibility.

(ii) Form I–694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I–694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by § 103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the applicant and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the application be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings.

(iv) Any appeal which is filed that:

(A) Fails to state the reason for appeal;

(B) Is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner; or

(C) Is patently frivolous;

will be summarily dismissed. An appeal received after the thirty (30) day period has tolled will not be accepted for processing.

* * * * *

8. In § 103.4, existing text is designated paragraph (a) and a new paragraph (b) is added to read as follows:

§ 103.4 Certifications.

* * * * *

(b) *Certification of denials of special agricultural worker and legalization applications.* The Regional Processing Facility director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit), when the case involves an unusually complex or novel question of law or fact.

9. In § 103.5, existing text is designated paragraph (a) and a new paragraph (b) is added to read as follows:

§ 103.5 Reopening or reconsideration.

* * * * *

(b) *Motions to reopen or reconsider denials of special agricultural worker and legalization applications.* Upon the filing of an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit), the Director of a Regional Processing Facility or the consular officer at an Overseas Processing Office may *sua sponte* reopen any proceeding under his or her jurisdiction opened under Part 210 or 245a of this chapter and may reconsider any decision rendered in such proceeding. The new decision must be served on the appellant within 45 days of receipt of any brief and/or new evidence, or upon expiration of the time allowed for the submission of a brief. The Associate Commissioner, Examinations, or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that Unit under Part 210 or 245a of this chapter and reconsider any decision rendered in such proceeding. Motions to reopen a proceeding or reconsider a decision under Part 210 or 245a of this chapter shall not be considered.

10. In § 103.7, paragraph (b)(1) is amended by adding in numerical sequence the following:

§ 103.7 Fees.

* * * * *

(b) * * *

Form I–687. For filing application for status as a temporary resident under section 245A (a) of the Immigration and Nationality Act as amended—to be remitted in the form of a cashier's check, certified bank check or money order. A fee of one hundred and eighty-five dollars ($185.00) for each application or fifty dollars ($50.00) for each application for a minor child (under 18 years of age) is required at the time of filing with the Immigration and Naturalization Service. The maximum amount payable by a family (husband, wife, and any minor children) shall be four hundred and twenty dollars ($420.00).

Form I–690. For filing application for waiver of ground of excludability under seciton 212(a) of the Act as amended, in conjunction with application under section 210 or 245A of the Act—to be remitted in the form of a cashier's check, certified bank check or a money order—$35.00

Form I–694. For appealing the denial of application under section 210 or 245A of the Act—to be remitted in the form of a cashier's check, certified bank check or a money order—$50.00

Form I–695. For filing application for replacement of temporary resident card (Form I–688) to be remitted in the form of a cashier's check, certified bank check or a money order—$15.00

Form I–698. For filing application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act, as amended—to be remitted in the form of a cashier's check, certified bank check or money order. (fee amount to be determined as required).

Form I–700. For filing application for status as a temporary resident under section 210(a)(1) of the Act, as amended—to be remitted in the form of a cashier's check, certified bank check or a money order. A fee of one hundred and eighty-five dollars ($185.00) for each application or fifty dollars ($50.00) for each application for a minor child (under 18 years of age) is required at the time of filing with the Immigration and Naturalization Service. The maximum amount payable by a family (husband, wife, and any minor children) shall be four hundred and twenty dollars ($420.00).

* * * * *

10a. Part 103 is amended by adding a new § 103.37 to read as follows:

§ 103.37 Display of control numbers.

The following forms are contained in § 103.7. The Office of Management and Budget has assigned the following OMB control numbers:

Forms	Currently assigned OMB control numbers
I–687	1115–0133
I–690	1115–0132
I–693	1115–0134
I–694	1115–0135
I–695	1115–0129
I–697	1115–0130
I–700	1115–0131
I–705	1115–0137

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

11. The authority citation for Part 211 is revised to read as follows:

Authority: Secs. 101, 103, 211, 212, 223, 235, 247; Pub. L. 99–603, as amended; 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

12. § 211.1, paragraph (d) is added to read as follows:

§ 211.1 Visas.

* * * * *

(d) *Returning temporary residents—(I–688).* (1) Form I–688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 210.1 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within one year after a temporary absence abroad.

(2) Form I–688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 245a.2 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within 30 days after a temporary absence abroad, provided that the aggregate of all such absences abroad during the temporary residence period has not exceeded 90 days.

13. In § 211.5, paragraph (d) is added to read as follows:

§ 211.5 Alien commuters.

* * * * *

(d) *Special agricultural workers.* Notwithstanding any other provisions of this part, an alien lawfully admitted for temporary residence under section 210 may commence or continue to reside in foreign contiguous territory and commute to his or her place of employment in the United States to engage in daily or seasonal work which on the whole is regular and stable as provided in section 210(a)(4) of the Act, provided, that at the time of each reentry a valid Form I–688 is presented in lieu of an immigrant visa and passport. An alien commuter engaged in seasonal work is presumed to have taken up residence in the United States if he or she is present in this country for more than six months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show the actual residence address even though it is not in the United States. Temporary resident commuters are subject to loss of commuter status in the same manner as permanent resident commuters as provided in paragraph (b) of this section.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

14. The authority citation for Part 212 is revised to read as follows:

Authority: Secs. 101, 103, 212, 214, 235, 236, 238, 242, 66 Stat. 166, 173, 182, as amended,

189, 198, 200, 202, 208, as amended, 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, 1182c.

15. In § 212.5 paragraph (b) is amended by removing the period at the end of the last sentence, inserting a semicolon and adding new text to read as set forth below; by designating existing paragraph (d)(2) as (d)(2)(i) and adding a new paragraph (d)(2)(ii) to read as follows:

§ 212.5 Parole of aliens into the United States.

* * * * *

(b) * * * however, an alien who arrives at a port of entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (e) (2) of this section shall be denied parole and detained for exclusion in accordance with the provisions of paragraph (b) or (c) of § 235.3 of this chapter. An alien seeking to enter the United States for the sole purpose of applying for adjustment of status under section 210 of the Act shall be denied parole and detained for exclusion under paragraph (b) or (c) of § 235.3 of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

* * * * *

(d) * * *

(2) * * *

(ii) An alien who is granted parole into the United States after enactment of the Immigration Reform and Control Act of 1986 for other than the specific purpose of applying for adjustment of status under section 245A of the Act shall not be permitted to avail him or herself of the privilege of adjustment thereunder. Failure to abide by this provision through making such an application will subject the alien to termination of parole status and institution of proceedings under sections 235 and 236 of the Act without the written notice of termination required by § 212.5(d)(2)(i) of this chapter.

* * * * *

PART 234—PHYSICAL AND MENTAL EXAMINATION OF ARRIVING ALIENS

16. The authority citation for Part 234 is revised to read as follows:

Authority: Secs. 103, 234, 66 Stat. 173, 198; (8 U.S.C. 1103, 1224).

§ 234.2 [Amended]

17. In § 234.2, paragraph (b) is amended by inserting the phrase "and local, county and state health departments" immediately after the word "clinics" and inserting the following after the word "experience"; "Under usual circumstances physicians will be required to meet the 4 year professional experience criteria. However, at the district director's discretion other physicians with less experience can be designated to address unusual or unforeseen situations as the need arises."

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

18. The authority citation for Part 242 is revised to read:

Authority: Secs. 103, 242, 244, 292, 66 Stat. 173, 208, as amended 214, 235; 8 U.S.C. 1103, 1252, 1254, 1362.

19. Section 242.21 is amended by designating existing text as paragraph (a) and adding the following new paragraph (b):

§ 242.21 Appeals.

* * * * *

(b) *Prohibited appeals; legalization or special agricultural worker applications.* An alien respondent defined in § 210.2(d)(3) or § 245a.2(c) (5), (6), or (7) of this chapter who fails to file an application for adjustment of status to that of a temporary resident within the prescribed period(s), and who is thereafter found to be deportable by decision of an immigration judge, shall not be permitted to appeal the finding of deportability based solely on refusal by the immigration judge to entertain such an application in deportation proceedings.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

20. The authority citation for Part 264 is revised to read:

Authority: Secs. 103, 221, 261–265, 66 Stat. 173, 191, 223–225; 8 U.S.C. 1103, 1201, 1301–1305; sec. 8, 71 Stat. 641; 8 U.S.C. 1201a.

21. In § 264.1 paragraph (a) is amended by adding at the end of existing text; the following:

§ 264.1 Registration and fingerprinting.

(a) * * *

I–687, Application for Status as a Temporary Resident—Applicants under section 245A of the Immigration and Nationality Act, as amended.

I–691, Notice of Approval for Status as a Temporary Resident—Aliens adjusted to lawful temporary residence under 8 CFR 210.2 and 245A.2.

I–698, Application to Adjust Status from Temporary to Permanent Resident—Applicants under section 245A of the Immigration and Nationality Act, as amended.

I–700, Application for Status as a Temporary Resident—Applicants under section 210 of the Immigration and Nationality Act, as amended.

* * * * *

22. In § 264.1 paragraph (b) is amended by adding at the end of the existing text the following:

§ 264.1 Registration and fingerprinting.

* * * * *

(b) * * *

I–688, Temporary Resident Card-Lawful temporary residents of the United States.

I–688A, Employment Authorization Card.

I–695, Application for Replacement of Form I–688 Temporary Resident Card—While application is pending, aliens whose evidence of registration has been lost, stolen, mutilated, or destroyed; aliens whose original Form I–688 were incorrect when issued.

* * * * *

23. In § 264.1, paragraph (c) is amended by adding the following sentences at the end of the existing text:

(c) * * * Application by an alien lawfully admitted for temporary residence for Form I–688, Temporary Resident Card, in lieu of one lost, stolen, mutilated, or destroyed, shall be made on Form I–695 accompanied by the fee required by § 103.7(b) of this chapter, two color photographs, (regardless of the applicant's age, unless the requirement for such photographs has been waived by the director of the legalization office in his or her discretion because of hardship to an applicant who is confined due to age or physical infirmity), and when issuance of Form I–688 is desired in a changed name, by appropriate documentary evidence of such change. Any Form I–688 in applicant's possession must also be submitted with the application. An application by an alien within the United States for replacement of evidence of registration shall be submitted to the legalization office having jurisdiction over the applicant's place of residence in the United States. Prior to the issuance of Form I–688, all applicants, regardless of age, shall appear at the appropriate legalization office for interview; and placement of fingerprint and signature on I–688 unless these requirements are waived at the discretion of the district director because of infirmity, illiteracy, or other compelling reasons. An alien who files application Form I–695 may be required to appear in person before an immigration officer prior to the

adjudication of the application and be interviewed under oath concerning his or her eligibility for issuance of I–688 as evidence of his or her registration. In addition, the applicant may also be required to present a completed fingerprint card (Form FD–258). The decision on an application for replacement of evidence of registration shall be made by the regional processing facility director having jurisdiction over the alien's place of residence in the United States. No appeal shall lie from the decision of the regional processing facility director denying the application.

* * * * *

PART 299—IMMIGRATION FORMS

24. The authority citation for Part 299 is revised to read as follows:

Authority: Sec. 103; 66 Stat. 173; 8 U.S.C. 1103.

§ 299.1 [Amended]

25. Section 299.1 is amended by adding the following immediately before the entry "ICAO" in numerical sequence:

§ 299.1 Prescribed forms.

* * * * *

I–687 (4–1–87)—Application for Status as a Temporary Resident (section 245A INA).
I–688 (5–87)—Temporary Resident Card.
I–688A (5–87)—Employment Authorization Card.
I–690 (2–14–87)—Application for Waiver of Grounds of Excludability.
I–691 (5–5–87)—Notice of Approval of Status as a Temporary Resident.
I–692 (5–5–87)—Notice of Denial for Status as a Temporary Resident.
I–693 (2–14–87)—Medical Examination for Status as a Temporary Resident Under Pub. L. 99–603).
I–694 (4–1–87)—Notice of Appeal.
I–695 (2–24–87)—Application for Replacement of Form I–688 Temporary Resident Card (Under Pub. L. 99–603.
I–697 (2–14–87)—Change of Address.
I–698 (———)—Application to Adjust Status from Temporary to Permanent Resident (Under the Immigration Reform and Control Act of 1986).
I–700 (4–1–87)—Application for Status as a Temporary Resident (section 210 INA).
I–705 (3–12–87)—Affidavit to corroborate employment claimed by an applicant for status as a temporary resident (section 210 INA).

* * * * *

26. Section 299.3 is amended by adding the following in the appropriate numerical sequence:

§ 299.3 Forms available from Superintendent of Documents.

Form No.	GPO stock No. (S/N)	Price per 100/pad
I–687	S/N 027–002–00336–5	27.00/100
I–693	S/N 027–002–00340–3	27.00/100
I–700	S/N 027–002–00337–3	27.00/100
I–705	S/N 027–002–00339–0	13.00/100

Dated: April 28, 1987.

Alan C. Nelson,

Commissioner.

[FR Doc. 87–9893 Filed 4–30–87; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 210

[INS No. 1021–87]

Adjustment of Status for Special Agricultural Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule establishes Part 210 of 8 CFR, a new part added to conform with the new section 210 of the Immigration and Nationality Act established by Pub. L. 99–603, the Immigration Reform and Control Act of 1986 (IRCA). This rule sets the criteria and procedures to be used to adjust the status of special agricultural workers to that of temporary residents; sets standards for maintenance of that status; outlines the benefits accruing to temporary residents and the distinctions between temporary and permanent resident status; sets criteria and procedures for termination of temporary resident status; and establishes procedures for adjustment of the status of temporary resident special agricultural workers to that of permanent residents.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: William S. Slattery, Assistant Commissioner, Legalization, 425 I Street, NW., Washington, D.C. 20536, (202) 786–3658.

SUPPLEMENTARY INFORMATION: A preliminary working draft of this rule was made available to the public by notice in the **Federal Register** on January 20, 1987 (52 FR 2115). Comments on that draft received from 164 organizations and individuals were helpful in the preparation of the proposed rule which was published in the **Federal Register** on March 19, 1987 (52 FR 8745). Comments on the proposed rule were received from 184 organizations and individuals including comments from three organizations which represented 76 other institutions or organizations. Eight state government departments and one federal agency provided comments on the proposed rule. The Service has made extensive use of the public comment on the proposed rule in analyzing the special agricultural worker provisions of IRCA and in developing this rule for the implementation of those provisions. The suggestions of many commentors have either been adopted in this rule or have motivated adjustments to the rule by the Service. The Service thanks all commentors for the thoughtfulness and constructive intent of their suggestions.

Several comments were directed to the provision in § 210.1(d) of the proposed rule concerning the initiation of deportation proceedings in cases involving fraud. This section has been clarified by reference to § 210.2(e)(4) but otherwise remains basically unchanged. A more complete discussion of the provisions governing fraud is provided below in reference to § 210.2(d)(4).

Four commentors suggested that the Service has applied an erroneous residence requirement for Group 1 eligibility at § 210.1(e). However, the Service is persuaded that its interpretation of the Group 1 residency requirement is correct based on the authorities cited in the preambles to the draft and proposed rule. The Conference Managers' Report expressly states that: ". . . the conferees intend 'resided' to mean 6 months per year, in the aggregate, in the U.S. for the 'Group 1' workers. . . ." A six-month residence requirement for Group 2 workers is mentioned in the Conference Managers' Report but this was reduced to a three-month requirement according to clarification provided in colloquies in the House and Senate.

One commentor suggested that the definition of Group 2 workers should include an express residence requirement and a provision that persons who commuted to the United States for the purposes of daily employment are not eligible for special agricultural worker status. It is the Service's belief that the Congress did not intend seasonal agricultural workers who commute on a daily basis to be ineligible for adjustment of status. Express provision is made at section 210(a)(4) that aliens granted temporary resident status may commute from a residence abroad. It is abundantly clear in the legislative history that, in passing section 210, Congress was addressing the needs of producers of perishable commodities who have come to rely heavily on the existence of an undocumented workforce. Producers of perishable commodities along the border have been at least as dependent

on such labor as producers in the interior. We have not found in the legislative history an indication that such producers, a significant portion of whose workforce commutes on a daily basis, are for that or any other reason meant to be less favored.

The definition of the term "man-day" has been expanded to include the statutory provision that ". . . performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day."

Several commentors stated that the proposed rule definition of a nonfrivolous application is overly stringent, that documentary evidence should not be required to support a nonfrivolous application, and that applicants' testimony alone should be sufficient to demonstrate that an application is nonfrivolous. One commentor stated that an application should be regarded as nonfrivolous only if the applicant demonstrates that he or she meets all affirmative qualifications and is not ineligible due to any disqualifications.

Generally, those commentors who view the proposed rule definition as overly restrictive premise their position on language in the Conference Managers' Report which relates to the establishment of a "nonfrivolous case of eligibility." It is the interpretation of INS that the criteria stated in the Conference Managers' Report apply only to the provisions of section 210(d)(1) of the Act, which provides a temporary stay of exclusion or deportation and work authorization to aliens apprehended before the application period, who "can establish a nonfrivolous case of eligibility. . . ." The Service has adopted and applied these criteria to persons apprehended between enactment of IRCA and the beginning of the application period. Neither the Conference Managers' Report nor any other legislative history provides guidelines concerning a "nonfrivolous application," which is a new standard set at section 210(d)(2) of the Act for qualification for a temporary stay of exclusion or deportation and work authorization during the application period. Given the difference in statutory terminology, it is the Service's interpretation that a "nonfrivolous case of eligibility" and a "nonfrivolous application" constitute distinct and different standards. The situations of an alien who is apprehended before the application period and one who files an application are clearly different. The former is not in a position to do more than make a declaration. An alien who files an application has had time to more carefully consider his claim and to obtain corroborating evidence. It is the opinion of the Service that the proposed rule definition of a nonfrivolous application, which requires payment of the application fee and documentary evidence of eligibility, is reasonable. This definition attempts to strike a balance between facilitating the issuance of work authorization and limiting such issuance to those for whom Congress intended this benefit.

Sixty-nine commentors urged that 13 various products or classes of products be classified as "other perishable commodities". One commentor stated that INS is not bound to accept regulations issued by the Secretary of Agriculture if such regulations are plainly contrary to the provisions or spirit of IRCA. It is the Service's interpretation of section 210(h) of the Act that it is the authority of the Secretary of Agriculture to define "other perishable commodities" for the purposes of IRCA and not that of Attorney General. On April 22, 1987, the Secretary of Agriculture published in the **Federal Register**, a proposed rule defining "seasonal agricultural services" as it appears in IRCA which contains a definition of "other perishable commodities" (52 FR 13246). The Secretary of Agriculture has been provided the comments received by INS on this issue. Interested parties should direct any further comments to the Secretary of Agriculture at the address provided in his proposed rule. No definition of "other perishable commodities" appears in this rule.

The definition of an "overseas processing office" has been amended to accommodate the Department of State's organization and procedures for the overseas processing of SAW applications. One commentor suggested that consular personnel should not be empowered to approve applications for special agricultural worker status but should be required to refer applications deemed approvable to INS for a final decision. Based on discussions between the Service and the Department of State, this is the procedure which will be implemented. Overseas processing offices will recommend approval of or deny applications for adjustment of status under section 210. Applicants who present applications which are recommended for approval will be admitted to the United States to present their applications at legalization offices for forwarding to regional processing facilities for a final determination. An exception to this procedure will occur if a consular officer has reason to believe that the applicant may have a criminal record. In such a case, the alien will not be admitted to the United States until the results of relevant record checks are known.

Numerous commentors provided suggestions as to specific programs or forms of assistance which should or should not be regarded as "public cash assistance." The Service believes that the proposed rule definition is an accurate interpretation of the provisions of IRCA. Several commentors stated that it was inappropriate to regard public cash assistance received by immediate family members as having been received by an applicant for the purpose of this rule. However, if the dependents, including U.S. citizens, of an applicant qualify for such assistance based on the applicant's inability to adequately provide for their support, and if the assistance received by these persons is required for the maintenance of the applicant's household or subsistence of its members, the Service may regard receipt of such assistance as constituting reliance on public cash assistance on the applicant's part dependent on the amount of assistance received and/or the length of the period of time over which it is received. With the exception of the listing of Medicaid as a program which does not constitute public cash assistance, the proposed rule definition will stand.

Numerous commentors suggested changes in the Service's definition of "qualifying agricultural employment" or suggested that the Secretary of Agriculture, rather than the Attorney General, is authorized to formulate that definition. The Service has removed the proposed rule definition of qualifying agricultural employment and has substituted a reference to "seasonal agricultural services" from section 210(h) of the Act. The Secretary of Agriculture has issued a proposed rule defining "seasonal agricultural services" which contains a definition of "field work". When finalized after comment, this rule will govern qualifying employment.

The proposed rule definition of "subject to an order to show cause" has been removed in that, as pointed out by one commentor, that term appears nowhere else in this rule.

Two commenters suggested that the provision of § 210.2(a)(2) requiring that applicants for Group 1 classification so endorse their applications is unfair and obstructive. The provision is designed merely to permit applicants for that classification to signal their claim to Group 1 eligibility and to permit

examiners to readily identify such claims. Form I–700, Application for Temporary Resident Status as a Special Agricultural Worker, is similar to other Service applications for alternative benefits, with blocks to be checked to identify the exact benefit sought.

Several commentors suggested a change to the language of section 210(a)(3) relative to the tracking of Group 1 numerical limitations. The language of this provision has been amended to more accurately describe the standard for limiting the number of Group 1 applications.

Two commentors suggested that § 210.2(b)(1) be amended to reduce the amount of time given qualified designated entities (QDEs) to forward applications to the Service. The language of this section has been amended to clarify its intent that QDEs must forward applications within 60 days from the date the applicant gives consent for such forwarding rather than the date they receive a completed application. This allows time after filing with a QDE for an application to be perfected before it is filed with the Service.

Several commentors stated that the Service has no statutory authority to impose a 30-day filing deadline on aliens apprehended before the application period and released from Service custody based on establishment of a nonfrivolous case of eligibility for adjustment of status under section 210 of the Act. However, section 210(d)(1) of the Act expressly provides that the stay of exclusion and deportation and the work authorization provided to such persons extends only through the first 30 days of the application period. They are therefore required to file applications within that 30-day period. If they fail to do so, they are subject to issuance of an order to show cause and warrant of arrest or to the execution of any outstanding warrant of arrest or order of deportation.

One hundred and thirty commentors stated that the provision of § 210.2(c)(1) of the proposed rule that persons who were not in the United States upon enactment of IRCA or who departed subsequent to enactment cannot file applications in the United States but must file overseas is inconsistent with section 210(d) of the Act and the legislative history of IRCA. Numerous commentors foresaw disruption of the agricultural labor force and possible crop losses if the proposed rule provision was not changed. One commentor supported this provision. This rule provides that aliens who entered the United States before May 1, 1987 can file applications for special agricultural worker status in the United States. Aliens who were outside the United States on or after May 1, 1987 are still required to file applications at overseas processing offices. However, under this rule appreciation filed overseas will be received, processed, referred to the Service or denied. An applicant whose application is recommended for approval and referred to the Service will be able to proceed immediately to a legalization office in the United States for issuance of Form I–688A, Employment Authorization. These modifications avoid the disruption of on-going agricultural activity which might result from requiring workers currently engaged in agricultural employment to depart the United States to file applications and allow for the earliest possible admission of overseas applicants.

Several comments were offered on the provisions of § 210.2(c)(2) governing applications in the United States. These included a suggestion that the language of this section be clarified to show that it applies to applications received from QDEs; that cash and personal checks be accepted for filing fees; and that filing by mail and in person be permitted in all districts. The language of this provision has been modified to clarify QDE filing procedures. The provision requiring payment of fees by money order or certified check is intended to ensure the efficiency of the special agricultural worker program by eliminating the problems of default on personal checks and the need for security created by the handling of currency. Also, district directors will retain the discretion to set modes of filing in legalization offices under their jurisdiction in order to best respond to the great variance in workloads and case characteristics anticipated among legalization offices. The provisions of § 210.2(c)(3) governing overseas applications have been expanded to include more detailed information concerning consular authority, organization, and procedures for overseas processing of applications for special agricultural worker status.

One commenter suggested that § 210.2(d) of the proposed rule, which provides for an interview of applicants, be amended to require written notice of the time and place of interview in all cases. Such a notice will be provided to all applicants scheduled for interview. It is, however, obviously infeasible for walk-in cases.

One commentor suggested that § 210.2(e) of the proposed rule governing medical examinations be amended to require testing for AIDS to safeguard the public health and prevent aliens afflicted with that disease from becoming public charges. However, section 234 of the Act provides that the physical and mental examination of aliens, to include guidelines for such examination, is a matter under the jurisdiction of the Secretary of Health and Human Services.

Several commentors suggested that § 210.2(f)(3) of the proposed rule governing the use of application information be modified to provide assurances that evidence of eligibility provided to applicants by other parties, such as employers, is covered by the confidentiality provisions. Clarifying language has been added to this provision, now at § 210.2(e)(3). The position of the Service is that all information provided with an application is covered by the confidentiality provisions of section 210(b)(6) of the Act other than false or fraudulent statements or evidence as described in section 210(b)(7) of the Act.

Several commentors suggested that the Service is without statutory authority to effect the provision of § 210.2(f)(4) of the proposed rule that an order to show cause and warrant of arrest can be issued in cases involving violation(s) of section 210(b)(7) of the Act. This provision, now at §210.2(e)(4), has been modified to state that an order to show cause and warrant of arrest can be issued in cases where prosecution is declined and the matter is returned to the Service by an United States Attorney for initiation of deportation proceedings in lieu of prosecution.

Several commentors suggested that § 210.2(g) of the proposed rule governing decisions on special agricultural worker cases be modified to require a notice of intent in denial cases and a copy of the decision to attorneys or representatives in all cases. This provision, now at § 210.2(f), has been amended to provide for a copy of decisions to attorneys and representatives. The administrative process includes an appeal mechanism as required by statute. A notice of intent procedure would create an unwarranted additional adjudicative process and will therefore not be adopted.

The language of § 210.2(h), of the proposed rule, governing motions has been amended to include overseas processing offices and to otherwise clarify the provisions of this rule for, now at § 210.2(g), motions to reopen or reconsider.

Several commentors suggested that the provisions of § 210.3(a) be amended to provide derivative status for family members of eligible aliens or to clarify the eligibility of in-status nonimmigrants for special agricultural worker status. There is no statutory authority for the

creation of derivative special agricultural worker status, nor is there any provision in IRCA or this rule to preclude nonimmigrants from eligibility for adjustment of status under section 210 of the Act.

Several commentors stated that the provisions of § 210.3(b) governing proof of eligibility, which require documentary evidence of eligibility other than applicant testimony, are overly restrictive and inconsistent with the presumption in favor of worker evidence suggested by the legislative history of IRCA. One commentor stated that the provision of § 210.3(b)(3) that an application may be denied if the evidence presented is deemed insufficient and cannot be corroborated, violates section 210(b)(3)(B) of the Act which provides that the burden of proof shifts to the Service if an applicant provides evidence establishing a just and reasonable inference of eligibility. That Congress intended that applications for adjustment of status under section 210 of the Act be supported by documentary evidence is shown by the language of the Conference Managers' Report which provides that to establish a nonfrivolous case of eligibility, applicants must, in addition to attesting to their eligibility, ". . . (identify) the type or nature of documentation they intend to adduce to make the necessary showing . . ." An applicant who provides evidence which is insufficient per se to establish a just and reasonable inference of eligibility and which cannot be corroborated, has not caused the reallocation of the burden of proof to the Service. To provide that the application filed in such a case may be denied is therefore not violative of section 210(b)(3)(B) of the Act. As suggested by several commentors, this provision has been amended by inclusion of the statutory burden of proof provisions.

Several commentors objected to the provision of § 210.3(c) requiring submission of original documents wherever possible. Several commentors noted that this provision is consistent with Congressional concern over fraud in the application process. Fraudulent attempts to gain permanent resident status through this program must be anticipated. This provision is regarded as necessary to prevent fraud. Several minor technical amendments have been made, including a provision that available original documents must be provided at the time of interview, although mailed-in applications may be supported by certified copies of such original documents.

One commentor noted that the provision of an exclusive list of forms of proof of identity at § 210.3(c)(1) would preclude submission of alternative evidence proving identity and suggested inclusion of a final general provision in the list of evidence by preference. This suggestion has been adopted.

Several commentors suggested that the distinction between primary and secondary evidence of employment provided at § 210.3(c)(3) be deleted. This suggestion has been adopted. Several commentors stated that the provisions of this section are overly burdensome in a manner inconsistent with the legislative history of IRCA. However, they are consistent both with the Service's interpretation that documentary evidence of eligibility is required and with the Service's mandate to prevent fraud in the application process.

Several commentors suggested that the provisions of § 210.3(c)(5) governing proof of financial responsibility be amended to include an expanded or universal requirement that applicants submit proof of non-receipt of public cash assistance. Other commentors suggested that the Service's authority to require such proof be restricted or eliminated. The Service regards the rule as written as a proper interpretation of the statute.

Two commentors suggested that the inclusion under § 210.3(d) of persons who have engaged in the persecution of others exceeds the Service's authority under the statute. This is correct and this provision therefore has been removed. However, exchange visitors subject to the provisions of section 212(e) of the Act remain included in the class of persons ineligible for adjustment of status under section 210 of the Act. If such persons are subject to the foreign residence requirement and have not received a waiver of that requirement, they are not admissible as immigrants and are therefore precluded from eligibility under section 210(a)(1)(C) of the Act.

Several commentors objected to the provisions of § 210.3(d) (3) and (4) including in the class of ineligible persons those who have failed to file within certain deadlines. Section 210.3(d)(3) will stand based on the explanation provided in response to comments on § 210.2(b)(2) of this rule. Section 210.3(d)(4) of the proposed rule which imposed a 30-day filing requirement on aliens apprehended after June 1, 1987, has been deleted.

Section 210.3(e)(2) has been amended to more precisely describe the role of overseas processing offices in the processing of waivers of grounds of excludability.

One commentor suggested that the language relating to the special rule for determining public charge provided in proposed rule § 245a.2(k)(4) be adopted at § 210.3(e)(3). This language has been added to this rule. As was the case in relation to § 210.3(c)(5), comment on this section was divided between those favoring a more liberal standard and those favoring a more restrictive one. The standard set remains basically unchanged from the proposed rule.

Several commentors suggested that § 210.4 be amended to include a provision conforming to section 210(f) of the Act to stipulate the precise forms of aid for which aliens whose status is adjusted under section 210 would be ineligible. However, the statute states that Aid to Families with Dependent Children is the sole program for which such aliens are ineligible for five years after adjustment to temporary resident status. The Service believes that the statutory language is clear on its face and does not require regulatory construction.

Several commentors suggested various modifications to the criteria and procedures set at § 210.4(b)(2) for the granting of employment authorization. The Service regards the proposed rule provisions as proper.

Several commentors urged a change in the provision of § 210.4(b)(3) that applicants must return to the office where they were interviewed in order to receive a temporary resident card. However, a change in card issuance procedures would cause significant logistical and administrative difficulties which would threaten the overall efficiency of the legalization and special agricultural worker programs and result in other inconveniences to applicants.

One commentor suggested that the provision of § 210.4(c) that temporary residents who obtain that status under section 210 of the Act are not entitled to submit relative visa petitions is incorrect. The Service interprets section 210(a)(5) of the Act to the contrary.

Several commentors suggested that the termination provisions of section 210(d) are violative of section 242 of the Act. These provisions have been amended to render termination of temporary resident status automatic upon a final order of deportation.

Several commentors objected to the provisions of § 210.5(b) that a determination that an alien has maintained temporary resident status be made before his or her status may be adjusted to that of a permanent resident. The Service regards a brief review of

eligibility, admissibility, and presence in the U.S. as a wholly appropriate and necessary part of the process of adjusting aliens to full permanent resident status. Section 210.5(a) has been amended to conform to the revised overseas processing procedures. Approved overseas applicants will be adjusted to temporary resident status as of the date they enter the United States. Therefore, approved applicants who enter after the application period will be adjusted to permanent resident status one or two years (Group 1 or 2, respectively) following their date of adjustment to temporary resident status. The language of § 210.5(b)(2) has been amended to render it consistent with the revised provisions for termination of temporary resident status at § 210.4(d).

In order to permit prospective applicants to prepare to file, Form I–700, Application for Temporary Resident Status as a Special Agricultural Worker, was prepared and distributed before the development of this final rule. Certain instructions and items on Form I–700 are therefore inconsistent with the final rule. These are as follows:

1. Instruction number 1 states that aliens must have been in the United States since November 6, 1986, to file applications in the United States. Under this rule, aliens who were in the United States prior to May 1, 1987, may file applications in the United States.

2. Instruction number 4 states that an alien who has assisted in the persecution of others is ineligible for special agricultural status. Though aliens who have assisted in the persecution of others may be excludable under certain provisions of section 212(a) of the Act, assistance in persecution per se no longer constitutes an automatic ground of ineligibility. Item 24 will be deleted.

3. Instruction number 7 states that applicants outside the United States may be fingerprinted at United States consulates. However, overseas processing offices will only require the submission of fingerprints in cases where consular offices have reason to believe a criminal/national security background check should be initiated.

4. Instruction number 9 states that all documents must be submitted in the original. This rule requires the submission of original documents "wherever possible" at the time of interview. They need not accompany mailed-in applications, which can be supported with certified copies of original documents.

5. Item 25 will be amended to inquire as to receipt of public cash assistance by family members.

A revised Form I–700 is currently being developed. In the interim, an addendum to Form I–700 will be distributed to ensure that correct information regarding eligibility and documentary requirements is available to applicants.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule as defined within the meaning of section 1(b) of EO 12291.

The information collection requirements contained in this regulation have been cleared by OMB under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 210

Aliens, Permanent resident status, Reporting and recordkeeping requirements, Temporary resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended by adding a new Part 210 to read as follows:

PART 210—SPECIAL AGRIGULTURAL WORKERS

Sec.

210.1 Definition of terms used in this part.
210.2 Application for Temporary Resident Status.
210.3 Eligibility.
210.4 Status and Benefits.
210.5 Adjustment to Permanent Resident Status.

Authority: Pub. L. 99–603, 100 Stat. 3359; 8 U.S.C. 1101 note.

§ 210.1 Definition of terms used in this part.

(a) *Act.* The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.

(b) *Application period.* The 18-month period during which an application for adjustment of status to that of a temporary resident may be accepted, begins on June 1, 1987, and ends on November 30, 1988.

(c) *Complete application.* A complete application consists of an executed Form I–700, Application for Temporary Resident Status as a Special Agricultural Worker, evidence of qualifying agricultural employment and residence, a report of medical examination, and the prescribed number of photographs. An application is not complete until the required fee has been paid and recorded.

(d) *Determination process.* Determination process as used in this part means reviewing and evaluating all information provided pursuant to an application for the benefit sought and making a determination thereon. If fraud, willful misrepresentation of a material fact, a false writing or document, or any other activity prohibited by section 210(b)(7) of the Act is discovered during the determination process the Service shall refer the case to a U.S. Attorney for possible prosecution and/or issue an Order to Show Cause and Warrant of Arrest as provided in § 210.2(e)(4) of this part.

(e) *Family unity.* The term "family unity" as used in section 210(c)(2)(B)(i) of the Act means maintaining the family group without deviation or change. The family group shall include the spouse, unmarried minor children who are not members of some other household, and parents who reside regularly in the household of the family group.

(f) *Group 1.* Special agricultural workers who have performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending on May 1, 1984, 1985, and 1986, and who have resided in the United States for six months in the aggregate in each of those twelve-month periods.

(g) *Group 2.* Special agricultural workers who during the twelve-month period ending on May 1, 1986 have performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States.

(h) *Legalization Office.* Legalization offices are local offices of the Immigration and Naturalization Service which accept and process applications for legalization or special agricultural worker status, under the authority of the district directors in whose districts such offices are located.

(i) *Man-day.* The term "man-day" means the performance during any day of not less than one hour of qualifying agricultural employment for wages paid. If employment records relating to an alien applicant show only piece rate units completed, then any day in which piece rate work was performed shall be counted as a man-day. Work for more than one employer in a single day shall be counted as no more than one man-day for the purposes of this part.

(j) *Nonfrivolous application.* A complete application will be determined to be nonfrivolous at the time the applicant appears for an interview at a legalization or overseas processing office if it contains: (1) Evidence or information which shows on its face that the applicant is admissible to the United States or, if inadmissible, that the

applicable grounds of excludability may be waived under the provisions of section 210(c)(2)(i) of the Act, and (2) evidence or information which shows on its face that the applicant performed at least 90 man-days of employment in seasonal agricultural services during the twelve-month period from May 1, 1985 through May 1, 1986, and (3) documentation which establishes a reasonable inference of the performance of the seasonal agricultural services claimed by the applicant.

(k) *Overseas processing office.* Overseas processing offices are offices outside the United States at which applications for adjustment to temporary resident status as a special agricultural worker are received, processed, referred to the Service for adjudication or denied. The Secretary of State has designated diplomatic and consular offices for this purpose as follows: In Mexico: The Embassy at Mexico City and Consulate General at Monterrey; in all other countries: The immigrant visa issuing office at which the alien, if an applicant for an immigrant visa, would make such application. Consular officers assigned to such offices are authorized to recommend approval of an application for special agricultural worker status to the Service if the alien establishes eligibility for approval and to deny such an application if the alien fails to establish eligibility for approval or is found to have committed fraud or misrepresented facts in the application process.

(l) *Public cash assistance.* Public cash assistance means income or needs-based monetary assistance. This includes but is not limited to supplemental security income received by the alien or his immediate family members through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(m) *Qualified designated entity.* A qualified designated entity is any state, local, church, community, or voluntary agency, farm labor organization, association of agricultural employers or individual designated by the Service to assist aliens in the preparation of applications for Legalization and/or Special Agricultural Worker status.

(n) *Qualifying agricultural employment.* Qualifying agricultural employment means the performance of "seasonal agricultural services" as found at section 210(h) of the Act and as defined in regulations by the Secretary of Agriculture.

Note.—Regulatory definition will be provided by the Department of Agriculture and published by the Immigration and Naturalization Service as an amendment to this regulation.

(o) *Regional processing facility.* Regional Processing Facilities are Service offices established in each of the four Service regions to adjudicate, under the authority of the Directors of the Regional Processing Facilities, applications for adjustment of status under sections 210 and 245a of the Act.

(p) *Service.* The Immigration and Naturalization Service (INS).

(q) *Special agricultural worker.* Any individual granted temporary resident status in the Group 1 or Group 2 classification or permanent resident status under section 210(a) of the Act.

§ 210.2 Application for temporary resident status.

(a)(1) *Application for temporary resident status.* An alien agricultural worker who believes that he or she is eligible for adjustment of status under the provisions of § 210.3 of this part may file an application for such adjustment at a qualified designated entity, at a legalization office, or at an overseas processing office outside the United States. Such application must be filed within the application period except that an alien described in paragraph (b)(2) of this section must file such application during the period specified therein.

(2) *Application for Group 1 status.* An alien who believes that he or she qualifies for Group 1 status as defined in § 210.1(f) of this part and who desires to apply for that classification must so endorse his or her application at the time of filing. Applications not so endorsed will be regarded as applications for Group 2 status as defined in § 210.1(g) of this part.

(3) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful temporary or permanent resident status under section 210 of the Act. No more than 350,000 aliens may be granted temporary resident status in the Group 1 classification. If more than 350,000 aliens are determined to be eligible for Group 1 classification, the first 350,000 applicants, in chronological order by date the application is filed at a legalization or overseas processing office, whose applications are approved for Group 1 status shall be accorded that classification. Other applicants who may be eligible for Group 1 classification shall be classified as Group 2 aliens. There is no limitation on the number of aliens whose resident status may be adjusted from temporary to permanent in Group 2 classification.

(b) *Filing date of application*—(1) *General.* The date the alien submits an application to a qualified designated entity, legalization office or overseas processing office shall be considered the filing date of the application, provided that in the case of an application filed at a qualified designated entity the alien has consented to have the entity forward the application to a legalization office. Qualified designated entities are required to forward completed applications to the appropriate legalization office within 60 days after the applicant gives consent for such forwarding. Except as provided in paragraph (b)(2) of this section, applications must be filed no later than November 30, 1988.

(2) *Filing date for eligible aliens apprehended prior to the application period.* An alien who was apprehended by the Service on or after November 6, 1986 and prior to June 1, 1987, who is eligible to file an application in the United States under paragraph (c)(1) of this section and who was released from Service custody based on a nonfrivolous claim to eligibility for adjustment of status under section 210 of the Act must file an application for adjustment of status during the period beginning on June 1, 1987 and ending on June 30, 1987. This limitation does not apply to aliens who file overseas.

(c) *Filing of application*—(1) *General.* The application must be filed on Form I–700 at a qualified designated entity, at a legalization office, or at an overseas processing office. Only aliens who were physically present in the United States before May 1, 1987 may file applications in the United States. Aliens who were not present in the United States prior to May 1, 1987 must file an application at the overseas processing office having jurisdiction over their current foreign residence, or, if they are currently in the United States, at the overseas processing office having jurisdiction over the place of their last foreign residence prior to coming to the United States.

(2) *Applications in the United States.* (i) The application must be filed on Form I–700 with the required fee and, if the applicant is 14 years or older, the application must be accompanied by a completed Form FD–258 (Fingerprint Card).

(ii) All fees for applications filed in the United States must be submitted in

the exact amount in the form of a money order, cashier's check, or bank check made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(iii) In the case of an application filed at a legalization office, including an application received from a qualified designated entity, the district director may, at his or her discretion, require filing either by mail or in person, or may permit filing in either manner. The applicant must appear at the legalization office as scheduled.

(iv) Each applicant, regardless of age, must appear at the appropriate Service legalization office and must be fingerprinted for the purpose of issuance of Form I–688. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived when it is impractical because of the health of the applicant.

(3) *Filing at overseas processing offices.*

(i) The application must be filed on Form I–700 and must include a complete State Department Form OF–179 (Biographic Data for Visa Purposes).

(ii) Every applicant must appear at the appropriate overseas processing office to be interviewed by a consular officer. The overseas processing office will inform each applicant of the date and time of the interview. At the time of the interview every applicant shall submit the required fee.

(iii) All fees for applications submitted to an overseas processing office shall be submitted in United States currency, or in the currency of the country in which the overseas processing office is located. Fees will not be waived or refunded under any circumstances.

(iv) An applicant at an overseas processing office whose application is recommended for approval shall be provided with an entry document attached to the applicant's file. Upon admission to the United States, the applicant shall proceed to a legalization office for presentation or completion of Form FD–258 (Fingerprint Card), presentation of the applicant's file and issuance of the employment authorization Form I–688A.

(d) *Medical examination.* An applicant under this part must be examined at no expense to the government by a designated civil surgeon or, in the case of an applicant abroad, by a physician or clinic designated to perform medical examinations of immigrant visa applicants. The medical report setting forth the findings concerning the mental and physical condition of the applicant shall be incorporated into the record. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(e) *Limitation on access to information and confidentiality.* (1) Except for consular officials engaged in the processing of applications overseas and employees of a qualified designated entity where an application is filed with that entity, no person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, will be permitted to examine individual applications. For purposes of this part, any contract personnel employed by the Service to work in connection with the legalization program shall be considered an "employee of the Department of Justice or bureau or agency thereof."

(2) Files and records prepared by qualified designated entities under this section are confidential. The Attorney General and the Service shall not have access to these files and records without the consent of the alien.

(3) All information furnished pursuant to an application for temporary resident status under this part including documentary evidence filed with the application shall be used only in the determination process or to enforce the provisions of section 210(b)(7) of the Act, relating to fraud and false statements in applications as provided in paragraph (e)(4) of this subsection.

(4) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 210(b)(7) of the Act, the Service shall refer the matter to the U.S. Attorney for prosecution of the alien or any person who created or supplied a false writing or document for use in an application for adjustment of status under this part. If prosecution is declined, the Service may issue an order to show cause and warrant of arrest if the United States Attorney returns the matter to the Service for initiation of deportation proceedings in lieu of prosecution.

(f) *Decision.* The applicant shall be notified in writing of the decision and, if the application is denied, of the reason(s) therefor. Appeal from an adverse decision under this part may be taken by the applicant, including an overseas applicant, on Form I–694, in accordance with the provisions of § 103.3(a)(2) of this chapter. An applicant for Group 1 status as defined in § 210.1(f) of this part who is determined to be ineligible for that status may be classified as a temporary resident under Group 2 as defined in § 210.1(g) of this part if otherwise eligible for Group 2 status. In such a case the applicant shall be notified of the decision to accord him or her Group 2 status and to deny Group 1 status. He or she is entitled to file an appeal in accordance with the provisions of § 103.3(a)(2) of this chapter from that portion of the decision denying Group 1 status. In the case of an applicant who is represented in the application process by a qualified designated entity, or other entity or individual, the applicant's representative shall also receive notification of decisions specified in this section.

(g) *Motions.* In accordance with the provisions of § 103.5(b) of this chapter, the director of a regional processing facility or a consular officer at an overseas processing office may *sua sponte* reopen any proceeding under this part under his or her jurisdiction and reverse any adverse decision in such proceeding when appeal is taken under § 103.3(a)(2) of this part from such adverse decision; the Associate Commissioner, Examinations, and the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that unit under this part and reconsider any decision rendered in such proceeding. The decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motions to reopen a proceeding or reconsider a decision shall not be considered under this part.

(h) *Certifications.* The regional processing facility director may, in accordance with section 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations when the case involves an unusually complex or novel question of law or fact. A consular officer assigned to an overseas processing office is authorized to certify a decision in the same manner and upon the same basis.

§ 210.3 Eligibility.

(a) *General.* An alien who, during the twelve-month period ending on May 1, 1986, has engaged in qualifying agricultural employment in the United States for at least 90 man-days is

eligible for status as an alien lawfully admitted for temporary residence if otherwise admissible under the provisions of section 210(c) of the Act and if he or she is not ineligible under the provision of subsection (d) of this section.

(b) *Proof of eligibility.*—(1) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States under the provisions of section 210(c) of the Act, is otherwise eligible for adjustment of status under this section and in the case of Group 1 applicant, has resided in the United States for the requisite periods. If the applicant cannot provide documentation which shows qualifying employment for each of the requisite man-days, or in the case of a Group 1 applicant, which meets the residence requirement, the applicant may meet his or her burden of proof by providing documentation sufficient to establish the requisite employment or residence as a matter of just and reasonable inference. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraphs (b) (2) and (3) of this section. If an applicant establishes that he or she has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable.

(2) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Original documents will be given greater weight than copies. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. Analysis of evidence submitted will include consideration of the fact that work performed by minors and spouses is sometimes credited to a principal member of a family.

(3) *Verification.* Affidavits and other personal testimony by an applicant which are not corroborated, in whole or in part, by other credible evidence (including testimony of persons other than the applicant) will not serve to meet an applicant's burden of proof. All evidence of identity, qualifying employment, admissibility, and eligibility submitted by an applicant for adjustment of status under this part will be subject to verification by the Service. Failure by an applicant to release information protected by the Privacy Act or related laws when such information is essential to the proper adjudication of an application may result in denial of the benefit sought. The Service may solicit from agricultural producers, farm labor contractors, collective bargaining organizations and other groups or organizations which maintain records of employment, lists of workers against which evidence of qualifying employment can be checked. If such corroborating evidence is not available and the evidence provided is deemed insufficient, the application may be denied.

(c) *Documents.* A complete application for adjustment of status filed under this part must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as is required hereunder and as may be requested by the examining immigration officer in accordance with such requirement. At the time of filing, certified copies of documents may be submitted in lieu of originals. However, at the time of the interview, wherever possible, the original documents must be presented except for the following: Official government records; employment or employment related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director or consular officer, original documents, even if accompanied by certified copies, may be temporarily retained for further examination.

(1) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(i) Passport;

(ii) Birth certificate;

(iii) Any national identity document from a foreign country bearing a photo and/or fingerprint (e.g., "cedula", "cartilla", "carte d'identite," etc.);

(iv) Driver's license or similar document issued by a state if it contains a photo;

(v) Baptismal record or marriage certificate;

(vi) Affidavits, or

(vii) Such other documentation which may establish the identity of the applicant.

(2) *Assumed names.*— (i) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name.

(ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail.

(3) *Proof of employment.* The applicant may establish qualifying employment through government employment records, or records maintained by agricultural producers, farm labor contractors, collective bargaining organizations and other groups or organizations which maintain records of employment, or such other evidence as worker identification issued by employers or collective bagaining organizations, union membership cards or other union records such as dues receipts or records of the applicant's involvement or that of his or her immediate family with organizations providing services to farmworkers, or work records such as pay stubs, piece work receipts, W–2 Forms or certification of the filing of Federal income tax returns on IRS Form 6166, or state verification of the filing of state income tax returns. Affidavits may be submitted under oath, by agricultural producers, foremen, farm labor contractors, union officials, fellow employees, or other persons with

specific knowledge of the applicant's employment. The affiant must be identified by name and address; the name of the applicant and the relationship of the affiant to the applicant must be stated; and the source of the information in the affidavit (e.g. personal knowledge, reliance on information provided by others, etc.) must be indicated. The affidavit must also provide information regarding the crop and the type of work performed by the applicant and the period during which such work was performed. The affiant must provide a certified copy of corroborating records or state the affiant's willingness to personally verify the information provided. The weight and probative value of any affidavit accepted will be determined on the basis of the substance of the affidavit and any documents which may be affixed thereto which may corroborate the information provided.

(4) *Proof of residence.* Evidence to establish residence in the United States during the requisite period(s) includes: Employment records as described in paragraph (c)(3) of this section; utility bills (gas, electric, phone, etc.), receipts, or letters from companies showing the dates during which the applicant received service; school records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing the name of school, name and, if available, address of student, and periods of attendance, and hospital or medical records showing similar information; attestations by churches, unions, or other organizations to the applicant's residence by letter which: Identify applicant by name, are signed by an official (whose title is shown), show inclusive dates of membership, state the address where applicant resided during the membership period, include the seal of the organization impressed on the letter, establish how the author knows the applicant, and the origin of the information; and additional documents that could show that the applicant was in the United States at a specific time, such as: Money order receipts for money sent out of the country; passport entries; birth certificates of children born in the United States; bank books with dated transactions; letters of correspondence between the applicant and another person or organization; Social Security card; Selective Service card; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, contracts to which applicant has been a party; tax receipts; insurance policies, receipts, or letters; and any other document that will show that applicant was in the United States at a specific time. For Group 2 eligibility, evidence of performance of the required 90 man-days of seasonal agricultural services shall constitute evidence of qualifying residence.

(5) *Proof of financial responsibility.* Generally, the evidence of employment submitted under paragraph (c)(3) of this section will serve to demonstrate the alien's financial responsibility. If it appears that the applicant may be inadmissible under section 212(a)(15) of the Act, he or she may be required to submit documentation showing a history of employment without reliance on public cash assistance for all periods of residence in the United States.

(d) *Ineligible classes.* The following classes of aliens are ineligible for temporary residence under this part:

(1) An alien who at any time was a nonimmigrant exchange visitor under section 101(a)(15)(J) of the Act who is subject to the two-year foreign residence requirement unless the alien has complied with that requirement or the requirement has been waived pursuant to the provisions of section 212(e) of the Act;

(2) An alien who was in the custody of the Service or was apprehended as a deportable alien after November 6, 1986 and prior to June 1, 1987 who was determined to have a nonfrivolous claim to eligibility for adjustment of status under the provisions of section 210(d)(1) of the Act and who does not file an application for adjustment of status to that of temporary resident under this part prior to July 1, 1987;

(3) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived, pursuant to section 210(c)(2)(B)(ii) of the Act.

(e) *Exclusion grounds*—(1) *Grounds of exclusion not to be applied.* Sections (14), (20), (21), (25), and (32) of section 212(a) of the Act shall not apply to applicants applying for temporary resident status.

(2) *Waiver of grounds for exclusion.* Except as provided in paragraph (e)(3) of this section, the Service may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I-690. When an application for waiver of grounds of excludability is filed jointly with an application for temporary residence under this section, it shall be accepted for processing at the legalization office or overseas processing office. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the legalization office it shall be forwarded to the appropriate regional processing facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances. Generally, an application for waiver of grounds of excludability under this part submitted at a legalization office or overseas processing office will be approved or denied by the director of the regional processing facility in whose jurisdiction the applicant's application for adjustment of status was filed. However, in cases involving clear statutory ineligibility or admitted fraud, such application for a waiver may be denied by the district director in whose jurisdiction the application is filed; in cases filed at overseas processing offices, such application for a waiver may be denied by a consular officer; or, in cases returned to a legalization office for reinterview, such application may be approved at the discretion of the district director. The applicant shall be notified of the decision and, if the application is denied, of the reason(s) therefor. The applicant may appeal the decision within 30 days after the service of the notice pursuant to the provisions of § 103.3(a)(2) of this chapter.

(3) *Grounds of exclusion that may not be waived.* The following provisions of section 212(a) of the Act may not be waived:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) except as provided in paragraph (c)(4) of this section.

(iii) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana.

(iv) Paragraphs (27), (prejudicial to the public interest), (28) (communists), and (29) (subversive);

(v) Paragraph (33) (nazi persecution).

(4) *Special rule for determination of public charge.* An applicant who has a consistent employment history which shows the ability to support himself and his or her family, even though his income may be below the poverty level, is not excludable under paragraph

(e)(3)(ii) of this section. The applicant's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the applicant shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without reliance on public cash assistance. This regulation is prospective in that the Service shall determine, based on the applicant's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

§ 210.4 Status of benefits.

(a) *Date of adjustment.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date on which the fee was paid at a legalization office, except that the status of an alien who applied for such status at an overseas processing office whose application has been recommended for approval by that office shall be adjusted as of the date of his or her admission into the United States.

(b) *Employment and travel authorization*—(1) *General.* Authorization for employment and travel abroad for temporary resident status applicants under section 210 of the Act may only be granted by a Service legalization office. In the case of an application which has been filed with a qualified designated entity, employment authorization may only be granted after a nonfrivolous application has been received at a legalization office, and receipt of the fee has been recorded.

(2) *Employment authorization prior to the granting of temporary resident status.* Permission to travel abroad and to accept employment will be granted to the applicant, after an interview has been conducted in connection with a nonfrivolous application at a legalization office. If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a legalization office, authorization to accept employment will be granted valid to the scheduled appointment date. The appointment letter will be endorsed with the temporary employment authorization. Employment authorization subsequent to an interview will be granted on Service Form I–688A, and will be restricted to six months duration, pending final determination on the application for temporary resident status. If a final deterimination has not been made on the application prior to the expiration date of the I–688A, that date may be extended upon return of the I–688A by the applicant to the legalization office where it was obtained.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon grant of an application for adjustment to temporary resident status by a regional processing facility, the processing facility will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant will be required to return to the legalization office where the application was initially received, surrender the I–688A previously issued, and will be issued Form I–688, Temporary Resident Card, authorizing employment and travel abroad. An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted for permanent residence.

(c) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act is not entitled to submit a petition pursuant to section 203(a)(2) of the Act or to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence, except as provided in paragraph (b)(3) of this section.

(d) *Termination of temporary resident status*—(1) *General.* The temporary resident status of a special agricultural worker is terminated automatically and without notice under section 210(a)(3) of the Act upon entry of a final order of deportation by an immigration judge based on a determination that the alien is deportable under section 241 of the Act.

(2) *Surrender of Form I–688.* An alien whose status as a temporary resident has been terminated under this section shall, upon demand, promptly surrender Form I–688, Temporary Resident Card, to the district director having jurisdiction over the alien's place of residence or, in the case of a commuter, employment.

§ 210.5 Adjustment to permanent resident status.

(a) *Eligibility and date of adjustment to permanent resident status.* The status of an alien lawfully admitted to the United States for temporary residence under section 210(a)(1) of the Act, if the alien has otherwise maintained such status as required by the Act, shall be adjusted to that of an alien lawfully admitted to the United States for permanent residence as of the following dates:

(1) *Group 1.* Aliens determined to be eligible for Group 1 classification whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1989. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence one year from the date of the adjustment to temporary residence.

(2) *Group 2.* Aliens determined to be eligible for Group 2 classification whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1990. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence two years from the date of the adjustment to temporary residence.

(b) *Maintenance of temporary resident status; ADIT processing*—(1) *General.* Before the status of an alien lawfully admitted for temporary residence under section 210(a)(1) of the Act can be adjusted to that of an alien lawfully admitted for permanent residence, the alien must appear at a legalization office or such other Service office as is designated for this purpose for a determination that he or she has maintained temporary resident status, and for completion of processing for issuance of Form I–551, Alien Registration Receipt Card.

(2) *Maintenance of status.* Information provided by the alien concerning his or her maintenance of status will be subject to Service verification. The status of an alien described in paragraph (b)(1) of this section who has maintained temporary resident status will be adjusted to that of an alien lawfully admitted for permanent residence effective on the date appropriate for his or her group as provided in paragraph (a) of this section. The alien must execute an affidavit

stating that he or she has maintained status as a temporary resident. An alien who the examining officer believes to be deportable under section 241 of th Act is subject to issuance of an order to show cause and warrant of arrest and, if found to be deportable by an immigration judge, to termination of temporary resident status as provided in § 210.4(d) of this part. An alien who is excludable under section 210(c) of the Act who is not deportable under section 241 of the Act is not subject to termination of temporary resident status if the ground of excludability arose subsequent to the adjustment of the alien's status to that of a temporary resident. If the alien is deportable under section 241(a) of the Act because he or she was excludable at the time his or her status was adjusted to that of a lawful temporary resident, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability if a waiver is available under section 210(c) of the Act. If the alien applies for such a waiver, and the waiver is granted after the dates of adjustment set in paragraph (a) of this section, the adjustment of the alien's status to that of an alien lawfully admitted for permanent residence shall be recorded as of the date of adjustment appropriate for his or her group.

(3) *ADIT Processing.* An alien described in paragraph (b)(1) of this section must provide suitable ADIT photographs, and a fingerprint and signature must be obtained from the alien on Form I–89.

Dated: April 28, 1987.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 87–9894 Filed 4–30–87; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 245A

[INS Number: 1022–87]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 245A of the Immigration and Nationality Act as amended by section 201 of the Immigration Reform and Control Act of 1986 ("IRCA"). Section 201 of IRCA directs the Attorney General to adjust the status of certain aliens to that of aliens lawfully admitted for temporary residence if they meet certain requirements. This section also directs the Attorney General to adjust the status of a temporary resident alien to that of an alien lawfully admitted for permanent residence if the alien meets certain requirements.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: William S. Slattery, Assistant Commissioner, Legalization, (202) 786–3658.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub. L. 99–603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment of the Immigration and Nationality Act ("INA") in 1952, reflects a resolve to strengthen law enforcement to control illegal immigration. It also reflects the Nation's concerns for certain aliens who have been residing illegally in the United States. The theme of this legislation is focused upon regaining control of our Nation's borders and eliminating the illegal alien problem in this country through the firm yet fair enforcement of our Nation's laws. With the benefits of legalization and employer's sanctions, and the penalties for fraud in conjunction with both programs, this legislation will demonstrate that the only mode of entry into the United States will be the legal mode.

Section 201 of IRCA, the subject of this final rule, provides for the legalization of status of certain aliens who have been residing illegally in the United States since before January 1, 1982. At the same time, as stated under certain provisions of section 201 of IRCA, Congress' intent that aliens eligible for the legalization program be admissible as immigrants, is reflected through the requirement that the aliens meet certain standards of eligibility.

Since November 6, 1986, the Immigration and Naturalization Service has taken a number of steps to insure that the new legislation will be implemented effectively, efficiently and fairly. Service officials have engaged in a continuing dialogue with members of the public and representatives of interested organizations on how to implement this legislation. On January 20, 1987, the Service took the unprecedented step of publishing in the **Federal Register** a notice making available to the public the preliminary working draft regulations (52 FR 2115). More than 6,800 persons requested and received a copy of this draft. As a result, 164 individuals and interested organizations submitted written comments. All comments were seriously considered by the Service. A number of the suggestions received by the Service were incorporated in the proposed rule.

The Immigration and Naturalization Service published a notice of proposed rulemaking on the implementation of the legalization provisions of "IRCA" in the **Federal Register** on March 19, 1987 (52 FR 8752). 549 comments were received in response to the proposed rule. The provisions of the proposed rule which received a significant number of comments will be discussed separately.

Summary of the Final Rule

The final rule amends 8 CFR Part 245 by creating a new Part 245a. The final rule permits certain aliens, who are otherwise eligible, to adjust their status to that of aliens lawfully admitted for temporary residence.

Aliens who are eligible to apply include: Aliens who entered the United States before January 1, 1982 and who have continued to reside in the United States in an unlawful status since such date and through the date the alien files an application under this rule; aliens who entered the United States prior to January 1, 1982 as nonimmigrants and whose period of authorized stay expired before January 1, 1982 or whose unlawful status was known to INS as of such date; aliens whose status is that of Cuban-Haitian Entrants; and, aliens who prior to January 1, 1982 were either granted extended voluntary departure (EVD) or were in a deferred action status.

All applicants for legalization, with certain exceptions for those applicants who have a Cuban-Haitian Entrant status, must meet certain requirements. In general, an applicant must establish:

(1) Continuous residence in the United States since January 1, 1982;

(2) continuous physical presence in the United States since November 6, 1986; and

(3) admissibility as an immigrant.

Additionally, applicants must file a timely application as prescribed under this rule, submit the result of a prescribed medical examination and provide proof that they either have registered or are registering under the Military Selective Service Act, if required to be so registered under that Act.

This rule establishes a single level of appellate review to permit the applicant to challenge a denial of his or her application for temporary resident status. This rule also provides that that status shall be terminated by the Service upon the occurrence of certain events.

This rule also sets forth procedures and the substantive requirements for the

adjustment of status of temporary residents to that of permanent residents.

Finally, the rule provides that aliens who submit false documentation or make false representations in support of their application for legalization will be subject to criminal prosecution and eventual explusion from the United States.

Key Provisions of the Final Rule

Application Period

An alien must file an application for legalization between May 5, 1987 and May 4, 1988. However, aliens who have been apprehended or served with an Order to Show Cause subsequent to November 6, 1986, must apply within thirty days of the beginning of the application period. Aliens who are apprehended or served with an Order to Show Cause during the application period must apply within thirty days but not later than May 4, 1988. Failure to apply within the application period, as fully set forth in this rule, will render the alien statutorily ineligible for legalization.

Where to File the Application

Form I–687 (Application for Status as a Temporary Resident) and supporting documentation may be filed either at a Service Legalization Office or with a Qualified Designated Entity ("QDE").

What Documentation Should be Submitted to INS

In addition to the completed Form I–687, the applicant must submit the result of a medical examination, an application for waivers of grounds of excludability, if applicable, and sufficient documentary information as fully set forth in this rule, to prove the applicant's identity, his or her continuous residence in the United States since January 1, 1982, and proof of financial responsibility.

Eligibility Requirements

(1) *Continuous residence since January 1, 1982.* An applicant otherwise eligible for legalization must prove that he or she "resided continuously" in the United States since January 1, 1982. However, certain absences will not be considered to have interrupted this continuous residence requirement. The Service initially considered that a single absence of more than 30 days or aggregate absences totaling more than 150 days would break the continuous residence requirement. However, in light of the public comments received on this subject, the Service reconsidered its position and under the proposed rule a single absence of 45 days or more and aggregate absences of 180 days or more would break the continuous residence requirement.

In response to the proposed rule, 357 comments were received concerning this issue. The majority of commenters (233) were supportive of the periods of absences that were outlined in the proposed rule. The negative commenters (124) indicated that the proposed timeframes were far too restrictive.

After review and careful consideration of all comments, and with the support received for the language outlined in the proposed rule, no change from the language proposed in the proposal rule is warranted.

(2) *Continuous physical presence since November 6, 1986.* In addition to the continuous residence requirement since January 1, 1982, the applicant must prove that he has been continuously physically present in the United States since November 6, 1986. 130 comments were received in reference to this issue. In light of the comments received, all of which were in opposition to the definition found in the proposed rule, INS has reevaluated and reconsidered its position. Under this final rule, absences that are brief, casual, and innocent will not break the physical presence requirement if made before May 1, 1987. Aliens who were outside of the United States on the date of enactment or departed the United States after enactment may apply for legalization if they reentered prior to May 1, 1987, provided they meet the continuous residence requirements, and are otherwise eligible for legalization.

(3) *Definition of the term "Known to the Government".* An alien who entered the United States as a nonimmigrant before January 1, 1982, may be eligible for legalization if the alien's "unlawful status was known to the Government" as of January 1, 1982. The Service, in the proposed rule, interpreted the term "known to the Government" to mean "INS." This interpretation, as previously set forth in the preliminary draft regulations, was challenged by many commenters. The Service initially proposed that an alien's unlawful status would have been known by the Service if the Service had made an affirmative determination that the alien was subject to deportation proceedings. In light of the public comments, the Service reconsidered its initial proposal. Under the proposed rule, it was stated that if the Service received information as of January 1, 1982 from a federal agency reflecting the fact that the alien clearly expressed to the federal agency that he or she was in violation of his or her lawful status, and that information is contained in the alien's A-file, the alien's unlawful status would be known to INS regardless of whether or not the Service made a determination that the alien was subject to deportation proceedings.

In response to the proposed rule, 91 comments concerning this issue were received. All of the comments clearly stated that the definition was far too restrictive and should be modified to include all Federal agencies. Some of the commenters further stated that state agencies should also be included.

Pursuant to section 103 of the INA, only the Attorney General is charged with the administration and enforcement of the immigration laws. Correspondingly, only the Attorney General can make a determination that an alien's status is "unlawful." To interpret the word "Government" to include Federal, State, and local agencies would make the administration of section 201 difficult, if not impossible, and would vest government agencies with an authority that Congress specifically granted only to the Attorney General.

Therefore, after review and careful consideration of all comments, INS has modified its position to include responses made by the Service to any other agency which advised that agency that a particular alien had no legal status in the United States or for whom no record could be found.

(4) *Admissible as an Immigrant.* An alien who meets the residence requirements must be admissible as an immigrant. This rule implements the statutory requirements that certain grounds of admissibility are not applicable, that other grounds may be waived, and that other grounds cannot be waived. This rule also defines the terms "felony" and "misdemeanor," both of which refer to crimes committed within the United States. This rule also sets forth procedres for obtaining waivers of those grounds of admissibility which may be waived. In determining a waiver based on "family unity" the proposed rule defines family unity as limited to spouses, unmarried minor children and parents.

In response to the proposed rule, 409 comments were received which addressed numerous areas of the admissibility standards.

The key issues outlined in these comments were the public charge and special rule for determination of public charge which received a majority of the comments (345). Of these comments, 314 commenters were clearly supportive of the language in the proposed rule. The remaining commenters indicated an unfairness of the proposed rule due to

the financial status of the population that IRCA was intended to serve. Further, numerous commenters raised the concern that INA may deny legalization benefits if public cash assistance was received by United States citizen children of legalization applicants. The position of INS is that the statute is clear regarding this subject and applicants may in fact be ineligible for legalization if such cash assistance was received by their U.S. citizen child. Neither medicaid nor medicare will be considered public cash assistance.

After review and careful consideration of all comments, INS has modified the language found in the proposed rule to reflect that the provisions of section 212(a)(15), of the INA, relating to the likelihood of becoming a public charge may be waived at the time of application for temporary resident status.

(5) *Administrative appellate review.* This final rule establishes a single level of administrative appellate review to adjudicate appeals from legalization decisions. The appellate authority is the Associate Commissioner for Examinations.

In response to the proposed rule, 78 comments were received concerning this issue. The commenters aired concerns regarding the inclusion of legalization appeals into the existing Administrative Appeals Unit (AAU). Although the authority for legalization appeals lies with the AAU, a separate unit within AAU is being established to adjudicate these appeals. After review and careful consideration of all comments, no deviation from the language found in the proposed rule is warranted.

(6) *Termination of temporary resident status.* Consistent with section 245A(b)(2) of IRCA, this final rule sets forth the procedural and substantive grounds for terminating the status of a temporary resident alien. The rule sets forth that a decision to terminate status may be appealed to the Associate Commissioner for Examinations.

(7) *Adjustment of temporary resident status to permanent resident status.* This rule sets forth the procedural and substantive requirements with which a temporary resident alien must comply in order to change his or her status to that of an alien lawfully admitted for permanent residence.

(8) *Documentation requirements.* In the preliminary working draft, INS outlined the documentation requirements to establish residence, identity, and financial responsibility. INS also required that all such documentation presented must be original documents.

In response to the proposed rule, 223 comments were received concerning the documentation requirements. A vast majority of the commenters stated both a reluctance and unfairness to requiring the submission of original documents to INS.

Upon review and careful consideration of all comments, INS has modified its position with regard to the submission of original documentation. This final rule allows for the filing of an application for legalization supported by copies of documents certified pursuant to § 204.2(j). Whenever possible, the originals of the supporting evidence must be presented at the time of the interview.

(9) *Temporary disqualification of newly legalized aliens from receiving certain public welfare assistance.* The Attorney General will publish a separate list of programs identified as programs of financial assistance furnished under federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need which newly legalized aliens (with limited exceptions) may not receive for five (5) years.

(10) *Family unity.* Although not specifically addressed in the proposed rule, 134 comments were received concerning how INS will treat ineligible family members of legalized aliens that continue to reside illegally in the United States.

Aliens who apply for legalization and are found to be ineligible are protected by the confidentiality provisions of IRCA, as is information in that application. Such information includes that pertaining to family members. With such provisions existing, the information will not be used for the enforcement of other provisions of the INA (except in situations where fraud or willful misrepresentations are found to exist in the application process).

In contrast, the Service cannot use the regulatory process to substitute its judgment for that of the Congress and grant the equivalent of derivative status through any existing mechanisms such as voluntary departure (See 8 CFR 242.5). However, this is not a blanket prohibition against voluntary departure. Instead, district directors will continue to apply the provisions of 8 CFR 242.5 in those cases wherein it is determined that an ineligible family member has a humanitarian need to remain in the United States.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The Immigration and Naturalization Service has decided to invoke the "good cause" exception to the 30 day effective date requirement of 5 U.S.C. 553(d) making the final regulations effective upon publication. The justification for waiving the 30 day effective date is as follows: Persons eligible for benefits under 245A of the Immigration and Nationality Act would be adversely affected if the Service were forced to wait 30 days before implementing the regulations. The statute provides a one year application period for legalization which is to begin no later than May 5, 1987. A 30 day effective date would reduce the application period by almost one month.

Congress provided the Immigration and Naturalization Service with a limited amount of time in which to promulgate regulations and implement this new provision of the law. In six months time the Service has had to acquire, furnish, and staff over 100 new INS offices. The staffing of these offices alone has entailed the hiring of over 2,000 employees who require training and instructions on the processing of legalization applications. These are the preparations which were necessary to implement only 245A. The three major sections of the Immigration Reform and Control Act of 1986 have affected millions of aliens as well as every employer in the United States.

Furthermore, the Service has made unprecedented efforts to provide the public the opportunity to comment and provide input in formulating the regulations. The Service provided the public with two opportunities to comment on the regulations. On January 20, 1987 a notice was published in the **Federal Register** notifying the public that preliminary draft regulations were available for public comment. More than 6,800 copies of the preliminary draft regulations were requested and over 164 comments were received from the public. Based on these comments the draft regulations were revised and published as proposed regulations in the **Federal Register** on March 19, 1987.

The Service acknowledges that modifications made in this final rule (Documentation and Physical Presence) effect the instructions on Form I-687. Revision of Form I-687 is underway. Where the instructions on Form I-687 are inconsistent with the provisions of this rule, the rule governs. The Service will provide to Service Legalization Offices, Qualified Designated Entities, and other interest groups with an addendum to be attached to Form I-687 already in circulation.

This is not a major rule as defined within the meaning of section 1(b) of EO 12291.

The information collection requirements contained in this regulation have been cleared by OMB under Paperwork Reduction Act.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended by adding a new Part 245a to read as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

Sec.

245a.1 Definitions.
245a.2 Application for temporary residence.
245a.3 Application for adjustment from temporary to permanent resident status.

Authority: Pub. L. 99-603, 100 Stat. 3359; 8 U.S.C. 1101 note.

§ 245a.1 Definitions.

As used in this chapter:

(a) "Act" means the Immigration and Nationality Act, as amended by The Immigration Reform and Control Act of 1986.

(b) "Service" means the Immigration and Naturalization Service (INS).

(c)(1) "Resided continuously" as used in section 245A(a)(2) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status:

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application.

(2) "Continuous residence," as used in section 245A(b)(1)(B) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of applying for adjustment from temporary residence to permanent resident status: No single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of granting of lawful temporary resident status and of applying for permanent resident status, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period(s) allowed.

(d) In the term "alien's unlawful status was known to the government," the term "government" means the Immigration and Naturalization Service. An alien's unlawful status was "known to the government" only if:

(1) The Service received factual information constituting a violation of the alien's nonimmigrant status from any agency, bureau or department, or subdivision thereof, of the Federal government, and such information was stored or otherwise recorded in the official Service alien file, whether or not the Service took follow-up action on the information received. In order to meet the standard of "information constituting a violation of the alien's nonimmigrant status," the alien must have made a clear statement or declaration to the other federal agency, bureau or department that he or she was in violation of nonimmigrant status; or

(2) An affirmative determination was made by the Service prior to January 1, 1982 that the alien was subject to deportation proceedings. Evidence that may be presented by an alien to support an assertion that such a determination was made may include, but is not limited to, official Service documents issued prior to January 1, 1982, i.e., Forms I-94, Arrival-Departure Records granting a period of time in which to depart the United States without imposition of proceedings; Forms I-210, Voluntary Departure Notice letter; and Forms I-221, Order to Show Cause and Notice of Hearing. Evidence from Service records that may be used to support a finding that such a determination was made may include, but is not limited to, record copies of the aforementioned forms and other documents contained in alien files, i.e., Forms I-213, Record of deportable Alien; Unexecuted Forms I-205, Warrant of Deportation; Forms I-265, Application for Order to Show Cause and Processing Sheet; Forms I-541, Order of Denial of Application for Extension of Stay granting a period of time in which to depart the United States without imposition of proceedings, or any other Service record reflecting that the alien's nonimmigrant status was considered by the Service to have terminated or the alien was otherwise determined to be subject to deportation proceedings prior to January 1, 1982, whether or not deportation proceedings were instituted; or

(3) A copy of a response by the Service to any other agency which advised that agency that a particular alien had no legal status in the United States or for whom no record could be found.

(e) The term "to make a determination" as used in § 245a.2(t)(3) of this part means obtaining and reviewing all information required to adjudicate an application for the benefit sought and making a decision thereon. If fraud, willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document, knowingly making a false statement or representation, or any other activity prohibitied by section 245A(c)(6) of the Act is established during the process of making the determination on the application, the Service shall refer to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part. If prosecution is declined, the Service may issue an Order to Show Cause and Warrant of Arrest if the United States Attorney returns the matter to the Service for initiation of deportation proceedings in lieu of prosecution.

(f) The term "continuous physical presence" as used in section 245A(a)(3)(A) of the Act means actual continuous presence in the United States since November 6, 1986 until filing of any application for adjustment of status. Aliens who were outside of the United States on the date of enactment or departed the United States after enactment may apply for legalization if they reentered prior to May 1, 1987, provided they meet the continuous residence requirements, and are otherwise eligible for legalization.

(g) "Brief, casual, and innocent" means a departure authorized by the Service (advance parole) subsequent to May 1, 1987 of not more than thirty (30) days for legitimate emergency or

humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(h) The term "brief and casual" as used in section 245A(b)(3)(A) of the Act, means temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status. However, such absences must not exceed the specific periods of time required in order to maintain continuous residence.

(i) "Public cash assistance" means income or needs-based monetary assistance, to include but not limited to supplemental security income, received by the alien or his or her immediate family members through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(j) "Legalization Office" means local offices of the Immigration and Naturalization Service which accept and process applications for Legalization or Special Agricultural Worker status, under the authority of the INS district directors in whose districts such offices are located.

(k) "Regional Processing Facility" means Service offices established in each of the four Service regions to adjudicate, under the authority of the INS Directors of the Regional Processing Facilities, applications for adjustment of status under section 210, 245A(a) or 245A(b)(1) of the Act.

(l) "Designate entity" means any state, local, church, community, farm labor organization, voluntary organization, association of agricultural employers or individual determined by the Service to be qualified to assist aliens in the preparation of applications for Legalization status.

(m) The term "family unity" as used in section 245(d)(2)(B)(i) of the Act means maintaining the family group without deviation or change. The family group shall include the spouse, unmarried minor children under 18 years of age who are not members of some other household, and parents who reside regularly in the household of the family group.

(n) The term "prima facie" as used in section 245(e) (1) and (2) of the Act means eligibility is established if the applicant presents a completed I-687 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this part.

(o) "Misdemeanor" means a crime, committed in the United States, punishable by imprisonment for a term of one year or less but more than five days, regardless of the term such alien actually served, if any.

(p) "Felony" means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any.

(q) "Subject of an Order to Show Cause" means actual service of the Order to Show Cause upon the alien through the mail or by personal service.

§ 245a.2 Application for termporary residence.

(a) *Application period for temporary residence.* (1) An alien who has resided unlawfully in the United States since January 1, 1982, who believes that he or she meets the eligibility requirements of section 245A of the Act must make application within the twelve month period beginning on May 5, 1987 and ending on May 4, 1988, except as provided in the following paragraphs.

(2)(i) An alien who was apprehended by the Service, or was the subject of an Order to Show Cause issued, on or after November 6, 1986 and prior to May 5, 1987 and who has established prima facie eligibility for adjustment of status under section 245A(a) of the Act must file an application for adjustment during the period beginning on May 5, 1987 and ending on June 3, 1987.

(ii) An alien who is the subject of an Order to Show Cause issued under section 242 of the Act during the period beginning on May 5, 1987 and endig on April 4, 1988 must file an application for adjustment of status to that of a temporary resident prior to the thirty-first day after the issuance of the Order to Show Cause.

(iii) An alien who is the subject of an Order to Show Cause issued under section 242 of the Act during the period beginning on April 5, 1988 and ending on May 4, 1988 must file an application for adjustment of status to that of a temporary resident not later than May 4, 1988.

(iv) An alien, described in paragraphs (a)(2)(i) through (iii) of this section, who fails to file an application for adjustment of status to that of a temporary resident under section 245A(a) of the Act during the respective time period(s), will be statutorily ineligible for such adjustment of status.

(b) *Eligibility.* The following categories of aliens who are not otherwise excludable under section 212(a) of the Act are eligible to apply for status to that of a person admitted for temporary residence:

(1) An alien (other than an alien who entered as a nonimmigrant) who establishes that he or she entered the United States prior to January 1, 1982, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing the application.

(2) An alien who establishes that he or she entered the United States as a nonimmigrant prior to January 1, 1982, and whose period of authorized admission expired through the passage of time prior to January 1, 1982, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing the application.

(3) An alien who establishes that he or she entered the United States as a nonimmigrant prior to January 1, 1982, and whose unlawful status was known to the Government as of January 1, 1982, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing the application.

(4) An alien described in paragraphs (b) (1) through (3) of this section who was at any time a nonimmigrant exchange visitor (as defined in section 101(a)(15)(J) of the Act), must establish that he or she was not subject to the two-year foreign residence requirements of section 212(e) or has fulfilled that requirement or has received a waiver of such requirements and has resided continuously in the United States in unlawful status since January 1, 1982.

(5) An alien who establishes that he or she was granted voluntary departure, voluntary return, extended voluntary departure or placed in deferred action category by the Service prior to January 1, 1982 and who has thereafter resided continuously in such status in the United States and who has been physically present in the United States from November 6, 1986 until the date of filing the application.

(6) An alien who establishes that he or she was paroled into the United States prior to January 1, 1982, and whose parole status terminated prior to January 1, 1982, and who has thereafter resided continuously in such status in the United States, and who has been physically present in the United States from

November 6, 1986, until the date of filing the application.

(7) An alien who establishes that he or she is a Cuban or Haitian Entrant who was physically present in the United States prior to January 1, 1982, and who has thereafter resided continuously in the United States, and who has been physically present in the United States from November 6, 1986, until the date of filing the application, without regard to whether such alien has applied for adjustment of status pursuant to section 202 of the Act.

(8) An alien's eligibility under the categories described in §§ 245a.2(b) (1) through (7) shall not be affected by entries to the United States subsequent to January 1, 1982 that were not documented or Service Form I–94, Arrival-Departure Record.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors.

(2) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group or political opinion.

(3) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived, pursuant to section 245A(d)(2)(B)(ii) of this Act.

(4) An alien who at any time was a nonimmigrant exchange visitor who is subject to the two-year foreign residence requirement unless the requirement has been satisfied or waived pursuant to the provisions of section 212(e) of the Act who has resided continuously in the United States in an unlawful status since January 1, 1982.

(5) An alien who was in the custody of or apprehended by the Service, or apprehended and the subject of an Order to Show Cause, on or after November 6, 1986, and prior to May 5, 1987, and has established prima facie eligibility for adjustment of status, who does not file an application for adjustment of status to that of a temporary resident under section 245A(a) of the Act, prior to June 4, 1987.

(6) An alien who is the subject of an Order to Show Cause issued under section 242 of the Act during the period beginning on May 5, 1987 and ending on April 4, 1988 who does not file an application for adjustment of status to that of temporary resident under section 245A(a) of the Act prior to the thirty-first day after issuance of the order.

(7) An alien who is the subject of an Order to Show Cause issued under section 242 of the Act during the period beginning on April 5, 1988 and ending on May 4, 1988 who does not file an application for adjustment of status to that of a temporary resident under section 245A(a) of the Act prior to May 5, 1988.

(8) An alien who was paroled into the United States prior to January 1, 1982 and whose parole status terminated subsequent to January 1, 1982, except an alien who was granted advance parole.

(d) *Documentation.* Evidence to support an alien's eligibility for the legalization program shall include documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed fingerprint card (Form FD–258), and a completed medical report of examination (Form I–693). All documentation submitted will be subject to Service verification. Applications submitted with unverifiable documentation may be denied. Failure by an applicant to authorize release to INS of information protected by the Privacy Act and/or related laws in order for INS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for these three categories are discussed below.

(1) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(i) Passport;

(ii) Birth certificate;

(iii) Any national identity document from the alien's country of origin bearing photo and fingerprint (e.g., a "cedula" or "cartilla");

(iv) Driver's license or similar document issued by a state if it contains a photo;

(v) Baptismal Record/Marriage Certificate; or

(vi) Affidavits.

(2) *Assumed names*—(i) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (d)(1) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

(3) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any combination of the following:

(i) Past employment records, which may consist of pay stubs, W–2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:

(A) Alien's address at the time of employment;

(B) Exact period of employment;

(C) Periods of layoff;

(D) Duties with the company;

(E) Whether or not the information was taken from official company records; and

(F) Where records are located and whether the Service may have access to the records.

If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

(ii) Utility bills (gas, electric, phone, etc.), receipts, or letters from companies showing the dates during which the applicant received service are acceptable documentation.

(iii) School records (letters, report cards, etc.) from the schools that the applicant or their children have attended in the United States must show name of school and periods of school attendance.

(iv) Hospital or medical records showing treatment or hospitalization of

the applicant or his or her children must show the name of the medical facility or physician and the date(s) of the treatment or hospitalization.

(v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:

(A) Identifies applicant by name;

(B) Is signed by an official (whose title is shown);

(C) Shows inclusive dates of membership;

(D) States the address where applicant resided during membership period;

(E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;

(F) Establishes how the author knows the applicant; and

(G) Establishes the origin of the information being attested to.

(vi) Additional documents to support the applicant's claim may include:

(A) Money order receipts for money sent in or out of the country;

(B) Passport entries;

(C) Birth certificates of children born in the United States;

(D) Bank books with dated transactions;

(E) Letters or correspondence between applicant and another person or organization;

(F) Social Security card;

(G) Selective Service card;

(H) Automobile license receipts, title, vehicle registration, etc.;

(I) Deeds, mortgages, contracts to which applicant has been a party;

(J) Tax receipts;

(K) Insurance policies, receipts, or letters; and

(L) Any other relevant document.

(4) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges unless the applicant demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance. Generally, the evidence of employment submitted under paragraph (d)(3)(i) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is likely to become a public charge will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

(i) Evidence of a history of employment (i.e., employment letter, W–2 Forms, income tax returns, etc.);

(ii) Evidence that he/she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or

(iii) Form I–134, Affidavit of Support, completed by a spouse in behalf of the applicant and/or children which guarantees complete or partial financial support of the applicant.

(5) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245a of the Act, and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraph (d) of this section.

(6) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

(e) *Filing of application.* (1) The application must be filed on Form I–687 at an office of a designated entity or at a Service Legalization Office within the jurisdiction of the District wherein the applicant resides. If the application is filed with a designated entity, the alien must have consented to having the designated entity forward the application to the legalization office. In the case of applications filed at a legalization office, the district director may, at his or her discretion:

(i) Require the applicant to file the application in person; or

(ii) Require the applicant to file the application by mail; or

(iii) Permit the filing of applications either by mail or in person.

The applicant must appear for a personal interview at the legalization office as scheduled. If the applicant is 14 years of age or older, the applicant must be accompanied by a completed Form FD–258 (Applicant Card).

(2) At the time of the interview, wherever possible, original documents must be submitted except the following: Official government records; employment or employment-related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Document Analysis Unit at the Regional Processing Facility having jurisdiction over the legalization office to which the documents were submitted.

(3) A separate application (I–687) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check, or certified bank check, made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(f) *Filing date of application.* The date the alien submits a completed application to a Service Legalization Office or designated entity shall be considered the filing date of the application, provided that in the case of an application filed at a designated entity the alien has consented to having the designated entity forward the application to the Service Legalization Office having jurisdiction over the location of the alien's residence. The designated entities are required to forward completed applications to the appropriate Service Legalization Office within sixty days of receipt.

(g) *Selective Service registration.* At the time of filing an application under this section, male applicants over the age of 17 and under the age of 27 are required to be registered under the Military Selective Service Act. An applicant shall present evidence that he has previously registered under that Act in the form of a letter of

acknowledgement from the Selective Service System, or such alien shall present a completed and signed Form SSS–1 at the time of filing Form I–687 with the Immigration and Naturalization Service or a designated entity. Form SSS–1 will be forwarded to the Selective Service System by the Service.

(h) *Continuous residence.* (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining a residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

(2) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application under this section.

(i) *Medical examination.* An applicant under this part shall be required to submit to an examination by a designated civil surgeon at no expense to the government. The designated civil surgeon shall report on the findings of the mental and physical condition of the applicant and the determination of the alien's immunization status. Results of the medical examinaton must be presented to the Service at the time of interview and shall be incorporated into the record. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(j) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service Legalization Office and must be fingerprinted for the purpose of issuance of Forms I–688 and I–688A. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant.

(k) *Applicability of exclusion grounds*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for temporary resident status: (14) Workers entering without Labor Certification; (20) immigrants not in possession of a valid entry document; (21) visas issued without compliance with section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of exclusion.* Except as provided in paragraph (k)(3) of this section, the Attorney General may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I–690. When an application for waiver of grounds of excludability is filed jointly with an application for temporary residence under this section, it shall be accepted for processing at the legalization office. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the legalization office, it shall be forwarded to the appropriate Regional Processing Facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances. An application for waiver of grounds of excludability under this part shall be approved or denied by the director of the Regional Processing Facility in whose jurisdiction the applicant's application for adjustment of status was filed except that in cases involving clear statutory ineligibility or admitted fraud, such application may be denied by the district director in whose jurisdiction the application is filed, and in cases returned to a Service Legalization Office for re-interview, such application may be approved at the discretion of the district director. The applicant shall be notified of the decision and, if the application is denied, of the reason therefor. Appeal from an adverse decision under this part may be taken by the applicant on Form I–694 within 30 days after the service of the notice only to the Service's Administrative Appeals Unit pursuant to the provisions of § 103.3(a) of this chapter.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provision of the Act, the following provisions of section 212(a) may not be waived by the Attorney General under paragraph (k)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana;

(iii) Paragraphs (27) (prejudicial to the public interest), (28) (communist), and (29) (subversive);

(iv) Paragraph (33) (participated in Nazi persecution).

(4) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself and his or her family, even though his income may be below the poverty level, may be admissible under paragraph (k)(2) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

(5) *Public assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.

(l) *Continous physical presence since November 6, 1986.* (1) An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. Aliens who were outside of the United States on the date of enactment

or departed the United States after enactment may apply for legalization if they reentered prior to May 1, 1987, and meet the continuous residence requirements and are otherwise eligible for legalization.

(2) A brief, casual and innocent absence means a departure authorized by the Service (advance parole) subsequent to May 1, 1987 of not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(m) *Departure.* (1) During the time period from the date that an alien's application establishing prima facie eligibility for temporary resident status is reviewed at a Service Legalization Office and the date status as a temporary resident is granted, the alien applicant can only be readmitted to the United States provided his or her departure was authorized under the Service's advance parole provisions contained in § 212.5(e) of this chapter.

(2) An alien whose application for temporary resident status has been approved may be admitted to the United States upon return as a returning temporary resident provided he or she:

(i) Is not under deportation proceedings;

(ii) Has not been absent from the United States more than thirty (30) days on the date application for admission is made;

(iii) Has not been absent from the United States for an aggregate period of more than 90 days since the date the alien was granted lawful temporary resident status;

(iv) Presents Form I–688;

(v) Presents himself or herself for inspection; and

(vi) Is otherwise admissible.

(3) The periods of time in paragraph (m)(2)(ii) and (m)(2)(iii) of this section may be waived at the discretion of the Attorney General in cases where the absence from the United States was due merely to a brief temporary trip abroad required due to emergent or extenuating circumstances beyond the alien's control.

(n)(1) *Employment and travel authorization; general.* Authorization for employment and travel abroad for temporary resident status applicants under section 245A(a) of the Act may only be granted by a Service Legalization Office. In the case of an application which has been filed with a designated entity, employment authorization may only be granted by the Service after the application has been properly received at the Service Legalization Office.

(2) *Employment authorization prior to the granting of temporary resident status.* Permission to travel abroad and accept employment will be granted to the applicant after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status. Applications may be presented in person, through designated entities, or through the mail to a legalization office. Applicants who walk-in or mail-in their applications to offices that schedule appointments will receive a form letter fee receipt and scheduled appointment.

If an appointment cannot be scheduled within thirty (30) days, authorization to accept employment will be given, valid to the scheduled appointment date. The appointment letter will be endorsed with the temporary employment authorization. Form I–688A, Employment Authorization, will be given to the applicant after an interview has been completed by an immigration officer unless a formal denial is issued by a Service Legalization Office. This temporary employment authorization will be restricted to six months duration, pending final determination on the application for temporary resident status.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon grant of an application for adjustment to temporary resident status by a Regional Processing Facility, the processing facility will forward a notice of approval to the alien at his or her last known address and to his or her designated entity or representative. The alien will be required to return to the Service Legalization Office where the application was initially received, surrender the I–688A previously issued, and will be issued Form I–688, Temporary Resident Card, authorizing employment and travel abroad.

(4) *Revocation of employment authorization upon denial of temporary resident status.* Upon denial of an application for adjustment to temporary resident status the alien will be notified that if a timely appeal is not submitted, employment authorization shall be automatically revoked on the final day of the appeal period.

(o) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. An appeal from an adverse decision under this part may be taken by the applicant on Form I–694.

(p) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the Regional Processing Facility within thirty (30) days after service of the notice of denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period includes any time required for service or receipt by mail.

(q) *Motions.* The Regional Processing Facility director may *sua sponte* reopen and reconsider any adverse decision. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within 45 days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motion to reopen a proceeding or reconsider a decision shall not be considered under this part.

(r) *Certifications.* The Regional Processing Facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissoner, Examinations (Administrative Appeals Unit) when the case involves an unusally complex or novel question of law or fact.

(s) *Date of adjustment of temporary residence.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at Service Legalization Office.

(t) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Justice Department or bureau of agency thereof, will be permitted to examine individual applications, except employees of designated entities where applications are filed with the same designated entity. For purposes of this part, any individual employed under contract by the Service to work in connection with the legalization program shall be considered an "employee of the Justice Department or bureau or agency thereof."

(2) Files and records prepared by designated entites under this section are confidential. The Attorney General and the Service shall not have access to these files and records without the consent of the alien.

(3) No information furnished pursuant to an application for legalization under this section shall be used for any purpose except: (i) To make a determination on the application; or, (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (t)(4) of this section.

(4) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an appliction for adjustment of status under this part. If prosecution is declined, the Service may issue an Order to Show Cause and Warrant of Arrest if the United States Attorney returns the matter to the Service for initiation of deportation proceedings in lieu of prosecution.

(5) Information obtained in granted legalization application and contained in the applicant's file is subject to subsequent review in reference to future benefits applied for (including petitions for naturalization and permanent resident status for relatives).

(u) *Termination of temporary resident staus*—(1) *Termination of temporary resident status; General.* The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time in accordance with section 245A(b)(2) of the Act. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status. The temporary resident status may be terminated upon the occurance of any of the following:

(i) It is determined that the alien was ineligible for temporary residence under section 245A of this Act;

(ii) The alien commits an act which renders him or her inadmissible as an immigrant, except as provided under § 2459.2(k)(2) or (3) of this part;

(iii) The alien is convicted of any felony, or three or more misdemeanors;

(iv) The alien fails to file for adjustment of status from temporary resident to permanent resident on Form I–698 within thirty-one (31) months of the date he/she was granted status as a temporary resident under § 245a.1 of this part.

(2) *Procedure.* Termination of an alien's status under paragaph (u)(1) of this section will be made only on notice to the alien sent by certified mail directed to his or her last known address, and to his or her representative. The alien must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. Evidence in opposition must be submitted within thirty (30) days after the service of the Notice of Intent to Terminate. If the alien's status is terminated, the director of the regional processing facility shall notify the alien of the decision and the reasons for the termination, and further notify the alien that any Service Form I–94, Arrival-Departure Record or other official Service document issued to the alien authorizing employment and/or travel abroad, or any Form I–688, Temporary Resident Card previously issued to the alien will be declared void by the director of the regional processing facility within thirty (30) days if no appeal of the termination decision is filed within that period. The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the regional processing facility within thirty (30) days after the service of the notice of termination. If no appeal is filed within that period, the I–94, I–688 or other official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(3) *Termination not construed as rescission under section 246.* For the purposes of this part the phrase "termination of status" of an alien granted lawful temporary residence under section 245A(a) of the Act shall not be construed to necessitate a rescission of status as described in section 246 of the Act, and the proceedings required by the regulations issued thereunder shall not apply.

(4) *Return to unlawful status after termination.* Termination of the status of any alien previously adjusted to lawful temporary residence under section 245A(a) of the Act shall act to return such alien to the unlawful status held prior to the adjustment, and render him or her amenable to exclusion or deportation proceedings under section 236 or 242 of the Act, as appropriate.

(v) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary resident under section 245A of the Act is not entitled to submit a petition pursuant to section 203(a)(2) or to any other benefit or consideration accorded under the Act to aliens lawfuly admitted for permanent residence.

(w) *Declaration of intending citizen.* An alien who has been granted the status of temporary resident under section 245A(a)(1) of this Act may assert a claim of discrimination on the basis of citizenship status under section 274B of the Act only if he or she has previously filed Form I–772 (Declaration of Intending Citizen) after being granted such status. The Declaration of Intending Citizen is not required as a basis for filing a petition for naturalization; nor shall it be regarded as a right to United States citizenship; nor shall it be regarded as evidence of a person's status as a resident.

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) *Application period for permanent residence.* An alien who has resided in the United States for a period of eighteen (18) months after the granting of temporary resident status may make application for permanent resident status during the twelve month period beginning on the day after the requisite eighteen months temporary residence has been completed. Applications for lawful permanent residence under section 245Ab)(1) of the Act will be accepted at legalization offices beginning on November 7, 1988.

(b) *Eligibility.* Any alien physically present in the United States who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been revoked or terminated, may apply for adjustment of status to that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status;

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purposes of this part if, at the time of applying for adjustment from temporary to permanent resident status, no single absence from the United States has exceeded thirty (30) days, or the aggregate of all absences has not exceeded ninety (90) days between the date of granting of lawful temporary resident status and applying for permanent resident status unless the alien can establish that due to emergent reasons, the return to the United States

could not be accomplished within the time period(s) allowed.

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (f) of this section; and has not been convicted of any felony (including crimes committed outside of the United States), or three or more misdemeanors (committed in the United States); and

(4)(i) Can demonstrate that the alien either meets the requirements of section 312 of the Immigration and Nationality Act, as amended, (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or, is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States; or,

(ii) Has demonstrated that the alien met the requirements of paragraph (b)(4)(i) of this section at the time of interview for adjustment of status to that of lawful temporary resident under section 245A(a); or,

(iii) The requirements of paragraph (b)(4)(i) of this section may be waived at the discretion of the Attorney General if the alien is 65 years or older.

(5) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if (i) it is sponsored or conducted by an established public or private institution of learning recognized as such by a qualified state certifying agency, or by an institution of learning approved to issue Forms I–20 in accordance with § 214.3 of this chapter, or by a qualified designated entity within the meaning of section 245A(c)(2) of the Act, and (ii) the course materials for such instruction include textbooks published under the authority of section 346 of the Act.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors.

(2) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group or political opinion.

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act who has not filed an application for permanent resident status under section 245A(b)(1) of the Act during the one year period which began with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(d) *Filing of application.* The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I–698 in person at a designated Legalization Office within the jurisdiction of the District wherein the applicant resides. Form I–698 must be accompanied by the documents specified in the instructions. If the alien is 14 years or older, the application must be accompanied by a completed Form FD–258 (Fingerprint Card).

(2) At the time of the interview, wherever possible, original documents must be submitted except the following: Official government records; employment or employment-related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview, the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Document Analysis Unit at the Regional Processing Facility having jurisdiction over the legalization office to which the documents were submitted.

(3) A separate application (I–698) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check or certified bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(e) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service legalization office and must be fingerprinted for the purpose of issuance of Form I–551. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant.

(f) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful permanent resident status under section 245A(b) of the Act.

(g) *Applicability of exclusion grounds—* (1) *Ground of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status; (14) workers entering without Labor Certification; (20) immigrants not in possession of valid entry document; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of excludability.* Except as provided in paragraph (g)(4) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under 245A(b)(1) of the Act. In the event that the alien becomes excludable under any other provision of section 212(a) of the Act subsequent to the date temporary residence was granted, a waiver of the additional ground of excludability will be required before permanent resident status may be granted.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provision of the Act the following provisions of section 212(a) of the Act *may not* be waived by the Attorney General under paragraph (g)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under Title XVI of the Social Security Act or section 212 of Pub. L. 93–66 for the month in which such alien is granted lawful temporary residence status under subsection (a);

(iii) Paragraph (23) (narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(iv) Paragraphs (27) (prejudicial to the public interest), (28) (communists), and (29) (subversive);

(v) Paragraph (33) (participated in Nazi persecution).

(4) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself or herself and his or her family even though his or her income may be below the poverty level is not excludable under paragraph (g)(3)(ii) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

(5) *Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in a denial of the application.

(h) *Departure.* An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exceed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(i) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. A party affected under this part by an adverse decision is entitled to file an appeal on Form I–694.

(j) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the Regional Processing Facility within thirty (30) days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period includes any time required for service or receipt by mail.

(k) *Motions.* The Regional Processing Facility director may *sua sponte* reopen and reconsider any adverse decision. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(l) *Certifications.* The regional processing facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact.

(m) *Date of adjustment to permanent residence.* The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date indicated on the application fee receipt issued at a Service Legalization Office.

Dated: April 28, 1987.

Alan C. Nelson,

Commissioner.

[FR Doc. 87–9895 Filed 4–30–87; 8:45 am]

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8 CFR Parts 109 and 274a

[INS No. 1023–87]

Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Part 274a and redesignates Part 109 with amendments as Part 274a, Subpart B, by: (1) Defining terms to clarify the regulations; (2) adding new sections to establish procedures for the verification of employment eligibility for workers in the United States; (3) delineating new sections to establish enforcement and process procedures for violations; (4) redesignating Part 109 (Employment Authorization) as Subpart B of Part 274a to consolidate into one part what would otherwise be dispersed regulations. The rule is necessitated by the Immigration Reform and Control Act of 1986, Pub. L. 99–603, which amended the Immigration and Nationality Act (Act) by adding provisions prohibiting the unlawful employment of aliens. These provisions make it unlawful to hire, recruit or refer for a fee for employment, unauthorized aliens in the United States. The rule provides for an employment eligibility verification system designed to prevent the employment of unauthorized aliens. The statute mandates the Attorney General to issue regulations implementing these provisions not later than June 1, 1987.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Walter D. Cadman, Deputy Assistant Commissioner, Investigations Division, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–2997.

SUPPLEMENTARY INFORMATION: Since 1972 numerous attempts have been made by Congress and recent Administrations to pass immigration reform legislation. The imposition of sanctions on employers has been a central element of nearly all such attempts with the view that curbing illegal immigration would not be effective without such sanctions. The Select Commission on Immigration and Refugee Policy was established by Congress in October 1978. It was created to review immigration policy issues, assess the impact of legal and illegal immigrants on the nation, and recommend changes in policy and practice. The Commission made a series of over 70 recommendations concerning these issues in its final report in May 1981. Those recommendations included the imposition of employer sanctions to control illegal immigration. Thereafter a Cabinet level task force reviewed the Select Commission Report and other recommendations on immigration reform. In 1981 and 1982 alone some 28 hearings were conducted by House and

Senate immigration subcommittees on proposed immigration reform.

Since 1975 INS has vigorously worked in the spirit of cooperation with employers on an ad hoc basis to encourage a policy of employing only U.S. citizens and aliens lawfully authorized to work in the United States. The success of this effort, called Operation Cooperation, has been encouraging, but with the limits of INS resources and lack of statutory backing such programs have been of limited effectiveness. Mandatory compliance is the only effective mechanism that reduces "pull" factors that encourage rather than discourage illegal immigration.

On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub. L. 99–603, (IRCA). This legislation is the most comprehensive reform of our immigration laws in 35 years. The employer sanctions provisions of IRCA constitute one of three cornerstones on which immigration reform is based. The other two are increased enforcement measures and legalization.

Section 101 of IRCA is designed to control the unlawful employment of aliens in the United States by imposing civil and criminal penalties on those persons and entities that hire, or that recruit or refer for a fee unauthorized aliens. Section 101 of IRCA amends the Act by adding section 274A which closes a large gap in the enforcement of our immigration laws by: (1) Making it unlawful to hire, recruit or refer for a fee unauthorized aliens; (2) requiring those who hire, or who recruit or refer for a fee individuals for employment, to verify both the identity and employment eligibility of such individuals and (3) making it unlawful to continue to employ unauthorized aliens hired after November 6, 1986. While section 112 of IRCA amends section 274(a) of the Act (which sets forth criminal penalties for individuals who harbor illegal aliens), employment of illegal aliens in and of itself does not constitute harboring under section 274(a) of the Act as amended.

Since enactment of IRCA, INS has been working to develop these rules along with a balanced enforcement policy. On January 20, 1987, INS published a notice in the **Federal Register** to solicit comments from the public and other interested parties concerning draft rules implementing the employer provisions of IRCA. Interested parties were also provided with preliminary working drafts for review and comment. Numerous comments were received from a wide cross-section of society.

These comments were reviewed and evaluated in the development of a proposed rule, published in the **Federal Register** on March 19, 1987. The proposed rule invited comment on all issues, particularly those concerning: the nature of verification; the mandatory and universal aspect of the requirements for employers to complete and maintain the designated form; the range of documents which should be accepted under the regulation to establish identity; the guidelines relating to the role of state employment agencies in the issuance of verification certificates; the application of penalties to procedural as well as substantive violations of the Act; and the necessary changes to prior Part 109 of the regulations, redesignated as Subpart B of Part 274a in the proposed rule.

Public Comments

General Information

Approximately 4,000 comments were received from the public during the comment period. Additionally, hundreds of telephone calls were received. Commentors represented a very broad spectrum of American society and included private citizens; agricultural, business, industrial and labor organizations; Congressional sources and governmental entities at the federal, state, and local levels; educational institutions; voluntary agencies; interest groups and organizations; and law firms. Because many of these commentors provided their views on several different sections of the proposed rules within one response, the figures provided below are approximate as to the number of comments received in each area of concern. INS is appreciative of the number of responses and instructive comments, which clearly reflect the broad public interest in this statute.

The comments received in many instances enlightened Service officials concerning prevailing buisness and industry practices, and the problems which employers face in verification and the other responsibilities imposed by IRCA. As a result, there are some significant refinements in the rule, which INS believes are in the public interest and that represent a logical outgrowth of the comments. While the final rule may not satisfy the concerns of everyone who commented, INS believes that most issues have been addressed in the spirit of mutual dialogue. Every effort has been made to minimize the impact of our requirements on the affected parties, consistent with the statute; and to ensure continuity with other agencies' guidelines and definitions, to the extent possible. Furthermore, INS expects that these guidelines will prove sufficiently flexible so that employers and others required to comply with statutory and regulatory procedures will be able to do so in ways that suit current personnel hiring, recruiting and referring practices with minimal disruption.

INS will continue to encourage voluntary cooperation and compliance along with traditional enforcement in achieving the goal of this legislation. INS has established a new office for Employer and Labor Relations to administer a program of education and cooperation with employers and other affected entities. Many public appearances have been made by INS officials in the last few months to inform and solicit comments from interested parties. INS envisions a balanced approach between education and cooperation, and strict enforcement of penalties for egregious and persistent violators. INS will continue to develop agency guidelines and policies which further the goals of education, information, and employer awareness as effective methods of ensuring public support and voluntary compliance.

Consistent with this intent, INS wishes to remind the public that IRCA and Title VII of the Civil Rights Act prohibit discrimination in employment, or recruitment or referral for a fee for employment, on the basis of national origin. Additionally, IRCA generally prohibits discrimination on the basis of citizenship status in the case of a citizen or intending citizen. There are serious penalties which may be applied to those who violate the anti-discrimination laws of the United States. It is important to recognize that the purpose of the employer verification provisions of IRCA is not to discriminate against those with the right to work in the United States, regardless of their alienage or citizenship status. Rather, the purpose is to halt unlawful employment of those not entitled to work, and thus to have an ameliorative effect on illegal immigration to the United States. Application of the verification laws and voluntary compliance by employers will enhance job opportunities for lawfully authorized workers.

Comments Received

1. Recruiters and Referrers

By far the vast majority of comments (over 3,100), and the most contentious, related to the Service's proposed regulations in regard to recruiters and referrers. Many professionals in this industry were concerned that: (1) They would have to retroactively verify the

status of individuals whom they had recruited or referred since enactment of IRCA; (2) they would be prospectively required to perform verifications on all individuals recruited or referred, despite the fact that many of these individuals would either express no interest in the recruitment, or would not be hired as the result of referral; and (3) they would have to perform face-to-face verifications, despite prevailing industry practices relating to telephonic recruitments over long distances where there is no opportunity for such verifications.

INS carefully scrutinized the public comments received relating to this issue and performed an analysis of the extent of regulatory flexibility which was permitted by statute. Although it was determined that an absolute waiver of requirements for recruiters and referrers was beyond the permissible statutory scope, the Service has significantly modified the terms under which such entities may comply. Under the final rule: (1) Recruiters and referrers will not be required to retroactively verify individuals recruited or referred during the period, given the impossibility of this task; (2) the regulations have been amended so that referrers and recruiters need to verify within three business days of hiring only those individuals actually hired as the result of the referral; and (3) the verification procedures for recruiters and referrers have been amended to permit completion of the process by those who act as agents in their interest. This includes, but is not limited to affiliates, notaries, attorneys, national organizations, and even employers who hire the referred individuals. In this way, verifications used not be performed in person by the recruiter or referrer. These modifications to the proposed rule will greatly alleviate the concerns expressed by recruiters and referrers over the verification process. By statute, however, liability still rests with the recruiter or referrer.

2. Use of Agents

A similar concern expressed in the comments received from some employers and others indicated misunderstanding regarding their ability to use commonly accepted legal principles to delegate verification responsibilities through contractual or business arrangements. Approximately 75 responses were received on this concern. The definition of the term "employer" found in 8 CFR 274a.1(g) and the verification procedures outlined for recruiters and referrers in 8 CFR 274a.2(b)(1)(iv) specifically permit these arrangements. These provisions of the regulations incorporate the concepts found in the Fair Labor Standards Act. They provide great flexibility in the use of intermediaries for verification, because, rather than establish a restrictive definition of agent, they permit verification by anyone "acting in [the employer's recruiter's or referrer's] interest." Employers, recruiters, and referrers may use central clearing houses or similar organizations to satisfy the document verification requirements of the Act. However, liability remains with the employer, the recruiter, or the referrer for any failure of the third party to satisfy the requirements of law.

3. Retroactive Verification

Another similar concern was expressed by employers concerning their responsibility to retroactively verify employees who were hired subsequent to enactment but prior to June 1, 1987. Approximately 50 responses were received on this issue. Recognizing these concerns, INS has taken the following steps in the final rule: (1) Employees who were hired but quit or were terminated within this period need not be verified; (2) employees who were hired within this period and continue to be employed, must be verified on or before September 1, 1987; and (3) as stated above, recruiters and referrers need not verify individuals recruited or referred within the period. Many concerns were expressed to INS about the lack of availability of a final Form I–9 during the public education period prior to June 1. INS recognizes that some employers took the step, in good faith, of commencing retroactive verification of employees using the version of the form which was published for comment with the proposed rule on March 19, 1987. In such instances, INS will accept verifications which were performed using this form as satisfying the requirements of the law and regulations. However, only the finalized Form I–9 should be used for verifications performed on or after June 1.

4. Union Hiring Halls

Approximately 60 comments were received on the issue of whether union hiring halls constituted a form of recruitment or referral for a fee based upon union dues paid. Opinions were divided on this matter. The final rule excludes union hiring halls from such definition. INS does not believe inclusion of these entities was within Congressional intent. However, such arrangements may be included in contractual or collective bargaining agreements between unions and employers where they are in the interests of both parties.

5. Definition of Hire

The Service in its proposed rules defined "hire" as the "actual commencement of employment of an employee . . ." This aroused public concern as to the appropriate time for completion of the verification process. Approximately 20 comments were received in this regard. INS realizes that employers with decentralized operations may actually hire an individual well in advance of the time that the employee commences work. While the regulations state that the Service wishes to stress that verification may be completed either at the time of an individual's acceptance of an offer of employment or at the time employment actually commences.

6. State Employment Agency Verification

The rule provides for procedures relating to verification by a state employment agency. These procedures were developed on the basis of discussions with state employment agencies. INS also attended several open forums at which state employment agencies were well represented. INS anticipates that future modifications to this rule will be forthcoming in order to further develop standardized certification forms and procedures for all state agencies which choose to exercise the option to issue certifications which is granted them under the statute.

7. Pre-enactment ("Grandfather") Status

The proposed rule specified that a pre-enactment employment status is retained by an individual even though termporarily interrupted because of leave for study, illness, pregnancy, or transfer from one location to another with the same company. It provided that status would be lost by termination, exclusion, or deportation. Approximately 15 comments were received from the public, including labor law attorneys familiar with other agencies' definitions and procedures. The commentors recommended that the rule address other temporary employment interruptions. INS has considered these suggestions, and adopted several of them, including: Strikes and layoffs where there is a reasonable basis for believing that the individual will be reemployed by the same employer; promotions or demotions within the same company and intracompany transfers; and other temporary leaves which have been

approved by the employer. The public is directed to the regulations for other examples of interruptions which do not cause loss of the pre-enactment status of the individual.

The public should be aware that pre-enactment status pertains to the continued employment of individuals hired, recruited, or referred prior to November 7, 1986 only. It does not accord an illegal alien the right to remain in the United States.

8. Independent Contractor

Several business entities (approximately 25) provided their views on this aspect of the proposed regulations. They recommended that INS include the term "independent contractor" among the definitions in the regulations. The final rule specifies criteria and factors that are to be considered in determining whether a particular business arrangement constitutes an agreement with an independent contractor as opposed to an employee. The criteria and factors which have been enumerated are consistent with current Internal Revenue Service guidelines. Those who engage the labor services of an independent contractor are not responsible for verification of the employment eligibility of the employees of the independent contractor. However, contracts may not be used for the purposes of circumventing the employment eligibility verification requirements of employees.

9. Three-day Period for Completion of Verification

Approximately 30 comments were received on this proposed rule from various sources, including governmental employing entities. Commentors generally believed that the three-day period for completion of verification is sufficient. However, it was recommended that an exception be made for an individual who does not possess an acceptable document and needs to secure one for verification. It was noted that even large numbers of United States citizens are not in possession of certain documents and may need additional time to obtain them. Commentors were concerned that failure to provide an exception to the three-day requirement might result in unemployment of authorized workers who are awaiting replacement or initial issuance of documents.

The final rule allows an exception in cases where an individual has lost a document or has not yet obtained a document necessary for either identity or work authorization purposes. In such a case, the individual is required to present a receipt for the application of the document within three days, and present the required document itself within twenty-one days.

10. Identification Documents

The proposed rule required employees to present an employer with a document or documents that establish identity and employment eligibility. With regard to documents that establish identity alone, the proposed rule required presentation of a state-issued driver's license or state-issued identification card except where the individual is under sixteen years old or lives or works in one of the eight states that does not issue an identification card. The statute allows the Attorney General to designate alternative identity documents for individuals covered by the two exceptions.

Approximately 60 responses concerned this issue. Public comment was received from a variety of sources, including private individuals, several colleges, and some agricultural enterprises such as produce farmers. Many strongly opposed these restrictions on the use of alternative documents. Commentors noted that the requirement would be extremely confusing for employers and unnecessarily burdensome for individuals who do not have a driver's license or identification card, yet might have one of the designated alternative documents.

The final rule establishes an expanded list of identity documents and permits parents or guardians to sign the Form I-9 on behalf of minors under sixteen years of age. Documents from this expanded list can be used by anyone in any state for the purpose of establishing identity.

In terms of number and variety, the list contains a wide range of identity documents and is based upon recommendations received in response to the proposed rule. The list has been defined in consideration of the recency of the legislation and in recognition of the fact that a comprehensive but reasonable list is in the interest of the public at this time.

The statute mandates that any alternative identity document provide a "reliable means of identification." The Congress, both in the statute and in its legislative history, expressed a particular concern with fraud in the verification system. For these reasons, INS will closely monitor the reliability and integrity of the list of alternative identity documents. After a sufficient period of time has elapsed to enable the public to become accustomed to and familiar with the law, and based upon information acquired from system monitoring, INS may propose amendments to this list.

11. I-9 Retention

In response to public comment, the one-year period of validity of the I-9 for rehiring purposes has been expanded to three years in the final rule. This period coincides with the minimum retention period required for the Form I-9. Also, INS believes that this three year rehire provision adequately deals with the concerns of temporary help companies. Such temporary help companies can rehire the same individual without limit during a three year period (beginning on the date the Form I-9 was initially completed) as long as the individual remains authorized to work.

12. Authority to Inspect I-9

There were numerous public comments on the proposed rule regarding inspection of the Form I-9. The Service believes that the final rule requiring employers to produce the Form I-9 for inspection upon request of an INS officer after three days notice is well within our statutory authority. IRCA provides at section 274A(B)(3) that "the person or entity must retain the form (Form I-9) and make it available for inspection by officers of the Service or the Department of Labor beginning on the date . . ." The final regulations specify that INS will provide employers or others with three days advance notice of an inspectional visit, in order that they may comply with a request for production of the Form I-9. IRCA does not require Service officers to present a subpoena or warrant prior to a request to inspect. Furthermore, they will be permitted to produce the forms to the Service office which is located closest to the place where the forms have been retained, if different from where the demand was made. However, this does not preclude INS from obtaining warrants based on probable cause, for entry onto the premises of suspected violators without advance notice. The past experience of many agencies with similar responsibilities has proven the occasional necessity of such actions, where serious, repeated violators are concerned.

13. Good Faith Defense

An employer, recruiter, or referrer who establishes that he or she has acted in good faith to comply with the verification requirements of the regulations will have established an affirmative yet rebuttable defense that he or she has in fact complied with the law with respect to such hiring, recruiting, or referral. An employer,

recruiter, or referrer must attest on Form I–9 that he or she has verified the employment eligibility and identity of an individual hired, recruited, or referred. This attestation may be made if the document or combination of documents examined in the verification process reasonably appears on its face to be geniune.

14. Organization of Subpart B: Employment Authorization

The rule redesignates Part 109, with amendments, as Part 274a, Subpart B, employment authorization. In response to public comments, § 274a.12, classes of aliens authorized to accept employment, has been expanded to identify aliens not previously identified in Part 109, and has also been subdivided to clarify and articulate classes of aliens who are or may be authorized to accept employment in the United States. The section contains three paragraphs generally categorizing these classes, which include: (1) Aliens authorized employment incident to status, whose employment authorization is not restricted in terms of location or type of employment and who need not seek employment authorization from INS; (2) aliens authorized employment with a specific employer incident to status, whose employment is subject to the restrictions imposed upon the particular nonimmigrant classification; and (3) aliens who must apply to INS for employment authorization. Within these paragraphs, the rule contains a comprehensive listing of employment authorization classifications.

15. Nonimmigrant Student Employment Authorization

In response to the proposed rule, numerous institutions of higher learning urged INS to retain the procedure concerning on-campus employment for full-time students, and for students in a work-study program which is part of the regular curriculum available within the student's program of study. The final regulations incorporate these recommendations by classifying on-campus employment as employment which is incident to the student's status. Academic institutions will need to comply with the employment verification requirements of IRCA with respect to these nonimmigrant students.

16. Employment Authorization for Temporary Workers, Exchange Visitors, and Intra-company Transferrees

In response to public comments, the final rule provides for an automatic extension of employment authorization for a period of 120 days for H, J, and L nonimmigrants who have filed timely applications for extensions of stay. The automatic extension of employment authorization is valid only for an alien who continues employment with the same employer. In the event that INS is unable to adjudicate such an application for extension of status within the 120 day period, the alien may apply for employment authorization pursuant to the application procedure defined in the rule. Thus the regulations address continued employment authorization for employment-related classifications of nonimmigrant aliens during periods when extensions of stay are pending. They also recognize the possibility of delays in the processing of applications for extensions of stay, and provide an application procedure in the event of any unusual delay. These provisions were added in direct response to the recommendations of commentors.

17. Interim Employment Authorization

The final rule requires INS to adjudicate an application for employment authorization within sixty days from the date of the receipt by INS of the application or the date of the receipt of a returned application. Any application for employment authorization not adjudicated within sixty days will result in an automatic grant to the applicant of interim employment authorization for a period of up to 120 days. In promulgating this rule, INS recognizes the importance of expeditious processing of employment authorization applications. As in the case of the rule regarding employment authorizations for certain nonimmigrant extension applicants, this regulation was developed in response to public comment.

18. Automatic Termination of Temporary Employment Authorization

In the past, Service practice was not uniform in the grant of temporary work authorization to certain aliens such as nonimmigrants and parolees. These individuals were sometimes granted work authorization for indefinite periods of time despite its "temporary" nature, on Service Form I–94 or other documents. In order to reconcile this inconsistency with the terms of IRCA, INS has specified in the regulations that any temporary employment authorization granted prior to June 1, 1987, pursuant to 8 CFR 109.1(b) or its redesignation as § 274a.12(c), shall automatically terminate on the date specified by the Service on the document issued to the alien, or on June 1, 1988, whichever is earlier. Any document issued by the Service prior to June 1, 1987 that authorizes temporary employment for an indefinite period beyond June 1, 1988 will become null and void on June 1, 1988, and must be surrendered to the Service on the date of the document's expiration or on June 1, 1988, whichever is earlier. The public is advised that no notice of intent to revoke or other Service advisory is necessary under this rule.

Automatic termination of such employment authorization does not preclude a subsequent application for employment authorization. The rule requires the issuance of a new employment authorization provided that the alien remains eligible for employment in the United States. This regulation is not applicable to an alien whose employment authorization is inherent in his or her status, such as a lawful permanent resident.

This rule is promulgated for the sole purpose of enabling INS to replace the multiplicity of outstanding employment authorization documents with a standard, uniform document. INS is taking this step because it believes this transition to a new uniform document is in the interest of employers and those aliens authorized to work in the United States.

This rule is a major rule within the context of E.O. 12291 in terms of the effect it will have on the national economy. A Regulatory Impact Analysis in conjunction with a Regulatory Flexibility Analysis as required by 5 U.S.C. 603 and 604, is available for review by the public upon request.

The information collection requirements contained in this regulation have been submitted to and cleared by OMB under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 109

Aliens, Employment.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment.

For the reasons set out in the preamble, INS amends Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 109—EMPLOYMENT AUTHORIZATION

1. Part 109 is removed and reserved.

2. A new Part 274a is added to read as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

Subpart A—Employer Requirements

Sec.
274a.1 Definitions.
274a.2 Verification of employment eligibility.
274a.3 Continuing employment of unauthorized aliens.
274a.4 Good faith defense.
274a.5 Use of labor through contract.
274a.6 State employment agencies.
274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986.
274a.8 Prohibition of indemnity bonds.
274a.9 Enforcement procedures.
274a.10 Penalties.
274a.11 Special rule for legalization, special agricultural worker and Cuban/Haitian entrant adjustment applicants.

Subpart B—Employment Authorization

274a.12 Classes of aliens authorized to accept employment.
274a.13 Application for employment authorization.
274a.14 Termination of employment authorization.

Authority: Secs. 101, 1103, 274A of the Immigration and Nationality Act, 8 U.S.C. 1101, 1103, 1324A.

Subpart A—Employer Requirements

§ 274a.1 Definitions.

For the purpose of this chapter—

(a) The term "unauthorized alien" means, with respect to employment of an alien at a particular time, that the alien is not at that time either: (1) Lawfully admitted for permanent residence, or (2) authorized to be so employed by this Act or by the Attorney General;

(b) The term "entity" means any legal entity, including but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association;

(c) The term "hire" means the actual commencement of employment of an employee for wages or other remuneration;

(d) The term "refer for a fee" means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that refer union members or non-union individuals who pay union membership dues;

(e) The term "recruit for a fee" means the act of soliciting a person, directly or indirectly, and referring that person to another with the intent of obtaining employment for that person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that refer union members or non-union individuals who pay union membership dues;

(f) The term "employee" means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section;

(g) The term "employer" means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term "employer" shall mean the independent contractor or contractor and not the person or entity using the contract labor;

(h) The term "employment" means any service or labor performed by an employee for an employer within the United States, including service or labor performed on a U.S. vessel or U.S. aircraft which touches at a port in the United States, but does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular, or intermittent;

(i) The term "State employment agency" means any State government unit designated to cooperate with the United States Employment Service in the operation of the public employment service system;

(j) The term "independent contractor" includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: Supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done. The use of labor or services of an independent contractor are subject to the restrictions in section 274A(a)(4) of the Act and § 274a.5 of this part;

(k) The term "pattern or practice" means regular, repeated, and intentional activities, but does not include isolated, sporadic, or accidental acts.

§ 274a.2 Verification of employment eligibility.

A. *General.* This section states the requirements and procedures persons or entities must comply with when hiring, or when recuiting or referring for a fee, individuals in the United States, or continuing to employ aliens knowing that the aliens are (or have become) unauthorized aliens. The Form I–9, Employment Eligibility Verification Form, has been designated by the Service as the form to be used in complying with the requirements of this section. The Form I–9 may be obtained in limited quantities at INS District Offices, or ordered from the Superintendent of Documents, Washington, DC 20402. The Form I–9 may be photocopied or printed without regard to the restrictions set forth in § 299.4 of this Chapter. Employers need only complete the Form I–9 for individuals who are hired after November 6, 1986 and continue to be employed after May 31, 1987. Employers shall have until September 1, 1987 to complete the Form I–9 for individuals hired from November 7, 1986 through May 31, 1987. Recruiters and referrers for a fee need complete the Form I–9 only for those individuals who are recruited or referred after May 31, 1987. In conjunction with completing the Form I–9, an employer or recruiter or referrer for a fee must examine documents that evidence the identity and employment eligibility of the individual. The employer or recruiter or referrer for a fee and the individual must each complete an attestation on the Form I–9 under penalty of perjury. However, if an individual attests to an employer or recruiter or referrer for a fee, that he or she is an alien who intends to apply or has applied for benefits under the provisions of section 245A or 210 of the Act or section 202 of the Immigration Reform and Control Act of 1986, then the individual is authorized to work in the United States until September 1, 1987 without providing the employer or the recruiter or referrer for a fee with documentary evidence of work authorization. In this case, the employer, or the recruiter or referrer for a fee, should follow the procedures set forth in § 274a.11 of this part. Employers and recruiters and referrers for a fee who fail to comply with the employment verification requirements set forth in paragraph (b) of this section shall be subject to penalties as stated in § 274a.10 of this part.

(b) *Employment verification requirements*—(1) *Examination of documents and completion of Form I–9.*

(i) An individual who is hired or is recruited or referred for a fee for employment must:

(A) Complete Section 1—"Employee Information and Verification" on the Form I–9 at the time of hiring; or if an individual is unable to complete the Form I–9 or needs it translated, someone may assist him or her. The preparer or translator must read the Form to the individual, assist him or her in completing Section 1—"Employee Information and Verification," and have the individual sign or mark the Form in the appropriate place. The preparer or translator should then complete the "Preparer/Translator Certification" portion of the Form I–9; and

(B) Present to the employer or the recruiter or referrer for a fee documentation as set forth in paragraph (b)(1)(v) of this section establishing his or her identity and employment eligibility within the time limits set forth in paragraphs (b)(1)(ii) through (v) of this section. However, pursuant to the "Special Rule" set forth in § 274a.11 of this part, legalization, special agricultural worker, and Cuban/Haitian entrant adjustment applicants are authorized to work without presenting documentation establishing work authorization until September 1, 1987.

(ii) except as provided in paragraph (b)(viii) of this section, an employer, his or her agent, or anyone acting directly or indirectly in the interest thereof, must within three business days of the hire:

(A) Physically examine the documentation presented by the individual establishing identity and employment eligibility as set forth in paragraph (b)(1)(v) of this section; and

(B) Complete Section 2—"Employer Review and Verification" on the Form I–9.

(iii) An employer, his or her agent, or anyone acting directly or indirectly in the interest thereof, who hires an individual for employment for a duration of less than three business days must comply with paragraphs (b)(1)(ii)(A)–(B) of this section before the end of the employee's first working day.

(iv) A recruiter or referrer for a fee for employment must comply with paragraphs (b)(1)(ii)(A)–(B) of this section within three business days of the date the referred individual was hired by the employer. Recruiters and referrers may designate agents to complete the employment verification procedures on their behalf including but not limited to notaries, national associations, or employers. If a recruiter or referrer designates an employer to complete the employment verification procedures, the employer need only provide the recruiter or referrer with a photocopy of the Form I–9.

(v) The individual may present either an original document that establishes both employment authorization and identity, or an original document that establishes employment authorization and a separate original document that establishes identity. The document identification number and expiration date (if any) should be noted in the appropriate space provided on the Form I–9. An employer or a recruiter or referrer for a fee may not specify which document or documents an individual is to present.

(A) The following documents are acceptable to evidence both identity and employment eligibility:

(*1*) United States passport;

(*2*) Certificate of United States Citizenship, INS Form N–560 or N–561;

(*3*) Certificate of Naturalization, INS Form N–550 or N–570;

(*4*) An unexpired foreign passport which:

(*i*) contains an unexpired stamp therein which reads, "Processed for I–551. Temporary Evidence of Lawful Admission for permanent residence. Valid until ———. Employment authorized." or

(*ii*) has attached thereto a Form I–94 bearing the same name as the passport and contains an employment authorization stamp, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

(*5*) Alien Registration Receipt Card, INS Form I–151 or Resident Alien INS Form I–551, provided that it contains a photograph of the bearer;

(*6*) Temporary Resident Card, INS Form I–688;

(*7*) Employment Authorization Card, INS Form I–688A.

(B) The following documents are acceptable to establish identity only:

(*1*) For individuals 16 years of age or older:

(*i*) a state-issued drivers's license or state-issued identification card containing a photograph. If the drivers's license or identification card does not contain a photograph, identifying information should be included such as: Name, date of birth, sex, height, color of eyes, and address;

(*ii*) School identification card with a photograph;

(*iii*) Voter's registration card;

(*iv*) U.S. military card or draft record;

(*v*) Identification card issued by federal, state, or local government agencies or entities;

(*vi*) Military dependent's identification card;

(*vii*) Native American tribal documents;

(*viii*) United States Coast Guard Merchant Mariner Card;

(*ix*) Driver's license issued by a Canadian government authority;

(*2*) For individuals under age 16 who are unable to produce a document listed in paragraph (b)(1)(v)(B)(*1*) of this section, the following documents are acceptable to establish identity only:

(*i*) School record or report card;

(*ii*) Clinic doctor or hospital record;

(*iii*) Daycare or nursery school record.

(*3*) Minors under the age of 16 who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B) (*1*) or (*2*) of this section are exempt from producing one of the following procedures are followed:

(*i*) The minor's parent or legal guardian completes on the Form I–9 Section 1—"Employee Information and Verification" and in the space for the minor's signature, the parent or legal guardian writes the words, "minor under age 16."

(*ii*) The minor's parent or legal guardian completes on the Form I–9 the "Preparer/Translator certification."

(*iii*) The employer or the recruiter or referrer for a fee writes in Section 2—"Employer Review and Verification" under List B in the space after the words "Document Identification #" the words, "minor under age 16."

(C) The following are acceptable documents to establish employment authorization only:

(*1*) A social security number card other than one which has printed on its face "not valid for employment purposes";

(*2*) An unexpired reentry permit, INS Form I–327;

(*3*) An unexpired Refugee Travel document, INS Form I–571;

(*4*) A Certification of Birth issued by the Department of State, Form FS–545;

(*5*) A Certification of Birth Abroad issued by the Department of State, Form DS–1350;

(*6*) An original or certified copy of a birth certificate issued by a State, county, or municipal authority bearing a seal;

(*7*) An employment authorization document issued by the Immigration and Naturalization Service;

(*8*) Native American tribal document;

(*9*) United States Citizen Identification Card, INS Form I–197;

(*10*) Identification card for use of resident citizen in the United States, INS Form I–179.

(vi) If an individual is unable to provide the required document or documents within the time periods specified in paragraphs (b)(1)(ii) and (iv) of this section, the individual must present a receipt for the application of the document or documents within three days of the hire and present the required document or documents within 21 days of the hire.

(vii) If an individual's employment eligibility document expires, the employer or the recruiter or referrer for a fee must update the Form I–9 to reflect that the individual is still authorized to work in the United States; otherwise the individual may no longer be employed, recruited, or referred. In order to update the Form I–9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or the recruiter or referrer for a fee should review this document, and if it appears to be genuine and to relate to the individual, update the form by noting the document's identification number and expiration date of the Form I–9.

(viii) An employer is not required to reverify an employee's employment eligibility as set forth in paragraphs (b)(1)(i)—(v) of this section if the employee is continuing his or her employment and at all times has a reasonable expectation of employment. "Continuing employment" includes but is not limited to situations where:

(A) The employee takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the employer;

(B) The employee is promoted, demoted, or gets a pay raise;

(C) The employee is laid off for lack of work;

(D) The employee is on strike or in a labor dispute;

(E) The employee is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

(F) The employee transfers from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the employee's Form I–9 to the receiving unit; or

(G) The employee continues his or her employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains from the previous records and Forms I–9 where applicable. For this purpose, a related, successor, or reorganized employer includes:

(*1*) The same employer at another location;

(*2*) An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets; or

(*3*) An employer who continues to employ some or all of another employer's workforce where both employers belong to the same multi-employer association and employees continue to work in the same bargaining unit under the same collective bargaining agreement.

(2) *Retention and Inspection of Form I–9.* (i) Form I–9 must be retained by an employer or a recruiter or referrer for a fee for the following time periods:

(A) In the case of an employer, three years after the date of the hire or one year after the date the individual's employment is terminated, whichever is later; or

(B) In the case of a recruiter or referrer for a fee, three years after the date of the referral.

(ii) Any person or entity required to retain Forms I–9 in accordance with this section shall be provided with at least three days notice prior to an inspection of the Forms by an authorized Service officer. At the time of inspection, the Forms I–9 must be made available at the location where the request for production was made, or if the Forms I–9 are kept at another location, at the nearest Service office to that location. No subpoena or warrant shall be required for such inspection. Any refusal or delay in presentation of the Forms I–9 for inspection is a violation of the retention requirements as set forth in section 274A(b)(3) of the Act. In addition, if the person or entity has not complied with a request to present the Forms I–9, any Service officer listed in section 242.1 of this chapter may compel production of the Forms I–9 by issuing a subpoena.

(3) *Copying of documentation.* An employer or a recruiter or referrer for a fee may, but is not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements of this section. If such copy is made, it must be retained with the Form I–9. The retention requirements in paragraph (b)(2) of this section do not apply to the photocopies.

(4) *Limitation on use of Form I–9.* Any information contained in or appended to the Form I–9, including copies of documents listed in paragraph (c) of this section used to verify an individual's identity or employment eligibility, may be used only for enforcement of the Act and Sections 1001, 1028, 1546, or 1621 of Title 18, United States Code.

(c) *Employment verification requirements in the case of hiring an individual who was previously employed.* (1) When an employer hires an individual whom he or she has previously employed, if the employer has previously completed the Form I–9 and complied with the verification requirements set forth in paragraph (b) of this section with regard to the individual, the employer may (in lieu of completing a new Form I–9) inspect the previously completed Form I–9 and:

(i) If upon inspection of the Form I–9 relating to the individual, the employer determines that the Form I–9 relates to the individual and that the individual is eligible to work, no additional verification or new Form I–9 need be completed if the individual is hired within three years of the initial execution of the Form I–9; or

(ii) If upon inspection of the Form I–9, the employer determines that the individual is no longer eligible to work in the United States, the employer shall not rehire the individual unless he or she follows the updating procedures in paragraph (b)(1)(vii) of this section.

(2) For purposes of retention of the Form I–9 by an employer for a previously employed individual hired pursuant to paragraph (c)(1) of this section, the employer shall retain the Form I–9 for a period of three years commencing from the date of the initial execution of the Form I–9 or one year after the individual's employment is terminated, whichever is later.

(d) *Employment verification requirements in the case of recruiting or referring for a fee an individual who was previously recruited or referred.* (1) When a recruiter or referrer for a fee refers an individual for whom he or she has previously completed a Form I–9, and the recruiter or referrer has completed the Form I–9 and complied with the verification requirements set forth in paragraph (b) of this section with regard to the individual, the recruiter or referrer may (in lieu of completing a new Form I–9) inspect the previously completed Form I–9 and:

(i) If upon inspection of the Form I–9 relating to the individual, the recruiter or referrer determines that the Form I–9 relates to the individual and that the individual is authorized to work, no additional verification or new Form I–9 need be completed if the individual is referred within three years of the initial execution of the Form I–9: or

(ii) If upon inspection of the Form I–9, the recruiter or referrer determines that

the individual is no longer authorized to work in the United States, the recruiter or referrer shall not refer the individual for employment unless he or she follows the updating procedures in paragraph (b)(1)(vii) of this section.

(2) For purposes of retention of the Form I–9 by a recruiter or referrer for a previously referred individual pursuant to paragraph (d)(1) of this section, the recruiter or referrer shall retain the Form I–9 for a period of three years commencing from the date of the initial execution of the Form I–9.

§ 274a.3 Continuing employment of unauthorized aliens.

An employer who continues the employment of an employee hired after November 6, 1986, knowing that the employee is or has become an unauthorized alien with respect to that employment, is in violation of section 274(a)(2) of the Act.

§ 274a.4 Good faith defense.

An employer or a recruiter or referrer for a fee for employment who shows good faith compliance with the employment verification requirements of § 274a.2(b) of this part shall have established a rebuttable affirmative defense that the person or entity has not violated section 274A(a)(1)(A) of the Act with respect to such hiring, recruiting, or referral.

§ 274a.5 Use of labor through contract.

Any person or entity who knowingly uses a contract, subcontract, or exchange entered into, renegotiated, or extended after the date of enactment, to obtain labor or services of an unauthorized alien shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

§ 274a.6 State employment agencies.

(a) *General.* A state employment agency as defined in § 274a.1 of this part may, but is not required to, verify employment eligibility pursuant to section 274A(b) of the Act. However, should a state employment agency choose to do so, it must:

(1) Complete the verification process for all individuals referred;

(2) Complete the verification process in accordance with the requirements of § 274a.2(b) of this part;

(3) Issue to an individual it refers a certification as set forth in paragraph (c) of this section, in which case an employer who hires the individual shall be deemed to have complied with the verification requirements of § 274a.2(b)(1) of this part, provided that the certification is retained by the employer in the same manner prescribed for Form I–9 in § 274a.2(b)(2) of this part; and

(4) Require the surrender of the certification back to the agency by the individual referred, if he or she is not hired as a result of the referral.

(b) *Compliance with the provisions of section 274A of the Act.* State employment agencies which choose to verify employment eligibility of individuals pursuant to § 274a.2(b) of this part shall comply with all provisions of section 274A of the Act and the regulations issued thereunder, and are subject to the penalties provided in § 274a.10 of this part for failure to comply.

(c) *Procedures for state employment agency certification.* All certifications issued by a state employment agency pursuant to paragraph (a)(3) of this section shall conform to the following standards. They must:

(1) Be issued on official agency letterhead, signed by an appropriately designated official, and contain the embossed seal of the agency;

(2) Be addressed to the particular employing entity to which the individual is referred, and contain identifying data concerning the individual being referred;

(3) Certify that the state agency has complied with the requirements of section 274A(b) of the Act concerning verification of the identity and employment eligibility of the individual referred, and determined that the individual is authorized to work in the United States;

(4) Clearly stipulate any restrictions, conditions, or other limitations which relate to the individual's employment eligibility in the United States; and

(5) State that the employer is not required to reverify the individual's identity or employment eligibility, but must retain the certification letter in lieu of Form I–9.

(d) *Procedures for individuals who are certified by state employment agencies.* Any individual referred to a potential employer by a state employment agency pursuant to this section shall present the original certification to that employer. If the referred individual is hired, the certification shall be provided by the individual to the employer for retention. If the referred individual is not hired, the original cetification shall be surrendered by the individual to the state employment agency which issued the certificate. No copies shall be made of this certification, except as provided in paragraph (e) of this section.

(e) *Retention of state employment agency certifications.* Certifications issued by state employment agencies pursuant to this section shall be retained in the same manner and for the same period as Form I–9:

(1) In original form by the state employment agency, upon surrender by the individual referred if he or she is not hired; or

(2) In duplicate form by the state employment agency if the individual referred is hired; and

(3) In original form by the employer if the individual referred is hired.

§ 274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986.

(a) The penalties provisions as set forth in section 274A (e) and (f) of the Act for violations of section 274A (a)(2) and (b) of the Act shall not apply to the "continuing employment" of an employee who was hired prior to November 7, 1986. For purposes of this section, "continuing employment" is defined in § 274a.2(b)(vi) of this part.

(b) For purposes of this section, an employee who was hired prior to November 7, 1986 shall lose his or her pre-enactment status if the employee:

(1) Quits; or

(2) Is terminated by the employer; the term termination shall include, but is not limited to, situations in which an employee is subject to seasonal employment; or

(3) Is excluded or deported from the United States or departs the United States under an order of voluntary departure.

§ 274a.8 Prohibition of indemnity bonds.

(a) *General.* It is unlawful for a person or other entity, in hiring or recruiting or referring for a fee for employment of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this part relating to such hiring, recruiting, or referring of the individual. However, this prohibition does not apply to performance clauses which are stipulated by agreement between contracting parties.

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil fine of $1,000 for each violation and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

§ 274a.9 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place that the alleged violation occurred and the specific act or conduct of the employer alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* The Service may conduct investigations for violations on its own initiative and without having received a written complaint. When the Service receives a complaint from a third party, it shall investigate only those complaints which have a reasonable probability of validity. If it is determined after investigation that the person or entity has violated section 274A of the Act, the Service shall issue and serve upon the alleged violator a citation or a Notice of Intent to Fine. Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated.

(c) *Citation and notice of intent to fine.* If after investigation the Service determines that a person or entity has violated section 274A of the Act for the first time during the citation period (June 1, 1987 through May 31, 1988) the Service shall issue a citation. If after investigation the Service determines that a person or entity has violated section 274A of the Act for the second time during the citation period or for the first time after May 31, 1988, the proceeding to assess administrative penalties under section 274A of the Act is commenced by the Service by issuing a Notice of Intent to Fine on Form I–762. Service of this Notice shall be accomplished pursuant to Part 103 of this chapter. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 242.1 of this chapter with concurrence of the District Counsel or his or her designee.

(1) *Contents of the notice of intent to fine.* (i) The Notice of Intent to Fine will contain a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law, a designation of the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

(ii) The Notice of Intent to Fine will provide the following advisals to the respondent:

(A) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the government;

(B) That any statement given may be used against the person or entity;

(C) That the person or entity has the right to request a hearing before an Administrative Law Judge pursuant to 5 U.S.C. 554–557, and that such request must be made within 30 days from the service of the Notice of Intent to Fine ;

(D) That the Service will issue a final order in 45 days if a written request for a hearing is not timely received and that there will be no appeal of the final order.

(d) *Answer to notice of intent to fine.* (1) If a respondent contests the issuance of a Notice of Intent to Fine, he or she must, by mail, serve a written answer responding to each allegation listed in the Notice and request a hearing within thirty days from the issuance of the Notice.

(2) If the respondent does not file an answer within thirty days, the Service shall issue a final order to which there is no appeal.

§274a.10 Penalties.

(a) *Criminal penalties.* An employer or a recruiter or referrer for a fee who engages in a pattern and practice of violating section 274A(a)(1)(A) or (a)(2) of the Act, may be fined not more than $3,000 for each unauthorized alien, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(b) *Civil penalties.* An employer or a recruiter or referrer for a fee may face civil penalties for a violation of section 274A of the Act. Civil penalties may be imposed by the Service or an Administrative Law Judge for violations under section 274A of the Act. In determining the level of the penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single violation. However, a single violation will include penalties for each unauthorized alien who is determined to have been knowingly hired or recruited or referred for a fee.

(1) A respondent found by the Service (if the respondent fails to request a hearing) or an Administrative Law Judge (at a hearing) to have knowingly hired or to have knowingly recruited or referred for a fee unauthorized alien for employment in the United States or to have knowingly continued to employ an unauthorized alien, shall be subject to the following order:

(i) To cease and desist from such behavior;

(ii) To pay a civil fine according to the following schedule:

(A) First violation—not less than $250 and not more than $2,000 for each unauthorized alien; or

(B) Second violation—not less than $2,000 and not more than $5,000 for each unauthorized alien; or

(C) More than two violations—not less than $3,000 and not more than $10,000 for each unauthorized alien; and

(iii) To comply with the requirements of section 274a.2(b) of this part, and to take such other remedial action as is appropriate.

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an Administrative Law Judge to have failed to comply with the employment verification requirements as set forth in § 274a.2(b) of this part, shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, consideration shall be given to:

(i) The size of the business of the employer being charged;

(ii) The good faith of the employer;

(iii) The seriousness of the violation;

(iv) Whether or not the individual was an unauthorized alien; and

(v) The history of previous violations of the employer.

(3) Where an order is issued with respect to a respondent composed of a distinct, physically separate subdivision which does its own hiring or its own recruiting or referring for a fee for employment (without reference to the practices of, or under the control of or common control with, another subdivision) the subdivision shall be considered a separate person or entity.

(c) *Enjoining pattern or practice violations.* If the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment or referral in violation of section 274A(a)(1)(A) or (2) of the Act, the

Attorney General may bring civil action in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

§274a.11 Special rule for legalization, special agricultural worker, and Cuban/Haitian entrant adjustment applicants.

An individual who claims to be eligible, and who intends to apply or has applied, for benefits pursuant to section 245A or 210 of the Act or section 202 of the Immigration and Reform and Control Act of 1986, is authorized to work without presenting an employer or a recruiter or referrer for a fee with documentary evidence of work authorization. When an individual indicates to an employer or a recruiter or referrer for a fee that he or she claims to qualify for such benefits and that he or she intends to apply or has applied for such benefits, he or she shall attest to that fact by checking on the Form I–9, the third box of Part 1 (Employee Information and Verification) and noting "Special Rule" in the space after "Alien Number A_____" and "September 1, 1987" in the space after "expiration of employment authorization." The individual must also provide a document listed in § 274a.2(b)(1)(v)(B) of this part that establishes identity. The employer shall follow all of the employment verification procedures set forth in § 274a.2(b) of this part except that the employer or the recruiter or referrer for a fee shall note on the Form I–9 that the individual has stated his or her intention to seek such benefits by writing on the Form I–9 in Section 2—"Employer Review and Verification" under List C ("Documents that Establish Employment Eligibility") in the space after "Document Identification" the words "Special Rule" and in the space after "Expiration Date," "September 1, 1987". After September 1, 1987, such individuals, employers and recruiters and referrers for a fee will be required to fully comply with all provisions of § 274a.2(b) of this part. Employers, recruiters, and referrers, however, may update the Form I–9 if they follow the procedures set forth in § 274a.2(b)(2) of this part.

Subpart B—Employment Authorization

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized employment incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes, and specific employment authorization need not be requested:

(1) An alien who is a lawful permanent resident (with or without conditions pursuant to section 216 of the Act), as evidenced by Form I–151 or Form I–551 issued by the Service;

(2) An alien admitted to the United States as a lawful temporary resident pursuant to section 245A or 210 of the Act, as evidenced by an employment authorization document issued by the Service;

(3) An alien admitted to the United States as a refugee pursuant to section 207 of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(4) An alien paroled into the United States as a refugee for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(5) An alien granted asylum under section 208 of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(6) An alien admitted to the United States as a nonimmigrant fiance or fiancee pursuant to section 101(a)(15)(K) of the Act, or an alien admitted as the child of such alien, for the period of admission of the United States, as evidenced by an employment authorization document issued by the Service;

(7) An alien admitted as a parent (N–8) or dependent child (N–9) of an alien granted permanent residence under section 101(a)(27)(I) of the Act, as evidenced by an employment authorization document issued by the Service;

(8) An alien admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM) or of the Marshall Islands (CFA/MIS) pursuant to agreements between the United States and the former trust territories, as evidenced by an employment authorization document issued by the Service;

(9) An alien granted suspension of deportation under section 244(a) of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(10) An alien granted withholding of deportation under section 243(h) of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service; or

(11) An alien who has been granted extended voluntary departure by the Attorney General as a member of a nationality group pursuant to a request by the Secretary of State. Employment is authorized for the period of time in that status as evidenced by Form I–__ issued by the Service.

(b) *Aliens authorized for employment with a specific employer incident to status.* The following classes of nonimmigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification. An alien in one of these classes is not issued an employment authorization document by the Service:

(1) A foreign government official (A–1 or A–2), pursuant to § 214.2(a) of this chapter. An alien in this status may be employed only by the foreign government entity;

(2) An employee of a foreign government official (A–3), pursuant to § 214.2(a) of this chapter. An alien in this status may be employed only by the foreign government official;

(3) A foreign government official in transit (C–2 or C–3), pursuant to § 214.2(c) of this chapter. An alien in this status may be employed only by the foreign government entity;

(4) A nonimmigrant crewman (D–1 or D–2) pursuant to § 214.2(d), and Parts 252 and 253, of this chapter. An alien in this status may be employed only in a crewman capacity on the vessel or aircraft of arrival, or on a vessel or aircraft of the same transportation company, and may not be employed in connection with domestic flights or movements of a vessel or aircraft;

(5) A nonimmigrant treaty trader (E–1) or treaty investor (E–2), pursuant to § 214.2(e) of this chapter. An alien in this status may be employed only by the treaty-qualifying company through which the alien attained the status. Employment authorization does not extend to the dependents of the principal treaty trader or treaty investor (also designated "E'1" or "E–2"), other than those specified in paragraph (c)(2) of this section;

(6) A nonimmigrant student (F–1) pursuant to § 214.2(f)(9) of this chapter. An alien in this status may be employed only in accordance with the following conditions:

(i) On campus for not more than twenty hours a week while school is in session; or

(ii) On campus full time when school is not in session if the student is eligible and intends to register for the next term or session. In addition, a nonimmigrant student (F–1) may engage in a work-study program as part of the regular curriculum available within the student's program of study in accordance with the conditions specified in § 214.2(f)(10) of this chapter;

(7) A representative of an international organization (G–1, G–2, G–3, or G–4), pursuant to § 214.2(g) of this chapter. An alien in this status may be employed only by the foreign government entity or the international organization;

(8) A personal employee of an official or representative of an international organization (G–5), pursuant to § 214.2(g) of this chapter. An alien in this status may be employed only by the official or representative of the international organization;

(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), pursuant to § 214.2(h) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained;

(10) An information media representative (I), pursuant to § 214.2(i) of this chapter. An alien in this status may be employed only for the sponsoring foreign news agency or bureau. Employment authorization does not extent to the dependents of an information media representative (also designated "I");

(11) An exchange visitor (J–1), pursuant to § 214.2(j) of this chapter. An alien in this status may be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by the United States Information Agency;

(12) An intra-company transferee (L–1), pursuant to § 214.2(1) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained;

(13) Officers and personnel of the armed services of nations of the North Atlantic Treaty Organization, and representatives, officials, and staff employees of NATO (NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 and NATO–6), pursuant to § 214.2(o) of this chapter. An alien in this status may be employed only by NATO;

(14) An attendant, servant or personal employee (NATO–7) of an alien admitted as a NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6, pursuant to § 214.2(o) of this chapter. An alien admitted under this classification may be employed only by the NATO alien through whom the status was obtained; or

(15) A nonimmigrant alien within the class of aliens described in paragraphs (b)(9), (11), and (12) of this section whose status has expired but who has filed a timely application for an extension of such status pursuant to §214.2 of this chapter. These aliens are authorized to continue employment with the same employer for a period not to exceed 120 days beginning on the date of the expiration of the authorized period of stay. If the alien's application for extension of stay has not been adjudicated within this period, the alien may apply to the district director for employment authorization pursuant to paragraph (c)(15) of this section.

(c) *Aliens who must apply for employment authorization.* Any alien within a class of aliens described in this section must apply for work authorization. If authorized, such an alien may accept employment subject to any restrictions indicated in the regulations or cited on the employment authorization document:

(1) An alien spouse or unmarried dependent son or daughter of a foreign government official (A–1 or A–2) pursuant to § 214.2(a)(2) of this chapter, or the dependent of an employee of a foreign government official (A–3) pursuant to § 214.2(a)(3) of this chapter;

(2) An alien spouse or unmarried dependent son or daughter of an alien employee of the Coordination Council for North American Affairs (E–1) pursuant to § 214.2(e) of this chapter;

(3) A nonimmigrant (F–1) student who:

(i) Is seeking off-campus employment authorization due to economic necessity pursuant to § 214.2(f) of this Chapter;

(ii) Is seeking employment for purposes of practical training pursuant to § 214.2(f) of this chapter. The alien may be employed only in an occupation which is directly related to his or her course of studies; or

(iii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669), if such international organization provides written certification to the district director having jurisdiction over the intended place of employment that the proposed employment is within the scope of the organization's sponsorship;

(4) An alien spouse or unmarried dependent son or daughter of an officer or employee of an international organization (G–4) pursuant to § 214.2(g) of this chapter;

(5) An alien spouse or minor child of an exchange visitor (J–2) pursuant to § 214.2(j) of this chapter;

(6) A nonimmigrant (M–1) student seeking employment for practical training pursuant to § 214.2(m) of this chapter following completion of studies if such employment is directly related to the student's course of study;

(7) A dependent of an alien classified as NATO–1 through NATO–7 pursuant to § 214.2(n) of this chapter;

(8) Any alien who has filed a non-frivolous application for asylum pursuant to Part 208 of this chapter. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

(9) Any alien who has filed an application for adjustment of status to lawful permanent resident pursuant to Part 245 of this chapter. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

(10) Any alien who has filed an application for suspension of deportation pursuant to Part 244 of this chapter, if the alien establishes an economic need to work. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

(11) Any alien paroled into the United States temporarily for emergent reasons or reasons deemed strictly in the public interest pursuant to § 212.5 of this chapter;

(12) Any deportable alien granted voluntary departure, either prior to or after hearing, for reasons set forth in §242.5(a)(2) (v), (vi), or (viii) of this chapter may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date. Factors which may be considered in adjudicating the employment application of an alien who has been granted voluntary departure are the following:

(i) The length of voluntary departure granted;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support;

(iii) Whether there is a reasonable chance that legal status may ensue in the near future; and

(iv) Whether there is a reasonable basis for consideration of discretionary relief.

(13) Any alien against whom exclusion or deportation proceedings have been instituted, who does not have a final order of deportation or exclusion, and who is not detained may be granted temporary employment authorization if the district director determines that employment is appropriate. Factors which may be considered by the district director in adjudicating the employment application of such an alien are the following:

(i) The existence of the economic necessity to be employed;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support;

(iii) Whether there is a reasonable chance that legal status may ensue in the near future; and

(iv) Whether there is a reasonable basis for consideration of discretionary relief;

(14) An alien who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority, if the alien establishes an economic necessity for employment;

(15) A nonimmigrant alien within the class of aliens described in paragraphs (b)(9), (11), and (12) of this section whose application for extension of stay has not been adjudicated within the 120-day period as set forth in paragraph (b)(15) of this section.

(d) *Basic criteria to establish economic necessity.* Title 45—Public Welfare, Poverty Guidelines, 45 CFR 1060.2 should be used as the basic criteria to establish eligibility for employment authorization when the alien's economic necessity is identified as a factor. The alien shall submit an application for employment authorization listing his or her assets, income, and expenses as evidence of his or her economic need to work. Permission to work granted on the basis of the alien's application for employment authorization may be revoked under §274a.14 of this chapter upon a showing that the information contained in the statement was not true and correct.

§ 274a.13 Application for employment authorization.

(a) *General.* An application (in the form of a written request) for employment authorization by an alien under § 274.12(c) of this chapter shall be filed with the district director having jurisdiction over the applicant's residence. Except for paragraph (c)(8) of this section, the approval of an application for employment authorization shall be within the discretion of the district director. Where economic necessity is identified as a factor, the alien must provide information regarding his or her assets, income, and expenses on the application for employment authorization.

(b) *Approval of application.* If the application is granted, the alien shall be notified of the decision and issued employment authorization for a specific period of time. Such authorization shall be subject to any conditions noted on the employment authorization document.

(c) *Denial of application.* If the application is denied, the applicant shall be notified in writing of the decision and the reasons for the denial. There shall be no appeal from the denial of the application.

(d) *Interim employment authorization.* The district director shall adjudicate the application for employment authorization within 60 days from the date of receipt of the application by the Service or the date of receipt of a returned application by the Service. Failure to complete the adjudication within 60 days will result in the grant of interim employment authorization for a period not to exceed 120 days. Such authorization shall be subject to any conditions noted on the employment authorization document. However, if the district director adjudicates the application prior to the expiration date of the interim employment authorization and denies the individual's employment authorization application, the employment authorization granted under this section shall automatically terminate.

§ 274a.14 Termination of employment authorization.

(a) *Automatic termination of employment authorization.*

(1) Employment authorization granted under § 274a.12(c) of this chapter shall automatically terminate upon the occurrence of one of the following events:

(i) The expiration date specified by the Service on the employment authorization document is reached;

(ii) Exclusion or deportation proceedings are instituted (however, this shall not preclude the authorization of employment pursuant to § 274a.12(c) of this part where appropriate); or

(iii) The alien is granted voluntary departure.

(2) Termination of employment authorization pursuant to this paragraph does not require the service of a notice of intent to revoke; employment authorization terminates upon the occurrence of any event enumerated in paragraph (a)(1) of this section.

However, automatic revocation under this section does not preclude reapplication for employment authorization under § 274.12(c) of this part.

(b) *Revocation of employment authorization—* (1) *Basis for revocation of employment authorization.* Employment authorization granted under § 274a.12(c) of this chapter may be revoked by the district director:

(i) Prior to the expiration date, when it appears that any condition upon which it was granted has not been met or no longer exists, or for good cause shown, or

(ii) Upon a showing that the information contained in the application is not true and correct.

(2) *Notice of intent to revoke employment authorization.* When a district director determines that employment authorization should be revoked prior to the expiration date specified by the Service, he or she shall serve written notice of intent to revoke the employment authorization. The notice will cite the reasons indicating that revocation is warranted. The alien will be granted a period of fifteen days from the date of service of the notice within which to submit countervailing evidence. The decision by the district director shall be final and no appeal shall lie from the decision to revoke the authorization.

(c) *Automatic termination of temporary employment authorization granted prior to June 1, 1987.* (1) Temporary employment authorization granted prior to June 1, 1987, pursuant to 8 CFR 109.1(b), or its redesignation as § 274a.12(c) of this part, shall automatically terminate on the date specified by the Service on the document issued to the alien, or on June 1, 1988, whichever is earlier. Automatic termination of temporary employment authorization does not preclude a subsequent application for temporary employment authorization.

(2) A document issued by the Service prior to June 1, 1987, that authorizes temporary employment authorization for any period beyond June 1, 1988, is null and void pursuant to paragraph (c)(1) of this section, and must be surrendered to the Service on the date that the temporary employment authorization terminates or on June 1, 1988, whichever is earlier. The alien shall be issued a new employment authorization document at the time the document is surrendered to the Service if the alien is eligible for temporary employment authorization pursuant to § 274a.12(c) of this chapter.

(3) No notice of intent to revoke is necessary for the automatic termination of temporary employment authorization pursuant to this part.

Dated: April 28, 1987.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1987

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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