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Friday
June 12, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, and Boston, MA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

CHICAGO, IL

WHEN: July 8, at 9 a.m.
WHERE: Room 204A,
Everett McKinley Dirksen Federal Building,
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RESERVATIONS: Call the Chicago Federal Information Center, 312-353-0339.

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WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617-565-8129

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

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Presidential Documents

Title 3—

The President

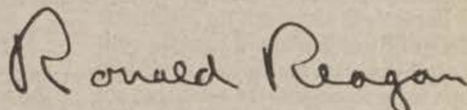
Presidential Determination No. 87-14 of June 2, 1987

Determination Under Subsection 402(d)(5) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93-618), January 3, 1975 (88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to the Socialist Republic of Romania, the Hungarian People's Republic, and the People's Republic of China will substantially promote the objectives of section 402 of the Act.

This determination shall be published in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 2, 1987.

[FR Doc. 87-13573
Filed 6-10-87; 12:18 pm]
Billing code 3195-01-M

Editorial note: For a statement and the text of the President's message to Congress, dated June 2, on the continuation of waiver authority, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 22).

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to implement the Consolidated Omnibus Budget Reconciliation Act of 1985 that amended the retirement provisions of chapter 83 of title 5, United States Code. The Act eliminates a feature of the law that permitted potential abuse of the Civil Service Retirement System (CSRS) by part-time employees who change to full-time service at the end of their career. These regulations require retirement benefits to be prorated for part-time service performed on or After April 7, 1986 (the date of enactment of the law).

DATES: Regulations effective April 7, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Elliott, (202) 632-4682.

SUPPLEMENTARY INFORMATION: On January 15, 1987, OPM published interim regulations in the **Federal Register** (52 FR 1621–1623) on computation of annuity for part-time employees. During the comment period we received nineteen letters on the interim regulations. We have carefully considered the comments and, as a result, have decided that the final regulations will reflect a method of computation where only service performed on or after April 7, 1986, (the date of enactment of Pub. L. 99–272), will be subject to the new method of computing annuities for part-time employees. Service prior to April 7, 1986, will be computed under the old method of computing annuities for employees with part-time service. Regulations on computing annuities for part-time employees under the Federal Employees' Retirement System will be issued separately.

The New Methodology

Pub. L. 99–272 provides that the average salary for both part-time and full-time employees will be computed on the basis of full-time salary, but the benfit so computed will be prorated, that is, reduced by a fraction (called the "proration factor") that reflects part-time service. The new provision applies only to service performed on or after April 7, 1986.

The proration factor is a fraction, expressed as a percentage rounded to the nearest percent. It is used in the computation explained below to reduce the annuity attributable to service on or after April 7, 1986. It is generally the number of hours a part-time employee works divided by the number of hours the employee would have worked if he or she were a full-time employee over the same period of time. For a half-time employee, it is 20/40, or .50. Only service on or after April 7, 1986 is involved. If an employee also performs service that is not affected by the new methodology (full time, intermittent, or temporary service performed on a full-time basis) as well as part-time service on or after April 7, 1986, the number of hours of such service must be included in both the numerator and the denominator of the fraction. This decreases the reduction effect of the proration factor. The additional credit for unused sick leave under 5 U.S.C. 8339 (m) is not included in the fraction.

Application of New Methodology to Current Employees

In order to give effect to the statutory requirement that the new methodology apply only to service performed on or after April 7, 1986, two separate computations must be performed to determine the basic yearly annuity. The first computation will include service through April 6, 1986, and will be computed under the method of computation that was in effect before the passage of Pub. L. 99–272. The second computation will include service on or after April 7, 1986, and will be computed under the new rules of computation as prescribed by Pub. L. 99–272. The dollar amounts arrived at in each of the two computations will be added together and will be the basic yearly annuity.

These regulations provide for establishing two separate high–3 average pay figures for part-time employees. First, a "pre-April 7, 1986, average pay" will be used to compute the portion of annuity attributable to service before enactment of Pub. L. 99–272. This average pay will be computed under the rules then in effect, using part-time rates of basic pay, and will then be multiplied by the percentage factor for service before April 7, 1986, resulting in a basic annuity benefit attributable to pre-Pub. L. 99–272 service.

Second, a "post-April 6, 1986, average pay" will be used to compute the portion of annuity attributable to creditable service on and after the date of enactment. This average pay will be computed on the basis of deemed full-time rates of basis pay (as if the service had been performed on a full-time basis) for part-time service on or after April 7, 1986. It will then be multiplied by the percentage factor for service on or after April 7, 1986. The result will be multiplied by the proration factor, to establish the basic annuity benefit attributable to service under the new statutory rules.

It must be noted that average pay under the CSRS covers a period of 3 consecutive years of creditable service. The highest average pay obtainable over the employee's entire length of service is used. Since this is usually the final 3 years of service, for the first 3 years following enactment of Pub. L. 99–272 both of the high-3 average pay computations will in most cases of part-time employees include rates of pay from both before and after the date of enactment. These final rules provide that the post-April 6, 1986, average pay will use the deemed full-time rates of basic pay only for the rates in effect after the date of enactment. This is intended to give effect to the bar to using the new methodology for service before enactment of the amendment. The pre-April 7, 1986, average pay, which is applicable to pre-enactment service only, will use the prior rules for service both before and after enactment, for the same reason.

Congress did not change the way in which annuity attributable to unused sick leave is computed. Under 5 U.S.C. 8339(m), this benefit is added to the

basic annuity computation by adding to the employee's length of service. To convert unused sick leave hours into calendar time for the purpose, OPM's regulations (5 CFR 831.302) provide the general rule that a part-time employee's unused sick leave hours are credited at the rate they would have been charged under the employee's tour of duty, so that the calendar time represented by the unused sick leave hours is added to the length of service. If the employee was a half-time employee, the sick leave hours would be converted to calendar time on the basis of 20 hours per week. In view of this manner of crediting unused sick leave of part-time employees, these regulations add the unused sick leave credit to the computation of the pre-April 7, 1986, benefit. Therefore, if a retiring employee has 1 year of unused sick leave accumulated, the combined basic annuity is increased by 2 percent (if total service exceeds 10 years) of the pre-April 7, 1986, average pay.

Examples of Computation of Basic Annuity

For example, consider an employee with 30 years of ¾ time service ending April 6, 1988, who, for simplicity of illustration, has no change in his rate of basic pay over the last 3 years of service—$15,000. The deemed full-time rate is $20,000. He has the equivalent of 1 year of unused sick leave. The computation of the basic yearly annuity is as follows:

Pre-April 7, 1986, benefit:

$15,000 (pre-April 7, 1986, average pay), *times* 54.25% (for 28 years of service to April 7, 1986, plus 1 year of sick leave), *equals* $8,137.50

Post-April 6, 1986, benefit:

$18,333 (post-April 6, 1986, average pay, computed by adding $15,000 [for 1 year before April 7, 1986] plus $40,000 [for 2 years at deemed full-time rate after April 6, 1986]) *times* 4% (for 2 years of service after April 6, 1986), *equals* $733.32, *times* .75 (proration factor based on 3120 hours actually worked from April 7, 1986, to the date of retirement, divided by 4174, the number of hours in a full-time schedule over the same period, [taking into account the change from a 2080 hour to a 2087 annual multiplier since March 1986]), *equals* $549.99

Combined basic benefit:

$8137.50 (pre-April 7, 1986, benefit), *plus* $549.99 (post-April 6, 1986, benefit), *equals* $8687.49 (basic yearly annuity).

As another example, consider a part-time employee with 30 years of service who retires on October 6, 1987, but who has twelve years of full-time (40 hours per week) service to her credit from 1957 to 1969. During her remaining 18 years of service, all part time, she worked 17 years on a 24-hour per week schedule until October 1986, and then went on a 32-hour per week schedule for her last year. Again for the sake of simplicity, her rates of basic pay over the last 3 years of service are, from October 1984, to October 1986—$18,000, and in her last year—$24,000. The deemed full-time rate is $30,000. She has the equivalent of one-half year of unused sick leave. The computation of the basic yearly annuity is as follows:

Pre-April 7, 1986, benefit:

$20,000 (pre-April 7, 1986 average pay), *times* 54.25% (for 28 and one-half years of service to April 7, 1986, plus one-half year of sick leave), *equals* $10,850.

Post-April 6, 1986, benefit:

$24,000 (post-April 6, 1986, average pay, computed by adding $27,000 [for one and one-half years before April 7, 1986] plus $45,000 [for one and one-half years at deemed full-time rate after April 6, 1986]) *times* 3% (for one and one-half years after April 6, 1986), *equals* $720.00 *times* .73 (proration factor based on 2288 hours actually worked from April 7, 1986, to the date of retirement, divided by 3130.5, the number of hours in a full-time schedule over the same period, [remembering the 2087 hour annual multiplier since March 1986]), *equals* $525.60.

Combined basic benefit:

$10,850.00 (pre-April 7, 1986, benefit), *plus* $525.60 (post-April 6, 1986, benefit), *equals* $11,375.60 (basic yearly annuity).

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 within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and will affect only Federal employees, retirees, and agencies.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 831 of Title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for Subpart G of Part 831 reads as follows:

Authority: 5 U.S.C. 8347.

2. Subpart G is amended by revising § 831.703 to read as follows:

Subpart G—Computation of Annuities

* * * * *

§ 831.703 Computation of annuities for part-time service.

(a) *Purpose.* The computational method in this section shall be used to determine the annuity for an employee who has part-time service on or after April 7, 1986.

(b) *Definitions.* In this section—

"Full-time service" means any actual service in which the employee is schedule to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

"Intermittent service" means any actual service performed with no prescheduled regular tour of duty.

"Part-time service" means any actual service performed on a less than full-time basis, by an individual whose appointment describes a regularly scheduled tour of duty, and any period of time credited as non pay status time under 5 U.S.C. 8332(f), which follows a period of part-time service without any intervening period of actual service other than part-time service. This definition is not limited to part-time career employment because it includes part-time temporary employment as well.

"Post-April 6, 1986 average pay" means the largest annual rate resulting from averaging, over any period of 3 consecutive years of creditable service, the annual rate of basic pay that would be payable for full-time service by an employee during that period, with each rate weighted by the time it was in effect, except that for periods of service before April 7, 1986, the actual rate of basic pay based on the employee's established tour of duty, if different, is used in the computation. The rates of pay included in the computation for intermittent service or temporary service performed on a full-time basis

are the actual rates of basic pay during those periods of creditable service.

"Pre-April 7, 1986, average pay" means the largest annual rate resulting from averaging, over any period of 3 consecutive years of creditable service, an employee's actual rates of basic pay during that period, with each rate weighted by the time it was in effect.

"Proration factor" means a fraction expressed as a percentage rounded to the nearest percent. The numerator is the sum of the number of hours the employee actually worked during part-time service, and the denominator is the sum of the number of hours that a full-time employee would be schedule to work during the same period of service included in the numerator. If an employee has creditable service in addition to part-time service (full-time service, intermittent service, or temporary service performed on a full-time basis), such service must be included in the numerator and denominator of the fraction. In general, this is done by including the number of days of such intermittent service, multiplied by 8, and the number of weeks of such temporary service or full-time service, multiplied by 40 in both the numerator and the denominator. The additional credit for unused sick leave under 5 U.S.C. 8339(m) is not included in the fraction.

"Temporary service" means service under an appointment limited to one year or less, exclusive of intermittent service.

(c) *Pre-April 7, 1986, basic annuity.* The partial annuity for pre-April 7, 1986, service is computed in acordance with 5 U.S.C. 8339 using the pre-April 7, 1986, average pay and length of service (increased by the unused sick leave credit at time of retirement) prior to April 7, 1986.

(d) *Post-April 6, 1986, basic annuity.* The partial annuity for post-April 6, 1986, service is computed in accordance with 5 U.S.C. 8339 using the post-April 6, 1986, average pay and length of service after April 6, 1986. This amount is then multiplied by the proration factor.

(e) *Combined basic annuity.* The combined basic annuity is equal to the sum of the partial annuity amounts computed under paragraphs (c) and (d). This amount is the yearly rate of annuity (on which the monthly rate is based) before reductions for retirement before age 55; pre-October 1, 1982, nondeduction service and survivor benefits; or the reduction for an alternative annuity under section 204 of Pub. L 99-335.

(f) *Limitations.* The use of the post-April 6, 1986, average pay is limited to the purposes stated in this section. It may not be used as the basis for computing:

(1) The 80-percent limit on annuity under 5 U.S.C. 8339(f);

(2) The minimum annuity amount under 5 U.S.C. 8339(e) (concerning air traffic controller annuity) or 5 U.S.C. 8339(g) (concerning disability annuity); or

(3) A supplemental annuity under 5 U.S.C. 8344(a).

[FR Doc. 87-13404 Filed 6-11-87; 8:45am]
BILLING CODE 6325-01-M

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5 CFR Part 842

Federal Employees Retirement System—Basic Annuity; Computation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is amending its interim rules published on February 11, 1987 (52 FR 4472), on basic annuity computation under the Federal Employees' Retirement System Act of 1986, and extending the time limit for comment on those rules. These rules implement section 8415(e) of title 5 of the U.S. Code to provide requirements for computing the annuity of employees whose service includes part-time service.

DATES: Interim rules effective January 1, 1987; comments must be received on or before August 11, 1987.

ADDRESSES: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt, (202) 632-5560.

SUPPLEMENTARY INFORMATION: Section 8415(e) of title 5, United States Code provides that the average salary for part-time employees will be computed on the basis of full-time salary, but the benefit so computed will be prorated, that is, reduced by a fraction that reflects part-time service. For the purpose of this computation, these interim rules establish three new definitions in § 842.402:

• *Full-time service* means any service in which the employee is scheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

• *Part-time service* means any actual service, performed on a less than full-time basis by an individual whose appointment describes a regularly scheduled tour of duty, and any period of time credited during nonpay status that follows a period of part-time service without any intervening period of actual service other than part-time service. This definition prevents a part-time employee who is credited with leave without pay time from avoiding the proration of annuity during periods in which no service is performed.

• *Proration factor* means the percentage, rounded to the nearest percent, used to make the appropriate reduction in the annuity of employees whose service includes part-time service. It is generally the number of hours a part-time employee works divided by the number of hours the employee would have worked if he or she were a full-time employee over the same period of time. For a half-time employee, it is 20/40, or .50. If an employee alao performs service that is not affected by this methodology, the number of hours of such service must be included in both the numerator and the denominator of the fraction. This decreases the reduction effect of the proration factor.

For example, consider a part-time employee with 30 years of service, but who has 10 years (520 weeks) of full-time (40 hours per week) service to her credit. During her remaining 20 years of service, all part time, she worked 5 years (260 weeks) on a 24-hour per week schedule, and 15 years (780 weeks) on a 32-hour per week schedule. Adding this all up, she worked a total of 52,000 hours during her 30-year career. Her average pay (based on deemed full-time rates) is $30,000. The computation of her basic yearly annuity is as follows:

One percent of $30,000 (average pay) *times* 30 (years of service) *equals* $9000, *times* .83 (proration factor based on 52,000 hours actually worked, divided by 62,400, the number of hours in a full-time schedule during 30 years), *equals* a basic annuity of $7470.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. OPM must issue regulations to implement an entire new retirement system, which was effective January 1, 1987. In addition, clear rules must be in place to allow preparation of materials

and to distribute them worldwide to employees who are eligible to elect FERS coverage during the "open season" between July 1 and December 31, 1987. These tasks, along with the necessity to prepare, publish, and distribute the necessary forms and informational materials make the publication of proposed rules impracticable.

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 because the regulation will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 842

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart D—Computations

Accordingly, OPM is amending 5 CFR Part 842 as follows:

1. The authority citation for Subpart D of Part 842 continues to read as follows:

Authority: 5 U.S.C. 8461.

2. Section 842.402 is amended to revise the section heading to read as set forth below and to add, in alphabetical order, three new definitions to read as follows:

§ 842.402 Definitions.

"Full-time service" means any actual service in which the employee is scheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

"Part-time service" means any actual service performed on a less than full-time basis, by an individual whose appointment describes a regularly scheduled tour of duty, and any period of time credited as nonpay status time under 5 U.S.C 8411(e), that follows a period of part-time service without any intervening period of actual service other than part-time service.

"Proration factor" means a fraction expressed as a percentage rounded to the nearest percent. The numerator is the sum of the number of hours the employee actually worked during part-time service; and the denominator is the sum of the number of hours that a full-time employee would be scheduled to work during the same period of service included in the numerator. If an employee has creditable service in addition to part-time service, such service must be included in the numerator and denominator of the fraction.

* * * * *

3. Section 842.407 is added to read as follows:

§ 842.407 Proration of annuity for part-time service.

The annuity of an employee whose service includes part-time service is computed in accordance with § 842.403, using the average pay based on the annual rate of basic pay for full-time service. This amount is then multiplied by the proration factor. The result is the annual rate of annuity before reductions for retirement before age 62, survivor benefits, or the reduction for an alternative form of annuity required by § 842.706.

[FR Doc. 87-13405 Filed 6-11-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

Table Grapes; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the United States Standards for Grades of Table Grapes (European or Vinifera Type). The Agricultural Marketing Service (AMS) is making this change to bring these standards into conformity with recently revised Arizona maturity regulations, which are applicable under the standards. In addition, the definition of "container" in the grade standards is revised to specify that the determination of all factors of grade be made on the basis of master containers when the grapes are packed in individual packages containing 5 pounds or less and placed in master containers for shipment. AMS has the responsibility to keep U.S. grade standards up to date with current industry marketing practices.

EFFECTIVE DATE: June 12, 1987.

FOR FURTHER INFORMATION CONTACT: Michael V. Morrelli, Fresh Products Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 447-2011.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Departmental Regulation 1512-1 and Executive Order 12291 and has been designated as "non major." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Compliance with these revisions will not impose substantial direct economic costs, record keeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

These grade standards were last revised in April 1983 to bring them into conformity with the California table grape maturity regulations and to provide uniform size specifications for seedless varieties exhibiting similar characteristics.

On May 5, 1987, a proposed rule inviting public comment on a possible change in maturity determination procedures for Arizona-grown table grapes and in sampling procedures for grapes in packages weighing 5 pounds or less was published in the **Federal Register** (52 FR 16399-16401). Copies of the proposed rule were distributed to growers, receivers, and industry organizations for review and comment.

Written comments were received from three respondents during the comment period which ended June 4, 1987. All agreed with the proposal and supported its issuance as a final rule.

This revision makes the following changes:

—allows a hand refractometer instead of a hydrometer to be used for determining soluble solids of table

grapes grown in Arizona (7 CFR 51.887 (a) (1)).

—Establishes 16 percent soluble solids as the minimum maturity requirement for the Flame Seedless variety when grown in Arizona (7 CFR 51.887 (a) (1)).

—Revises the definition of "container" (7 CFR 51.910) to state that master containers shall be used as individual sample units when they are packed with individual sub-containers which weigh 5 pounds or less.

—Removes the footnote 2 in 51 CFR 51.885(b), Tables I and II that refers to samples of grapes in packages weighing 5 pounds or less.

After review of written comments presented by interested persons, AMS has determined that these revised standards would be in-line with current marketing practices and such revision would facilitate inspection methods and the application of the grade standards.

It is found that it is contrary to public and industry interests to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making this revision effective upon publication in that: (1) The domestic table grape harvest has already begun; (2) all comments received were favorable; (3) no changes were made in the proposed rule, except for the addition of paragraph and sub-paragraph cross reference citations to the Arizona Rules and Regulations in § 51.887(a)(1).

List of Subjects in 7 CFR Part 51

Fresh fruits, Vegetables and other products (Inspection, certification, and standards).

PART 51—[AMENDED]

For the reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Sec. 203, 205, 60 Stat. 1087, as amended, 1090 as amended, (7 U.S.C. 1622, 1624).

§ 51.885 [Amended]

2. In Subpart—*United States Standards for Grades of Table Grapes (European or Vinifera Type)*, § 51.885, paragraph (b), Tables I and II, footnote 2 following the word "bunches" in line D of each table and the corresponding footnote description at the end of the tables are removed.

3. Section 51.887, paragraphs (a) introductory text and (a)(1) are revised as follows:

§ 51.887 Maturity requirements.

(a) In the case of grapes grown in Arizona or California, "mature" means grapes in any lot shall meet the maturity requirements for the variety as set forth in the applicable State Agricultural Laws and Regulations in effect on the date or dates specified in this section.

(1) Applicable Arizona maturity regulations, contained in Title 3, Chapter 7, Article 1, section R3–7–104, subsection 7d through f of the 1986 Arizona Official Compilation of Administrative Rules and Regulations, Arizona Fruit and Vegetable Standardization, are as follows:

(i) *Arizona 7d.* In all varieties the testing of soluble solids in the juice shall be determined by the hand refractometer.

(ii) *Arizona 7e.* The term "mature" shall be applied when the following conditions exist in each bunch of grapes tested:

(A) *Arizona 7e (i).* All varieties shall be considered mature if the juice contains soluble solids equal to, or in excess of 18 parts to every part of acid contained in the juice (the acidity of the juice to be calculated as tartaric acid without water of crystallization.)

(B) *Arizona 7e (ii).* Cardinals and Robins; at least 14 1/2 percent soluble solids.

(C) *Arizona 7e (iii).* Perlettes; at least 15 percent soluble solids.

(D) *Arizona 7e (iv).* Thompson Seedless and Flame Seedless varieties; at least 16 percent soluble solids.

(E) *Arizona 7e(v).* Exotic variety; at least 14 percent soluble solids.

(iii) *Arizona 7f.* The maturity of varieties named in this regulation shall be determined by testing the juice of entire bunches representative of the least mature grapes in any container and consisting of not less than 10 percent by weight of the contents of the container; however, no lot of grapes shall be considered as failing to meet the maturity requirements of this section because the sample of grapes from one container fails to meet the required test.

* * * * *

4. Section 51.910 is revised to read as follows:

§ 51.910 Container.

"Container" as used in these standards shall, for the purposes of determining maturity and other factors of grade of grapes in packages containing 5 pounds or less, mean the master container in which the individual packages are packed for shipment.

Done at Washington, DC, on: June 8, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-13441 Filed 6-11-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

Lemon Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 565 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 375,000 cartons during the period June 14 through June 20, 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 565 (§ 910.865) is effective for the period June 14 through June 20, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, 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 1521–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory 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 own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulation 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 recommendations 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 June 9, 1987, at 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 very active.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, or 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 purpose 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, Lemons.

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 910.865 is added to read as follows:

§ 910.865 Lemon Regulation 565.

The quantity of lemons grown in California and Arizona which may be handled during the period June 14, 1987, through June 20, 1987, is established at 375,000 cartons.

Dated: June 10, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87-13598 Filed 6-11-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 544

Oligosaccharide Certifiable Antibiotic Drugs for Animal Use; Dihydrostreptomycin Boluses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Boehringer Ingelheim Animal Health, Inc. The NADA provides for use of dihydrostreptomycin boluses in calves. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: June 22, 1987..

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Boehringer Ingelheim's NADA 65-413 for Sol-Mycin (dihydrostreptomycin) Calf Scour Bolus. Upon withdrawal of approval of a new animal drug application, the agency is required by 512(i) of the Federal Food, Drug and Cosmetic Act to revoke the regulations that reflect the approval. This document removes 21 CFR 544.110 that reflects approval of the NADA.

List of Subjects in 21 CFR Part 544

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 544 is amended as follows:

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 544 continues to read as follows:

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

§ 544.110 [Removed]

2. Section 544.110 *Dihydrostreptomycin boluses* is removed.

Dated: June 5, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-13416 Filed 6-11-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 602

[Attorney General Order No. 1193-87]

Jurisdiction; Independent Counsel Offices; Regarding Franklyn C. Nofziger

AGENCY: Justice Department.

ACTION: Final rule.

SUMMARY: This rule establishes an Office of Independent Counsel: In re Franklyn C. Nofziger, to be headed by an Independent Counsel. This Office is to be established pursuant to the Attorney General's statutory authority, found in 28 U.S.C. 509, 510, and 515, and 5 U.S.C. 301, and pursuant to the President's general responsibility to enforce the laws of the United States pursuant to Article II of the United States Constitution. This authority is being exercised because of the pending litigation challenging the constitutionality of the appointment and activities of Independent Counsel named pursuant to the Ethics in Government Act (28 U.S.C. 591 *et seq.*). It is advisable to assure the courts, Congress, and the American people that these investigations will proceed in a clearly authorized and constitutionally valid form regardless of the eventual outcome of the litigation. Thus, this rule is not meant to question the independence or authority of the Independent Counsel appointed under the Act or to interfere in any way with his activities. To the contrary, this rule is intended to make certain that the necessary investigation and appropriate legal proceedings can proceed in a timely manner.

EFFECTIVE DATE: March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas M. Barba, Counselor to the Assistant Attorney General, Civil Division, Room 3607, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. Telephone: (202) 633-5713. This is not a toll-free number.

List of Subjects in 28 CFR Part 602

Crime, Conflict of interests, Government employees, Authority delegations (Government agencies).

By the authority vested in me by 28 U.S.C. 509, 510, and 515, and 5 U.S.C. 301, and pursuant to the President's general responsibility to enforce the laws of the United States pursuant to Article II of the United States Constitution, Title 28, Code of Federal Regulations, is amended as follows.

1. A new Part 602 consisting of § 602.1 is added to read as follows:

PART 602—JURISDICTION OF THE INDEPENDENT COUNSEL: IN RE FRANKLYN C. NOFZIGER

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510.

§ 602.1 Independent Counsel: In re Franklyn C. Nofziger.

(a) The Independent Counsel: In re Franklyn C. Nofziger shall have jurisdiction to investigate to the maximum extent authorized by Part 600 of this chapter whether Franklyn C. Nofziger committed a violation of any Federal criminal law, as referred to in 28 U.S.C. 591, and more specifically whether the aforesaid Franklyn C. Nofziger, who served as Assistant to the President from January 21, 1981 through January 22, 1982, and who was therefore prohibited by the provisions of 18 U.S.C. 207 from thereafter knowingly making certain types of oral or written communications, did violate any subsection of 18 U.S.C. 207 because of certain oral or written communications with departments or agencies of the United States Government (including but not limited to the White House or the Executive Office of the President) on behalf of Welbilt Electronic Die Corporation, Comet Rice, Inc., or any other person or entity, at any time during 1982 or 1983.

(b) The Independent Counsel shall have jurisdiction and authority to investigate other allegations and evidence of violation of any Federal criminal law by Franklyn C. Nofziger, and/or any of his business associates who may have acted in concert with or aided or abetted Franklyn C. Nofziger, developed during the Independent Counsel's investigation referred to in paragraph (a) of this section or connected with or arising out of that investigation, and to seek indictments and to prosecute any such persons or entities involved in any of the foregoing events or transactions that Independent Counsel believes constitute a Federal offense and that there is reasonable cause to believe that the admissible evidence probably will be sufficient to obtain and sustain a conviction (28 U.S.C. 594(f)) of any Federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including such persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense related to the prosecutorial jurisdiction of the Independent Counsel as herein established.

(c) The Independent Counsel shall have prosecutorial jurisdiction to initiate and conduct prosecutions in any court of competent jurisdiction for any violation of 28 U.S.C. 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of the Federal criminal laws, in connection with the investigation authorized by this regulation, and shall have all the powers and authority provided by the Ethics in Government Act of 1978, as amended, and specifically by 28 U.S.C. 594.

Dated: March 6, 1987.

Stephen S. Trott,

Acting Attorney General.

[FR Doc. 87-13317 Filed 6-11-87; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 602

[Attorney General Order No. 1194-87]

Jurisdiction; Independent Counsel Offices; Regarding Franklyn C. Nofziger

AGENCY: Justice Department.

ACTION: Final rule.

SUMMARY: This rule amends part 602 to reflect the Acting Attorney General's May 11, 1987 referral of certain additional matters to the jurisdiction of the Independent Counsel: In re Franklyn C. Nofziger. This is being done to alert the public to this action and to provide a permanent record.

EFFECTIVE DATE: June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Margaret C. Love, Senior Counsel, Office of Legal Counsel, Room 5258, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. Telephone: (202) 633-2030. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 605(b), I certify that this rule will not have a significant impact on a substantial number of small entities. This rule will not be a major rule within the meaning of Executive Order 12291, section 1(b).

List of Subjects in 28 CFR Part 602

Crime, Conflict of Interests, Government employees, Authority delegations (Government agencies).

By the authority vested in me by 28 U.S.C. 509, 510, and 515, and 5 U.S.C. 301, and pursuant to the President's general responsibility to enforce the laws of the United States pursuant to Article II of the United States Constitution, Title 28, Code of Federal Regulations, is amended as follows:

PART 602—[AMENDED]

1. The authority citation for Part 602 is revised to read as follows:

Authority: 28 U.S.C. 509, 510, and 515; 5 U.S.C. 301.

2. Part 602 is amended by redesignating paragraph (c) of § 602.1 as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 602.1 [Amended]

* * * * *

(c) The Independent Counsel shall have jurisdiction and authority to investigate allegations and evidence that the federal conflict of interest law, 18 U.S.C. 201 through 211, or any other provision of federal criminal law, was violated by Edwin Meese III's relationship or dealings at any time from 1981 to the present with any of the following: Welbilt Electronic Die Corporation/Wedtech Corporation (including any of its contracts with the U.S. Government, or efforts to obtain same); Franklyn C. Nofziger; E. Robert Wallach; W. Franklyn Chinn; and or Management International, Inc.

* * * * *

Dated: June 5, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-13316 Filed 6-11-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD12 86-15]

Special Local Regulations; Sacramento Water Festival

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation will amend § 100.1202 of Title 33, Code of Federal Regulations. It will enlarge the closed area and extend the time period of closure during the Sacramento Water

Festival. The purpose is to provide time for more events, enhance the overall safety of the event by keeping spectators further away from the race course, and ensure that all events are completed by the end of the closure period. It also changes the name of the Formula I Power Boat Race Course Area to Regatta Area to better describe the purpose of the area.

EFFECTIVE DATES: This section is effective from 0945 to 1800 PDT 3, 4, and 5 July 1987 and thereafter annually on the first Friday and the following Saturday and Sunday in July as published in the Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: LT Jay Ellis, c/o Commander (bt), Twelfth Coast Guard District, Coast Guard Island, Alameda, CA 94501-5100, (415) 437-3309 or (FTS) 536-3309.

SUPPLEMENTARY INFORMATION: On January 21, 1987 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (52 FR 2237). Interested persons were requested to submit comments and five were received.

Drafting Information

The draftsmen of these regulations are LT Jay Ellis, project officer, Chief Boating Technical Branch, Twelfth Coast Guard District and LCDR Peter Mitchell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Comments

Four comments mentioned the impact of restricting commercial vessel access to the City of Sacramento landing barge at Old Town Sacramento, and two raised a similar concern regarding recreational boaters. The purpose of these regulations is to ensure safety of life and property during the Sacramento Water Festival. The modifications introduced by these regulations will significantly reduce the potential for accident or injury during the event. The Sacramento River between the Old Town Sacramento Landing Barge and the Capitol Street Bridge is used by the Water Festival sponsors for staging participant vessels. Collision or personal injury from jet skis, water skiers, or powerboats will probably occur here if access is unrestricted. In addition, festival boats are employed in this area to pick up floating debris, which is hazardous to racing boats, before it drifts into the race course area. The presence of drifting and anchored spectator boats interferes with the debris removal process. Although the landing barge is in this area, the sponsors of the Water Festival are granted sole use of the barge by the City of Sacramento during the hours of the Water Festival and vessels not involved in the Water Festival are restricted from using it.

Two of the comments addressed the diminished public access through the Water Festival area. The sponsors of the Water Festival have agreed to shorter closure periods than published in the Notice of Proposed Rulemaking. Passage through the Water Festival area will be restricted during the following periods: Friday—0945 to 1145, 1215 to 1515, and 1545 to 1645; Saturday—0900 to 1145, 1215 to 1515, and 1545 to 1800; Sunday—1000 to 1145, 1215 to 1515, and 1545 to 1800. In addition, the Regatta Area will be opened if no events are taking place and immediately upon conclusion of the Water Festival on Sunday if earlier than 1800. This is an increase of eleven hours over the previous regulations, and a decrease of at least three hours from the original amendment as published in the Notice of Proposed Rulemaking.

One comment mentioned the elimination of the north end of the closure area as a viewing area. The northern limit of the closed areas has been changed from that published in the Notice of Proposed Rulemaking: the I Street Bridge. It is now a line approximately 350 yards north of the Capitol Street Bridge, between the bow of the permanently moored Delta King on the east side of the river to the dolphin at the north end of the pier known as Raley's on the west side of the river. This will provide a spectator boat viewing area and still ensure enhanced spectator safety at the north end of the Water Festival area.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. It involves negligible cost and will not have significant effect on recreational vessels, commercial vessels or other marine interests.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Effective Date

In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. After comments had been received and changes made in the proposed regulations to accommodate them, there was not sufficient time remaining to submit the regulations to meet the 30 day requirement or to provide for a delayed effective date.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1202 (a) and (b) (1) and (2) are revised to read as follows:

§ 100.1202 Sacramento River—Sacramento Water Festival.

* * * * *

(a) *Effective Dates.* This section is effective from 0945 to 1800 PDT 3, 4, and 5 July 1987 and thereafter annually on the first Friday and the following Saturday and Sunday in July as published in the Local Notice to Mariners.

(b) * * *

(1) *Special events area.* That portion of the Sacramento River east of the Sacramento County/Yolo County line from a line between the bow of the permanently moored Delta King on the east side of the river to the dolphin at the north end of the pier known as Raley's on the west side of the river, south to 200 yards south of the Pioneer Memorial Bridge, a distance of approximately 1.05 statute miles, will be closed to all navigation from 0900 to 1800 daily.

(2) *Regatta area.* That portion of the Sacramento River from a line between the bow of the permanently moored Delta King on the east side of the river to the dolphin at the north end of the pier known as Raley's on the west side of the river, south to 200 yards south of the Pioneer Memorial Bridge, a distance of approximately 1.05 statute miles, will be closed to all navigation as follows: on Friday from 0945 to 1145, 1215 to 1515, and 1545 to 1645; on Saturday from 0900 to 1145, 1215 to 1515, and 1545 to 1800; on Sunday from 1000 to 1145, 1215 to 1515, and 1545 to 1800.

* * * * *

Dated: May 29, 1987.

William P. Leahy, Jr.,

Captain, U.S. Coast Guard, Commander, Twelfth Coast Guard District, Acting.

[FR Doc. 87-13360 Filed 6-11-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 760

Secretary's Discretionary Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues regulations for the Secretary's Discretionary Program under the Education Consolidation and Improvement Act of 1981 (ECIA) in order to amend current program regulations by establishing procedures for the funding of unsolicited proposals. The intended effect of these regulations is to enhance the capacity of the program to accomplish the objectives of the ECIA by providing the Secretary with a wider range of possible responses to promising ideas and innovative approaches to improving elementary and secondary education.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Thomas E. Enderlein, Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1011, Washington, DC 20202. (202) 732-3595.

SUPPLEMENTARY INFORMATION: The Secretary's Discretionary Program supports projects designed to meet the special educational needs of educationally deprived children or to improve elementary and secondary education consistent with the purposes of the ECIA.

These regulations establish procedures for funding an unsolicited application within the purposes of the ECIA that does not happen to conform with the timing or subject matter of regular competitions. These procedures would permit limited resources to be used efficiently and effectively and would support the statutorily broad discretion of the Secretary to exercise leadership in education by the funding of innovative ideas that hold promise for improving education.

On December 12, 1986, the Secretary published a Notice of Proposed Rulemaking (NPRM) for the Secretary's Discretionary Program in the **Federal Register** (51 FR 44800). During the 30-day comment period only one letter, signed by two commenters, was received. The following is a summary of these comments and the Secretary's response.

Section 760.31 How does the Secretary evaluate unsolicited applications?

Comment: The commenters questioned the appropriateness of the Secretary accepting and considering for funding unsolicited applications for projects that do not meet an established priority. The commenters stated that they are "unable to identify research proposals that are so pressing that they should be exempt from the timing or subject matter of regular competitions." The commenters further stated that while the preamble asserted that these procedures would "permit limited resources to be used for funding unsolicited applications," no limits were placed on the use of the unsolicited procedures.

Discussion: The Secretary's Discretionary Program supports projects of national significance for improving elementary and secondary education. In order to conduct the program effectively, the Secretary must be able to respond to educational issues in a timely manner. The Secretary must also be able to respond to unique and promising ideas suggested by the field. The procedures for funding an unsolicited application will permit the Secretary to respond to an innovative proposal from the field that does not happen to meet the priorities for competitions announced in the **Federal Register** for that particular fiscal year. Allowing consideration of unsolicited applications without having to generate a new grant competition will also expand the public's opportunity to propose new ideas to achieve the purposes of the program.

For similar reasons, procedures for funding unsolicited applications have been established for other discretionary programs in the Department, such as the Educational Research Grant Program (34 CFR Part 700) and the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages (Final regulations for this program were published in the **Federal Register** on January 26, 1987 (52 FR 2691)).

The Secretary's Discretionary Program, in addition to the research proposals mentioned in the comments, also supports demonstration, dissemination, training of educational personnel and technical assistance activities consistent with the purposes of the ECIA. An unsolicited proposal to conduct one or more of these activities may require prompt funding if the activities are to be carried out effectively.

If a priority is established in a particular fiscal year, funds will be set aside for that priority in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3). Review of any unsolicited applications will be in accordance with the procedures in § 760.31 of these regulations.

The funds available for the Secretary's Discretionary Program are already limited by the authorizing statute and by appropriations. Therefore, further regulatory limits on the use of these funds, such as limiting the use of the procedures for funding unsolicited applications, are unnecessary and would reduce the flexibility needed to carry out this discretionary program effectively.

Changes: None.

Section 760.33 How does the Secretary select an application for funding?

Comment. The commenters questioned the need to "side-step the peer review process" by amending the regulations so that the Secretary may select applications, other than the most highly rated applications, if doing so would improve the diversity of activities or projects under a particular competition or under this program.

Discussion: The purpose of this amendment is not to "side-step the peer review process." Under the current procedures, a panel reviews applications, and a rank ordering based on that review is prepared. See the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.217(a)-(c). The Secretary then selects applications on the basis of the rank ordering, the information in each application, and "any other information relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants." 34 CFR 75.217(d) and (e).

Under the amendment, one criterion the Secretary may use in the selection of applications is whether an application would improve the diversity of activities or projects under a particular competition or under this program. Individual peer reviewers do not normally review every application received under a particular competition. Because of the large number of applications typically received, each panel of peer reviewers normally evaluates only a portion of the

applications. Thus, like geographic distribution, diversity in the overall competition is not a factor that peer reviewers can judge. Because the program has only limited funding, but is nonetheless intended to improve elementary and secondary education nationally, it is necessary to fund a diverse mix of projects. To achieve this mix, it may be necessary to choose, from among the most highly rated applications that address a range of different topics or present a range of different approaches to educational problems.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 760

Education, Grant programs-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.122, Secretary's Discretionary Program).

Dated: June 9, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 760 of Title 34 of the Code of Federal Regulations as follows:

PART 760—SECRETARY'S DISCRETIONARY PROGRAM

1. The authority citation for Part 760 continues to read as follows:

Authority: 20 U.S.C. 3851, unless otherwise noted.

§ 760.32 [Redesignated as 760.33]

2. Section 760.32 is redesignated as § 760.33, and is amended by revising the reference to "§ 760.31" in paragraph (a) to read "§ 760.32", and by revising paragraph (b) to read as follows:

§ 760.33 How does the Secretary select an application for funding?

* * * * *

(b) The Secretary may select other applications for funding if doing so would improve—

(1) The geographic distribution of projects funded under a particular competition or under this program; or

(2) The diversity of activities or projects funded under a particular competition or under this program.

* * * * *

§ 760.31 [Redesignated as § 760.32]

3. Section 760.31 is redesignated as § 760.32, and is amended by revising the points assigned under paragraphs (a) and (f) to read as follows:

§ 760.32 [Amended]

(a) *Plan of operation.* (15 Points)

* * * * *

(f) *Improving elementary and secondary education.* (15 Points)

* * * * *

4. A new § 760.31 is added to read as follows:

§ 760.31 How does the Secretary evaluate unsolicited applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that do not meet a priority established in accordance with § 760.11(a) and (b).

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register.**

(c) The Secretary may select an unsolicited application for funding in accordance with the procedures contained in § 760.30(a) through (c).

(d) The Secretary assigns the reserved 15 points under § 760.30(b) to the selection criterion at § 760.32(g) (National significance) so that the maximum number of possible points for this criterion is 30.

(Authority: 20 U.S.C. 3851)

§ 760.30 [Amended]

5. Section 760.30 is amended by revising "§ 760.31" in paragraphs (a), (b), and (d), to read "§ 760.32".

[FR Doc. 87-13469 Filed 6-11-87; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-1-FRL-3218-1]

Designation of areas for Air Quality Planning Purposes; New Hampshire; Androscoggin Valley Interstate Air Quality Control Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request by the State of New Hampshire to redesignate the New Hampshire portion of the Androscoggin Valley Interstate Air Quality Control Region (AQCR 107) from unclassifiable to attainment of the National Ambient Air Quality Standards (NAAQS) for ozone. Under section 107 of the Clean Air Act, the designation of attainment status may be changed where warranted by the available data.

EFFECTIVE DATE: This action will be effective August 11, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Richard Burkhart, (617) 565-3223; FTS 835-3223.

SUPPLEMENTARY INFORMATION: On October 2, 1986, pursuant to section 107(d)(5) of the Clean Air Act, the State of New Hampshire submitted a request to redesignate the New Hampshire portion of the Androscoggin Valley Interstate AQCR from unclassifiable for the NAAQS for ozone to attainment. EPA reviewed the request and the air quality data for the area. Recent monitored ozone data (1983-1985) for the area show no violations of the primary or secondary standards. The highest hourly concentration during this period was 0.098 ppm. In addition, New Hampshire has certified that no exceedances were measured through September, 1986.

The request satisfies all of the necessary criteria for ozone redesignations. Only one year of data

showing no more than one exceedance per year is required to redesignate from unclassifiable to attainment. The data for three years have been presented and are satisfactory and complete. To redesignate the Androscoggin Valley Interstate Area from unclassifiable to attainment does not involve any regulatory change. The formal table in the Code of Federal Regulations containing the designation status is not changed since the attainment and unclassifiable designations are combined for ozone.

Final Action: EPA is approving the redesignation to attainment of the NAAQS for ozone in the New Hampshire portion of the Androscoggin Valley Interstate AQCR, submitted on October 2, 1986.

Since EPA views the redesignation as noncontroversial, we are taking this action without prior proposal. This action will be effective August 11, 1987. However, if EPA is notified within 30 days that adverse or critical comments will be submitted, we will withdraw this action and publish a new rulemaking proposing the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control.

Authority: 42 U.S.C. 7401–7642.

Dated: April 22, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87-13471 Filed 6-11-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 272

[FRL-3217-4]

Tennessee; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Tennessee has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Tennessee's application and has made a decision, subject to public review and comment, that Tennessee's hazardous waste program revision for the hazardous components of radioactive mixed wastes satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Tennessee's hazardous waste program revision for the hazardous components of radioactive mixed wastes. Tennessee's application for program revision is available for public review and comment.

DATES: Final authorization for Tennessee shall be effective August 11, 1987, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Tennessee's program revision application must be received by the close of business June 30, 1987.

ADDRESSES: Copies of Tennessee's program revision application are available during 8:30 A.M. to 4:30 P.M., Monday through Friday, at the following addresses for inspection and copying: Division of Solid Waste Management, Tennessee Department of Health and Environment, 701 Broadway, Nashville, Tennessee 37219; US EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: 202/382-5926; US EPA, Region IV, Library, 345 Courtland St., NE., Atlanta, Georgia 30365, Phone: 404/347-4216, Gayle Alston, Librarian. Written comments should be sent to Otis Johnson, Jr., 345 Courtland St., NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., 345 Courtland St., NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA") or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260 through 266 and 124 and 270.

B. Tennessee

Tennessee initially received final authorization on February 5, 1985. On March 12, 1987, Tennessee submitted a program revision application for additional program approval for the hazardous components of radioactive mixed wastes. Today, Tennessee is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Tennessee's application, and has made an immediate final decision that Tennessee's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Tennessee. The public may submit written comments on EPA's immediate final decision up until June 30, 1987. Copies of Tennessee's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Tennessee's program revision for the hazardous components of radioactive mixed wastes shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The State of Tennessee has issued one storage permit to the US Department of Energy (DOE) at Oak Ridge, Tennessee which allows the facility to store certain specific hazardous wastes. Although the Region does not believe that any radioactive mixed wastes are currently stored at this facility, their RCRA permit does not preclude them from storing the

specific hazardous wastes covered by their permit if the waste is also radioactively contaminated. This permit will continue in force and will be considered the RCRA permit.

The State of Tennessee anticipates issuing in the very near future, the public notice of the draft permit for the DOE K-1435 incinerator at Oak Ridge. The K-1435 incinerator, if permitted, will incinerate hazardous wastes which are radioactive and nonradioactive, as well as PCBs and other solid wastes.

EPA's intent is to authorize Tennessee for radioactive mixed hazardous wastes before they issue the final permit for this incinerator so the K-1435 incinerator permit will be the RCRA permit. Tennessee is not seeking authorization to operate in Indian lands.

C. Decision

I conclude that Tennessee's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted final authorization to operate its hazardous waste program as revised. Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291:

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

Certification Under the Regulatory Flexibility Act:

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Tennessee's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 21, 1987.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 87-13472 Filed 6-11-87; 8:45am]

BILLING CODE 6560-50-M

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40 CFR Part 716

[OPTS-84026A; FRL-3217-5]

Addition of Chemicals to the Preliminary Assessment Information and Health and Safety Data Reporting Rule; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects the CAS number entry for ethylbenzene listed under § 716.120 which was incorrectly listed.

DATE: This document is effective June 12, 1987.

FOR FURTHER INFORMATION CONTACT: John A. Richards (TS-788B), Federal Register Staff, Environmental Protection Agency, 401 M St., SW., Rm. NE-G009, Washington, DC 20460, (202)-382-3415.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 1987, (52 FR 19027), in FR Doc. 87-11479, EPA added four substances to two model information-gathering rules: The Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule and the TSCA section 8(d) Health and Safety Data Reporting Rule. The CAS number for ethylbenzene was incorrectly listed under the 8(d) amendment.

Dated: June 3, 1987.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

PART 716—[AMENDED]

Therefore, 40 CFR 716.120(a)(1) is corrected by revising the CAS number entry for ethylbenzene to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

(a) * * *

(1) * * *

CAS No.	Substances	Special Exemptions	Effective date	Sunset date
*	*	*	*	*
100-41-4	Ethylbenzene..	* * *	6/19/87	6/19/97
*	*	*	*	*

[FR Doc. 87-13474 Filed 6-11-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 416, 420, 431, 485, 489, 498, 1001 and 1004

[BERC-371-FC]

Medicare Program; Appeals Procedures for Determinations That Affect Participation in Medicare

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

ACTION: Final rule with comment period.

SUMMARY: These rules update and clarify policy and appeals from determinations that affect participation of providers, suppliers, and practitioners in the Medicare program. This policy is currently set forth in Subpart 0 of Part 405 of the Medicare rules. Revision is needed to conform these rules with changes that have been made in other regulations and in the delegations of authority since Subpart 0 was published. The purpose is to achieve internal consistency of all Medicare rules and to ensure that users of our regulations are not misled or confused by language that does not reflect current policy and delegations of authority.

DATES: 1. These rules are effective on June 12, 1987.

2. To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on August 11, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-371-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you perfer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If you comment on the information collection requirements, please send a copy of those comments directly to: Office of Information and Regulatory Affairs, Attention: Allison Herron, HCFA Desk Officer, New Executive Office Building, Room 3208, Washington, DC 20503.

In commenting, please refer to BERC-371-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245-0383.

SUPPLEMENTARY INFORMATION: In order to conform and clarify these rules, we found it necessary to—

1. Revise and reorganize the content of several sections in order to eliminate unnecessary repetition and clarify the appeal rights of providers, suppliers, practitioners, and nonparticipating hospitals that furnish emergency services. (§§ 498.2 and 498.5)

2. Reflect changes in delegations of authority whereby the Department's Office of the Inspector General (OIG), rather than HCFA, is responsible for certain initial determinations. (§ 498.3(c))

3. Add the following to the list of determinations that are subject to the provisions of Part 498:

a. The determination to impose sanctions on a practitioner or provider for violation of statutory obligations. (This reflects policy contained in Part 1004 of the OIG rules, published on September 30, 1986 at 51 FR 34764.)

b. Whether a physical therapist in independent practice or a chiropractor meets the requirements for coverage of his or her services. (This change corrects the unitentional omission of two practitioners who, in practice, have the same appeal rights as suppliers because they must meet special Medicare qualification requirements not applicable to other practitioners.)

c. The cancellation of the approval of a Medicaid SNF or ICF by HCFA, under section 1910(c) of the Act. Section 1910(c):

• Authorizes the Secretary (who has delegated responsibility to HCFA) to cancel the approval of a Medicaid SNF or ICF that is found not to meet the requirements for participation; and

• Gives the affected facility the right to a hearing and to judicial review to the extent provided in sections 205(b) and 205(g) of the Act, respectively. Since the Part 498 appeals procedures are also based on those sections (as cited in section 1869(c) of the Act), those procedures are made applicable to the Medicaid facilities whose approval is cancelled.

d. Whether an ESRD facility is considered to be hospital-based or independent. This type of determination was established by §405.439(c)(2) of the rules on prospective payment to ESRD facilities, published on May 11, 1983 at 48 FR 21254 and redesignated as § 413.170 on September 30, 1986 at 51 FR 34793.

4. Include hospices and rural health clinics, which were unintentionally omitted from the rules, even though in practice they have the same appeals rights as other providers and suppliers. (Because Subpart O contained 63 repetitious list of providers and suppliers to which the rules apply, adding a new provider or supplier has in the past required 63 changes in the rules. We will be taking advantage of this opportunity to simplify the regulations by adding definitions and eliminating the lists.)

5. Transfer, from Subpart F of Part 405 of the Medicare regulations to the new part 498, the special rules for notice of certain initial determinations that affect independent laboratories and suppliers of portable X-ray services (current § 405.640).

6. Conform language that describes the effect of determinations and decisions to the Social Security Administration (SSA) rules at 20 CFR Part 404, Subpart J, because it is the SSA Office of Hearings and Appeals that handles these Medicare appeals.

Because the transfer described under item 5. above left a single section in Subpart F (dealing with the general aspects of agreements with State survey agencies), we took advantage of this opportunity to—

• Transfer the content of that remaining § 405.685 to § 405.1902, which deals with survey agency functions and procedures; and

• Vacate and reserve Subpart F.

Note.—Paragraph (c) of § 405.685 is not repeated in the amendments to § 405.1902, but is subsumed in paragraph (b)(3).

We have also corrected cross-references and redesignated the content of Subpart O as a new Part 498, in accordance with the overall plan to assign a separate part for each major aspect of the Medicare program. A redesignation table at the end of this preamble will enable the reader to identify the source of each section in new Part 498.

Regulatory Impact Statement

Because these rules merely update, clarify and redesignate existing rules, we anticipate slight, if any, economic impact or impact on small entities such as some of the providers and suppliers that have long been subject to the provisions of Subpart O of Part 405 of the Medicare rules. For that reason, we have determined that a regulatory analysis under Executive Order 12291 is not required. We have also determined, and the Secretary certifies, that analysis under the Regulatory Flexibility Act (5 U.S.C. 601 through 612) is not required because this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980 (Pub. L. 96-511)

Sections 498.22(c), 498.40 (b) and (c), 498.58(c) and 498.82(b) of these redesignated rules contain information collection requirements that are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and are being submitted to OMB for that purpose. When approval is obtained, we will publish a notice to that effect in the **Federal Register.**

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

These rules clarify and update content that deals with procedural rather than substantive aspects of the Medicare program. They conform that content with practices that are already in effect and are not intended to make any substantive change, except as required by change in the delegation of authority. Accordingly, we find that notice and delayed effective date are unnecessary.

Response to Comments

Although this regulation is final, we will consider any comments, including comments from anyone who believes that, in the process of clarification and redesignation, we have made substantive changes other than the one discussed above as required by the change in the delegation of authority.

Because of the many letters we receive in response to publication in the **Federal Register,** we cannot acknowledge or respond to them individually. However, if we revise Part 498, in response to comments, or for any

other reason, we will discuss and respond to the comments in the preamble to that revision.

List of Subjects

42 CFR Part 405

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

42 CFR Part 420

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare Practitioners, providers, and suppliers.

Redesignation Table for 42 CFR Part 405, Subparts F and O

Old section	New section
405.640	498.20(a)(2).
405.685	405.1902(b).
405.1501(a)	Removed as duplicative of § 405.1502.
405.1501(b), (c), and (e).	498.5.
405.1501(d)	498.3(e).
405.1502	498.3(b).
405.1503	498.20(a).
405.1504	498.20(b).
405.1505	498.3(c).
405.1510	498.22(a).
405.1511(a)	498.22(c).
405.1511(b)	498.22(b).
405.1512	498.22(b)(2).
405.1513	498.23.
405.1514	498.24.
405.1515	498.24.
405.1516	498.25(a).
405.1517	498.25(b).
405.1518	498.22(d).
405.1519	498.30.
405.1520	498.32(a).
405.1521	498.32(b).
405.1530	Removed as duplicative of § 405.1531.
405.1531	498.40.
405.1532	498.42.
405.1533	498.44.
405.1534	498.45.
405.1535	498.47.
405.1536	498.48.
405.1537	498.49.
405.1538	498.50.
405.1539	498.50.
405.1540	498.52.
405.1541	498.53.
405.1542	498.56.
405.1543	498.54.
405.1544	498.58.
405.1545	498.60.
405.1546	498.61.
405.1547	498.62.
405.1548	498.63.
405.1549	498.64.
405.1550	498.66.
405.1551	498.68.
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405.1553	498.70.
405.1554	498.71.
405.1555	498.71.
405.1556	498.72.
405.1557	498.74.
405.1558	498.74.
405.1559	498.76.
405.1560	498.78.
405.1561	498.80.
405.1562	498.82.
405.1563	498.83.
405.1564	498.85.
405.1565	498.86.
405.1566	498.88.
405.1567	498.90.
405.1568	498.83.
405.1569	498.95.
405.1570	498.100.
405.1571	498.102.
405.1572 and 405.1571(c).	498.103.
405.1590	498.10.
405.1591	498.11.
405.1592	498.13.
405.1593	498.15.
405.1594	498.11(b).
405.1595	498.17

42 CFR Chapter IV is amended as set forth below:

PART 405—[AMENDED]

A. Part 405 is amended as set forth below:

1. Subparts F and O are removed and reserved and the table of contents is amended to reflect this change.

2. Section 405.1902 is amended to redesignate paragraphs (b) and (c) as (c) and (d), add a new paragraph (b), revise the caption of redesignated paragraph (c) and provide a caption for redesignated paragraph (d). As amended, § 405.1902 reads as follows:

§ 405.1902 State survey agency review.

* * * * *

(b) *Functions of survey agencies.* State and local agencies that have agreements under section 1864(a) of the Act—

(1) Survey and make recommendations regarding the issues listed in paragraph (a)(1) of this section;

(2) Conduct validation surveys as provided in paragraph (a)(3) of this section;

(3) Perform other surveys and other appropriate activities and certify their findings to HCFA; and

(4) Review statements obtained from each SNF, setting forth (from payroll records) the average numbers and types of personnel (in full-time equivalents) on each tour of duty during at least 1 week of each quarter, such week to be selected by the survey agency and to occur irregularly in each quarter of the year.

(c) *Effect of survey agency certification.* * * *

(d) *Effect of PRO review.* * * *

B. The content removed from § 405.640 and Subpart O of Part 405 is redesignated as a new Part 498 and revised to read as follows:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

Subpart A—General Provisions

Sec.
498.1 Statutory basis.
498.2 Definitions.
498.3 Scope and applicability.
498.5 Appeal rights.
498.10 Appointment of representatives.
498.11 Authority of representatives.
498.13 Fees for services of representatives.
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498.17 Filing of briefs with the ALJ or Appeals Council and opportunity for rebuttal.

Subpart B—Initial, Reconsidered, and Revised Determinations

498.20 Notice and effect of initial determination.
498.22 Reconsideration.
498.23 Withdrawal of request for reconsideration.
498.24 Reconsidered determination.
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Subpart D—Hearings

498.40 Request for hearing.
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498.45 Disqualification of Administrative Law Judge.
498.47 Prehearing conference.
498.48 Notice of prehearing conference.
498.49 Conduct of prehearing conference.
498.50 Record, order, and effect of prehearing conference.
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498.54 Joint hearings.
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498.58 Subpoenas.
498.60 Conduct of hearings.
498.61 Evidence.
498.62 Witnesses.
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498.64 Record of hearing.
498.66 Waiver of right to appear and present evidence.
498.68 Dismissal of request for hearing.
498.69 Dismissal for abandonment.

Sec.
498.70 Dismissal for cause.
498.71 Notice and effect of dismissal and right to request review.
498.72 Vacating a dismissal of request for hearing.
498.74 Administrative Law Judge's decision.
498.76 Removal of hearing to Appeals Council.
498.78 Remand by Administrative Law Judge.

Subpart E—Appeals Council Review

498.80 Right to request Appeals Council review of Administrative Law Judge's decision or dismissal.
498.82 Request for Appeals Council review.
498.83 Appeals Council action on request for review.
498.85 Procedures before the Appeals Council on review.
498.86 Evidence admissible on review.
498.88 Decision or remand by the Appeals Council.
498.90 Effect of Appeals Council decision.
498.95 Extension of time for seeking judicial review.

Subpart F—Reopening of Decisions Made by Administrative Law Judges or the Appeals Council

498.100 Basis, timing, and authority for reopening an ALJ or Council decision.
498.102 Revision of reopened decision.
498.103 Notice and effect of revised decision.

Authority: Secs. 205(a), 1102, 1869(c) 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395 ff(c), 1395hh and 1395ii), unless otherwise noted.)

Subpart A—General Provisions

§ 498.1 Statutory basis.

(a) Section 1869(c) of the Act provides for a hearing and for judicial review of the hearing for any institution or agency dissatisfied with a determination that it is not a provider, or with any determination described in section 1866(b)(2) of the Act.

(b) Section 1866(b)(2) of the Act lists determinations that serve as a basis for termination of a provider agreement.

(c) Section 1128 (a) and (b) of the Act provide for exclusion of certain individuals or entities because of conviction of crimes related to their participation in Medicare.

(d) Section 1156 of the Act establishes certain obligations for practitioners and providers of health care services, and provides sanctions and penalties for those that fail to meet those obligations.

(e) Section 1862(d) of the Act provides for the exclusion of individuals or entities that submit false claims, bill excessive charges or furnish substandard care.

(f) HFCA is responsible for implementing section 1869(c) of the Act, and section 1866 (b)(2), except subparagraphs (D), (E), and (F). The OIG is responsible for implementing the other cited sections.

(g) Although sections 1866 and 1869 of the Act are silent regarding appeal rights for suppliers and practitioners, the rules in this part include procedures for review of determinations that affect those two groups.

§ 498.2 Definitions.

As used in this part—

"Affected party" means a provider, prospective provider, supplier, prospective supplier, or practitioner that is affected by an initial determination or by any subsequent determination or decision issued under this part, and "party" means the affected party or HCFA (or the OIG), as appropriate.

"ALJ" stands for Administrative Law Judge.

"Appeals Council" or *"Council"* means the Appeals Council of the Office of Hearings and Appeals of the Social Security Administration.

"OHA" stands for the Social Security Administration's Office of Hearings and Appeals.

"OIG" stands for the Department's Office of the Inspector General.

"Provider" means a hospital, skilled nursing facility (SNF), comprehensive outpatient rehabilitation facility (CORF), home health agency (HHA), or hospice, that has in effect an agreement to participate in Medicare, or a clinic, rehabilitation agency, or public health agency that has a similar agreement but only to furnish outpatient physical therapy or outpatient speech pathology services, and *"prospective provider"* means any of the listed entities that seeks to participate in Medicare as a provider.

"Supplier" means an independent laboratory, supplier of portable X-ray services, rural health clinic (RHC), ambulatory surgical center (ASC), or end-stage renal disease (ESRD) treatment facility that is approved by HCFA as meeting the conditions for coverage of its services, and

"Prospective supplier" means any of the listed entities that seeks to be approved for coverage of its services under Medicare. However, for purposes of the sanctions and penalties that may be imposed by the OIG, the term "supplier" has the meaning specified in § 1001.2 of this title.

§ 498.3 Scope and applicability.

(a) *Scope.* This part sets forth procedures for reviewing initial determinations that HCFA makes with respect to the matters specified in paragraph (b) of this section and that the OIG makes with respect to matters specified in paragraph (c) of this section.

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

(1) Whether a prospective provider qualifies as a provider.

(2) Whether an institution is a hospital qualified to elect to claim payment for all emergency hospital services furnished in a calendar year.

(3) Whether an institution continues to remain in compliance with the qualifications for claiming reimbursement for all emergency services furnished in a calendar year.

(4) Whether a prospective supplier meets the appropriate conditions for coverage of its services, as set forth in Part 405 (§ 405.152, Subpart M, N, Q, or U), Part 416, or Part 491 of this chapter).

(5) Whether the services of a supplier continue to meet the conditions for coverage.

(6) Whether a physical therapist in independent practice or a chiropractor meets the requirements for coverage of his or her services as set forth in §§ 405.1730 through 405.1737 or in § 410.22 of this chapter, respectively.

(7) The termination of a provider agreement in accordance with § 489.53 of this chapter, or the termination of a rural health clinic agreement in accordance with § 405.2404 of this chapter.

(8) The cancellation of the approval of a Medicaid SNF or ICF by HCFA under section 1910(c) of the Act.

(9) Whether, for purposes of rate setting and reimbursement, an ESRD treatment facility is considered to be hospital-based or independent.

(c) *Initial determinations by the OIG.* The OIG makes initial determinations with respect to the following matters:

(1) The termination of a provider agreement in accordance with Part 1001, Subpart C of this title.

(2) The suspension, or exclusion from coverage and the denial of reimbursement for services furnished by a provider, practitioner, or supplier, because of fraud or abuse, or conviction of crimes related to participation in the program, in accordance with Part 1001, Subpart B of this title.

(3) The imposition of sanctions in accordance with Part 1004 of this title.

(d) *Administrative actions that are not initial determinations.* Administrative actions other than those specified in paragraphs (b) and (c) of this section are not initial determinations and thus are not subject to this part. Administrative actions that are not initial determinations include, but are not limited to, the following:

(1) The finding that a provider or supplier determined to be in compliance

with the conditions of participation or the conditions for coverage has deficiencies.

(2) The finding that a prospective provider does not meet the conditions of participation set forth in Part 405 (Subpart K, L, or Q), Part 482 or Part 485 of this chapter, if the prospective provider is, nevertheless, approved for participation in Medicare on the basis of special access certification, as provided in Subpart S of Part 405 of this chapter.

(3) The refusal to enter into a provider agreement because the prospective provider has been adjudged insolvent or bankrupt under Federal or State law, or insolvency or bankruptcy proceedings are pending.

(4) The finding that an entity that had its provider agreement terminated may not file another agreement because the reasons for terminating the previous agreement have not been removed or there is insufficient assurance that the reasons for the exclusion will not recur.

(5) The determination not to reinstate a suspended or excluded practitioner, provider, or supplier because the reason for the suspension or exclusion has not been removed, or there is insufficient assurance that the reason will not recur.

(6) The finding that the services of a laboratory are covered as hospital services or as physician's services, rather than as services of an independent laboratory, because the laboratory is not independent of the hospital or of the physician's office.

(7) The refusal to accept for filing an election to claim payment for all emergency hospital services furnished in a calendar year because the institution—

(i) Had previously charged an individual or other person for services furnished during that calendar year;

(ii) Submitted the election after the close of that calendar year; or

(iii) Had previously been notified of its failure to continue to comply.

(8) The finding that the reason for the revocation of a supplier's right to accept assignment has not been removed or there is insufficient assurance that the reason will not recur.

(9) The finding that a hospital accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association is not in compliance with a condition of participation, and a finding that that hospital is no longer deemed to meet the conditions of participation.

(10) With respect to a SNF that is not in compliance with a condition of participation—

(i) The finding that the SNF's deficiencies pose immediate jeopardy to patients' health and safety; and

(ii) When the SNF's deficiencies do not pose immediate jeopardy, the decision to deny payment for new admissions.

(e) *Exclusion of civil rights issues.* The procedures in this subpart do not apply to the adjudication of issues relating to a provider's compliance with civil rights requirements that are set forth in Part 489 of this chapter. Those issues are handled through the Department's Office of Civil Rights.

§ 498.5 Appeal rights.

(a) *Appeal rights of prospective providers.* (1) Any prospective provider dissatisfied with an initial determination or revised initial determination that it does not qualify as a provider may request reconsideration in accordance with § 498.22(a).

(2) Any prospective provider dissatisfied with a reconsidered determination under paragraph (a)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(b) *Appeal rights of providers.* Any provider dissatisfied with an initial determination to terminate its provider agreement is entitled to a hearing before an ALJ.

(c) *Appeal rights of providers and prospective providers.* Any provider or prospective provider dissatisfied with a hearing decision may request Appeals Council review and has a right to seek judicial review of the Council's decision.

(d) *Appeal rights of prospective suppliers.* (1) Any prospective supplier dissatisfied with an initial determination or a revised initial determination that its services do not meet the conditions for coverage may request reconsideration in accordance with § 498.22(a).

(2) Any prospective supplier dissatisfied with a reconsidered determination under paragraph (d)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(e) *Appeal rights of suppliers.* Any supplier dissatisfied with an initial determination that the services subject to the determination no longer meet the conditions for coverage, is entitled to a hearing before an ALJ.

(f) *Appeal rights of suppliers and prospective suppliers.* (1) Any supplier or prospective supplier dissatisfied with the hearing decision may request Appeals Council review of the ALJ's decision.

(2) Suppliers and prospective suppliers do not have a right to judicial review except as provided in paragraph (i) of this section.

(g) *Appeals rights for certain practitioners.* A physical therapist in independent practice or a chiropractor dissatisfied with a determination that he or she does not meet the requirements for coverage of his or her services has the same appeal rights as suppliers have under paragraphs (d), (e) and (f) of this section.

(h) *Appeal rights for nonparticipating hospitals that furnish emergency services.* A nonparticipating hospital dissatisfied with a determination or decision that it does not qualify to elect to claim payment for all emergency services furnished during a calendar year has the same appeal rights that providers have under paragraph (a), (b), and (c) of this section.

(i) *Appeal rights for suspended or excluded practitioners, providers, or suppliers.* (1) Any practitioner, provider, or supplier who has been suspended, or whose services have been excluded from coverage in accordance with § 498.3(c)(2), or has been sanctioned in accordance with § 498.3(c)(3), is entitled to a hearing before an ALJ.

(2) Any suspended or excluded practitioner, provider, or supplier dissatisfied with a hearing decision may request Appeals Council review and has a right to seek judicial review of the Council's decision by filing an action in Federal district court.

(j) *Appeal rights for Medicaid SNFs and ICFs terminated by HCFA.* (1) Any Medicaid SNF or ICF that has had its approval cancelled by HCFA in accordance with § 498.3(b)(8) has a right to a hearing before an ALJ, to request Appeals Council review of the hearing decision, and to seek judicial review of the Council's decision.

(2) The Medicaid agreement remains in effect until the period for requesting a hearing has expired or, if the facility requests a hearing, until a hearing decision is issued, unless HCFA—

(i) Makes a written determination that continuation of provider status for the SNF or ICF constitutes an immediate and serious threat to the health and safety of patients and specifies the reasons for that determination; and

(ii) Certifies that the facility has been notified of its deficiencies and has failed to correct them.

§ 498.10 Appointment of representatives.

(a) An affected party may appoint as its representative anyone not disqualified or suspended from acting as a representative in proceedings before the Secretary or otherwise prohibited by law.

(b) If the representative appointed is not an attorney, the party must file written notice of the appointment with HCFA, the ALJ, or the Appeals Council.

(c) If the representative appointed is an attorney, the attorney's statement that he or she has the authority to represent the party is sufficient.

§ 498.11 Authority of representatives.

(a) A representative appointed and qualified in accordance with § 498.10 may, on behalf of the represented party—

(1) Give and accept any notice or request pertinent to the proceedings set forth in this part;

(2) Present evidence and allegations as to facts and law in any proceedings affecting that party to the same extent as the party; and

(3) Obtain information to the same extent as the party.

(b) A notice or request may be sent to the affected party, to the party's representative, or to both. A notice or request sent to the representative has the same force and effect as if it had been sent to the party.

§ 498.13 Fees for services of representatives.

Fees for any services performed on behalf of an affected party by an attorney appointed and qualified in accordance with § 498.10 are not subject to the provisions of section 206 of Title II of the Act, which authorizes the Secretary to specify or limit those fees.

§ 498.15 Charge for transcripts.

A party that requests a transcript of prehearing or hearing proceedings or Council review must pay the actual or estimated cost of preparing the transcript unless, for good cause shown by that party, the payment is waived by the ALJ or the Appeals Council, as appropriate.

§ 498.17 Filing of briefs with the ALJ or Appeals Council, and opportunity for rebuttal.

(a) *Filing of briefs and related documents.* If a party files a brief or related document such as a written argument, contention, suggested finding of fact, conclusion of law, or any other written statement, it must submit an original and one copy to the ALJ or the Appeals Council, as appropriate. The material may be filed by mail or in person and must include a statement certifying that a copy has been furnished to the other party.

(b) *Opportunity for rebuttal.* (1) The other party will have 20 days from the date of mailing or personal service to submit any rebuttal statement or additional evidence. If a party submits a rebuttal statement or additional evidence, it must file an original and one copy with the ALJ or the Council and furnish a copy to the other party.

(2) The ALJ or the council will grant an opportunity to reply to the rebuttal statement only if the party shows good cause.

Subpart B—Initial, Reconsidered, and Revised Determinations

§ 498.20 Notice and effect of initial determinations.

(a) *Notice of initial determination*—(1) *General rule.* HCFA or the OIG, as appropriate, mails notice of an initial determination to the affected party, setting forth the basis or reasons for the determination, the effect of the determination, and the party's right to reconsideration, if applicable, or to a hearing.

(2) *Special rules: Independent laboratories and suppliers of portable x-ray services.* If HCFA determines that an independent laboratory or a supplier of portable x-ray services no longer meets the conditions for coverage of some or all of its services, the notice—

(i) Specifies an effective date of termination of coverage that is at least 15 days after the date of the notice;

(ii) Is also sent to physicians, hospitals, and other parties that might use the services of the laboratory or supplier; and

(iii) In the case of laboratories, specifies the categories of laboratory tests that are no longer covered.

(3) *Special rules: Nonparticipating hospitals that elect to claim payment for emergency services.* If HCFA determines that a nonparticipating hospital no longer qualifies to elect to claim payment for all emergency services furnished in a calendar year, the notice—

(i) States the calendar year to which the determination applies;

(ii) Specifies an effective date that is at least 5 days after the date of the notice; and

(iii) Specifies that the determination applies to services furnished, in the specified calendar year, to patients accepted (as inpatients or outpatients) on or after the effective date of the determination.

(4) *Other special rules.* Additional rules pertaining, for example, to content and timing of notice, notice to the public and to other entities, and time allowed for submittal of additional information, are set forth elsewhere in this chapter, as follows:

Part 405 Subpart X—for rural health clinics.

Part 416—for ambulatory surgical centers.

Part 489—for providers, when their provider agreements have been terminated.

Part 1001, Subpart B—for excluded or suspended providers, suppliers, physicians, or practitioners.

Part 1001, Subpart C—for providers, when their provider agreements are terminated by the OIG.

Part 1004—for sanctioned providers and practitioners.

(b) *Effect of initial determination.* An initial determination is binding unless it is—

(1) Reconsidered in accordance with § 498.24;

(2) Reversed or modified by a hearing decision in accordance with § 498.78; or

(3) Revised in accordance with § 498.32 or § 498.100.

§ 498.22 Reconsideration.

(a) *Right to reconsideration.* HCFA reconsiders any initial determination that affects a prospective provider or supplier, or a hospital seeking to qualify to claim payment for all emergency hospital services furnished in a calendar year, if the affected party files a written request in accordance with paragraphs (b) and (c) of this section. (None of the determinations made by the OIG are subject to reconsideration.)

(b) *Request for reconsideration: Manner and timing.* The affected party specified in paragraph (a) of this section, if dissatisfied with the initial determination may request reconsideration by filing the request—

(1) With HCFA or with the State survey agency;

(2) Directly or through its legal representative or other authorized official; and

(3) Within 60 days from receipt of the notice of initial determination, unless the time is extended in accordance with paragraph (d) of this section. The date of receipt will be presumed to be 5 days after the date on the notice unless there is a showing that it was, in fact, received earlier or later.

(c) *Content of request.* The request for reconsideration must state the issues, or the findings of fact with which the affected party disagrees, and the reasons for disagreement.

(d) *Extension of time to file a request for reconsideration.* (1) If the affected party is unable to file the request within the 60 days specified in paragraph (b) of this section, it may file a written request with HCFA, stating the reasons why the request was not filed timely.

(2) HCFA will extend the time for filing a request for reconsideration if the affected party shows good cause for missing the deadline.

§ 498.23 Withdrawal of request for reconsideration.

A request for reconsideration is considered withdrawn if the requestor files a written withdrawal request before HCFA mails the notice of reconsidered determination, and HCFA approves the withdrawal request.

§ 498.24 Reconsidered determination.

When a request for reconsideration has been properly filed in accordance with § 498.22, HCFA—

(a) Receives written evidence and statements that are relevant and material to the matters at issue and are submitted within a reasonable time after the request for reconsideration;

(b) Considers the initial determination, the findings on which the initial determination was based, the evidence considered in making the initial determination, and any other written evidence submitted under paragraph (a) of this section, taking into account facts relating to the status of the prospective provider or supplier subsequent to the initial determination; and

(c) Makes a reconsidered determination, affirming or modifying the initial determination and the findings on which it was based.

§ 498.25 Notice and effect of reconsidered determination.

(a) *Notice.* (1) HCFA mails notice of a reconsidered determination to the affected party.

(2) The notice gives the reasons for the determination.

(3) If the determination is adverse, the notice specifies the conditions or requirements of law or regulations that the affected party fails to meet, and informs the party of its right to a hearing.

(b) *Effect.* A reconsidered determination is binding unless—

(1) HCFA or the OIG, as appropriate, further revises the revised determination; or

(2) The revised determination is reversed or modified by a hearing decision.

Subpart C—Reopening of Initial or Reconsidered Determinations

§ 498.30 Limitation on reopening.

An initial or reconsidered determination that a prospective provider is a provider or that a hospital qualifies to elect to claim payment for all emergency services furnished in a calendar year may not be reopened. HCFA or the OIG, as appropriate, may on its own initiative, reopen any other initial or reconsidered determination, within 12 months after the date of notice of the initial determination.

§ 498.32 Notice and effect of reopening and revision.

(a) *Notice.* (1) HCFA or the OIG, as appropriate, gives the affected party notice of reopening and of any revision of the reopened determination.

(2) The notice of revised determination states the basis or reason for the revised determination.

(3) If the determination is that a supplier or prospective supplier does not meet the conditions for coverage of its services, the notice specifies the conditions with respect to which the affected party fails to meet the requirements of law and regulations, and informs the party of its right to a hearing.

(b) *Effect.* A revised determination is binding unless

(1) The affected party requests a hearing before an ALJ; or

(2) HCFA or the OIG further revises the revised determination.

Subpart D—Hearings

§ 498.40 Request for hearing.

(a) *Manner and timing of request.* (1) An affected party entitled to a hearing under § 498.5 may file a request for a hearing with HCFA or the OIG, as appropriate, or with OHA.

(2) The affected party or its legal representative or other authorized official must file the request in writing within 60 days from receipt of the notice of initial, reconsidered, or revised determination unless that period is extended in accordance with paragraph (c) of this section. (Presumed date of receipt is determined in accordance with § 498.22(b)(3)).

(b) *Content of request for hearing.* The request for hearing must—

(1) Identify the specific issues, and the findings of fact and conclusions of law with which the affected party disagrees; and

(2) Specify the basis for contending that the findings and conclusions are incorrect.

(c) *Extension of time for filing a request for hearing.* If the request was not filed within 60 days—

(1) The affected party or its legal representative or other authorized official may file with the ALJ a written request for extension of time stating the reasons why the request was not filed timely.

(2) For good cause shown, the ALJ may extend the time for filing the request for hearing.

§ 498.42 Parties to the hearing.

The parties to the hearing are the affected party and HCFA or the OIG, as appropriate.

§ 498.44 Designation of hearing official.

(a) The Associate Commissioner for Hearings and Appeals, or his or her delegate designates an ALJ or a member or members of the Appeals Council to conduct the hearing.

(b) If appropriate, the Associate Commissioner or the delegate may substitute another ALJ or another member or other members of the Appeals Council to conduct the hearing.

(c) As used in this part, "ALJ" includes a member or members of the Appeals Council who are designated to conduct a hearing.

§ 498.45 Disqualification of Administrative Law Judge.

(a) An ALJ may not conduct a hearing in a case in which he or she is prejudiced or partial to the affected party or has any interest in the matter pending for decision.

(b) A party that objects to the ALJ designated to conduct the hearing must give notice of its objections at the earliest opportunity.

(c) The ALJ will consider the objections and decide whether to withdraw or proceed with the hearing.

(1) If the ALJ withdraws, another will be designated to conduct the hearing.

(2) If the ALJ does not withdraw, the objecting party may, after the hearing, present its objections to the Appeals Council as reasons for changing, modifying, or reversing the ALJ's decision or providing a new hearing before another ALJ.

§ 498.47 Prehearing conference.

(a) At any time before the hearing, the ALJ may call a prehearing conference for the purpose of delineating the issues in controversy, identifying the evidence and witnesses to be presented at the hearing, and obtaining stipulations accordingly.

(b) On the request of either party or on his or her own motion, the ALJ may adjourn the prehearing conference and reconvene at a later date.

§ 498.48 Notice of prehearing conference.

(a) *Timing of notice.* The ALJ will fix a time and place for the prehearing conference and mail written notice to the parties at least 10 days before the scheduled date.

(b) *Content of notice.* The notice will inform the parties of the purpose of the conference and specify what issues are sought to be resolved, agreed to, or excluded.

(c) *Additional issues.* Issues other than those set forth in the notice of determination or the request for hearing may be considered at the prehearing conference if——

(1) Either party gives timely notice to that effect to the ALJ and the other party; or

(2) The ALJ raises the issues in the notice of prehearing conference or at the conference.

§ 498.49 Conduct of prehearing conference.

(a) The prehearing conference is open to the affected party or its representative, to the HCFA or OIG representatives and their technical advisors, and to any other persons whose presence the ALJ considers necessary or proper.

(b) The ALJ may accept the agreement of the parties as to the following:

(1) Facts that are not in controversy.

(2) Questions that have been resolved favorably to the affected party after the determination in dispute.

(3) Remaining issues to be resolved.

(c) The ALJ may request the parties to indicate the following:

(1) The witnesses that will be present to testify at the hearing.

(2) The qualifications of those witnesses.

(3) The nature of other evidence to be submitted.

§ 498.50 Record, order, and effect of prehearing conference.

(a) *Record of prehearing conference.* (1) A record is made of all agreements and stipulations entered into at the prehearing conference.

(2) The record may be transcribed at the request of either party or the ALJ.

(b) *Order and opportunity to object.* (1) The ALJ issues an order setting forth the results of the prehearing conference, including the agreements made by the parties as to facts not in controversy, the matters to be considered at the hearing, and the issues to be resolved.

(2) Copies of the order are sent to all parties and the parties have 10 days to file objections to the order.

(3) After the 10 days have elapsed, the ALJ settles the order.

(c) *Effect of prehearing conference.* The agreements and stipulations entered into at the prehearing conference are binding on all parties, unless a party presents facts that, in the opinion of the ALJ, would make an agreement unreasonable or inequitable.

§ 498.52 Time and place of hearing.

(a) The ALJ fixes a time and place for the hearing and gives the parties written notice at least 10 days before the scheduled date.

(b) The notice informs the parties of the general and specific issues to be resolved at the hearing.

§ 498.53 Change in time and place of hearing.

(a) The ALJ may change the time and place for the hearing either on his or her own initiative or at the request of a party for good cause shown, or may adjourn or postpone the hearing.

(b) The ALJ may reopen the hearing for receipt of new evidence at any time before mailing the notice of hearing decision.

(c) The ALJ gives the parties reasonable notice of any change in time or place or any adjournment or reopening of the hearing.

§ 498.54 Joint hearings.

When two or more affected parties have requested hearings and the same or substantially similar matters are at issue, the ALJ may, if all parties agree, fix a single time and place for the prehearing conference or hearing and conduct all proceedings jointly. If joint hearings are held, a single record of the preceedings is made and a separate decision issued with respect to each affected party.

§ 498.56 Hearing on new issues.

(a) *Basic rules.* (1) Within the time limits specified in paragraph (b) of this section, the ALJ may, at the request of either party, or on his or her own motion, provide a hearing on new issues that impinge on the rights of the affected party.

(2) The ALJ may consider new issues even if HCFA or the OIG has not made initial or reconsidered determinations on them, and even if they arose after the request for hearing was filed or after a prehearing conference.

(3) The ALJ may give notice of hearing on new issues at any time after the hearing request is filed and before the hearing record is closed.

(b) *Time limits.* The ALJ will not consider any issue that arose on or after any of the following dates:

(1) The effective date of the termination of a provider agreement.

(2) The date on which it is determined that a supplier no longer meets the conditions for coverage of its services.

(3) The effective date of the notice to a hospital of its failure to remain in compliance with the qualifications for claiming reimbursement for all emergency services furnished to Medicare beneficiaries during the calendar year.

(4) The effective date of the suspension, or of the exclusion from coverage of services furnished by a suspended or excluded practitioner, provider, or supplier.

(c) *Notice and conduct of hearing on new issues.* (1) Unless the affected party waives its right to appear and present evidence, notice of the time and place of hearing on any new issue will be given to the parties in accordance with § 498.52.

(2) After giving notice, the ALJ will, except as provided in paragraph (d) of this section, proceed to hearing on new issues in the same manner as on an issue raised in the request for hearing.

(d) *Remand to HCFA or the OIG.* At the request of either party, or on his or her own motion, in lieu of a hearing under paragraph (c) of this section, the ALJ may remand the case to HCFA or the OIG for consideration of the new issue and, if appropriate, a determination. If necessary, the ALJ may direct HCFA or the OIG to return the case to the ALJ for further proceedings.

§ 498.58 Subpoenas.

(a) *Basis for issuance.* The ALJ, upon his or her own motion or at the request of a party, may issue subpoenas if they are reasonably necessary for the full presentation of a case.

(b) *Timing of request by a party.* The party must file a written request for a subpoena with the ALJ at least 5 days before the date set for the hearing.

(c) *Content of request.* The request must:

(1) Identify the witnesses or documents to be produced;

(2) Describe their addresses or location with sufficient particularity to permit them to be found; and

(3) Specify the pertinent facts the party expects to establish by the witnesses or documents, and indicate why those facts could not be established without use of a subpoena.

(d) *Method of issuance.* Subpoenas are issued in the name of the Secretary, who pays the cost of issuance and the fees and mileage of any subpoenaed witnesses.

§ 498.60 Conduct of hearing.

(a) *Participants in the hearing.* The hearing is open to the parties and their representatives and technical advisors, and to any other persons whose presence the ALJ considers necessary or proper.

(b) *Hearing procedures.* (1) The ALJ inquires fully into all of the matters at issue, and receives in evidence the testimony of witnesses and any documents that are relevant and material.

(2) If the ALJ believes that there is relevant and material evidence

available which has not been presented at the hearing, he may, at any time before mailing of notice of the decision, reopen the hearing to receive that evidence.

(3) The ALJ decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

§ 498.61 Evidence.

Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to court procedure. The ALJ rules on the admissibility of evidence.

§ 498.62 Witnesses.

Witnesses at the hearing testify under oath or affirmation. The representative of each party is permitted to examine his or her own witnesses subject to interrogation by the representative of the other party. The ALJ may ask any questions that he or she deems necessary. The ALJ rules upon any objection made by either party as to the propriety of any question.

§ 498.63 Oral and written summation.

The parties to a hearing are allowed a reasonable time to present oral summation and to file briefs or other written statements of proposed findings of fact and conclusions of law. Copies of any briefs or other written statements must be sent in accordance with § 498.17.

§ 498.64 Record of hearing.

A complete record of the proceedings at the hearing is made and transcribed in all cases.

§ 498.66 Waiver of right to appear and present evidence.

(a) *Waiver procedures.* (1) If an affected party wishes to waive its right to appear and present evidence at the hearing, it must file a written waiver with the ALJ.

(2) If the affected party wishes to withdraw a waiver, it may do so, for good cause, at any time before the ALJ mails notice of the hearing decision.

(b) *Effect of waiver.* If the affected party waives the right to appear and present evidence, the ALJ need not conduct an oral hearing except in one of the following circumstances:

(1) The ALJ believes that the testimony of the affected party or its representatives or other witnesses is necessary to clarify the facts at issue.

(2) HCFA or the OIG shows good cause for requiring the presentation of oral evidence.

(c) *Dismissal for failure to appear.* If, despite the waiver, the ALJ sends notice of hearing and the affected party fails to appear, or to show good cause for the failure, the ALJ will dismiss the appeal in accordance with § 498.69.

(d) *Hearing without oral testimony.* When there is no oral testimony, the ALJ will—

(1) Make a record of the relevant written evidence that was considered in making the determination being appealed, and of any additional evidence submitted by the parties;

(2) Furnish to each party copies of the additional evidence submitted by the other party; and

(3) Give both parties a reasonable opportunity for rebuttal.

(3) *Handling of briefs and related statements.* If the parties submit briefs or other written statements of evidence or proposed findings of facts or conclusions of law, those documents will be handled in accordance with § 498.17.

§ 498.68 Dismissal of request for hearing.

(a) The ALJ may, at any time before mailing the notice of the decision, dismiss a hearing request if a party withdraws its request for a hearing or the affected party asks that its request be dismissed.

(b) An affected party may request a dismissal by filing a written notice with the ALJ.

§ 498.69 Dismissal for abandonment.

(a) The ALJ may dismiss a request for hearing if it is abandoned by the party that requested it.

(b) The ALJ may consider a request for hearing to be abandoned if the party or its representative—

(1) Fails to appear at the prehearing conference or hearing without having previously shown good cause for not appearing; and

(2) Fails to respond, within 10 days after the ALJ sends a "show cause" notice, with a showing of good cause.

§ 498.70 Dismissal for cause.

On his or her own motion, or on the motion of a party to the hearing, the ALJ may dismiss a hearing request either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.* There has been a previous determination or decision with respect to the rights of the same affected party on the same facts and law pertinent to the same issue or issues which has become final either by judicial affirmance or, without judicial consideration, because the affected party did not timely request reconsideration, hearing, or review, or commence a civil action with respect to that determination or decision.

(b) *No right to hearing.* The party requesting a hearing is not a proper party or does not otherwise have a right to a hearing.

(c) *Hearing request not timely filed.* The affected party did not file a hearing request timely and the time for filing has not been extended.

§ 498.71 Notice and effect of dismissal and right to request review.

(a) Notice of the ALJ's dismissal action is mailed to the parties. The notice advises the affected party of its right to request that the dismissal be vacated as provided in § 498.72.

(b) The dismissal of a request for hearing is binding unless it is vacated by the ALJ or the Appeals Council.

§ 498.72 Vacating a dismissal of request for hearing.

An ALJ may vacate any dismissal of a request for hearing if a party files a request to that effect within 60 days from receipt of the notice of dismissal and shows good cause for vacating the dismissal. (Date of receipt is determined in accordance with § 498.22(b)(3).)

§ 498.74 Administrative Law Judge's decision.

(a) *Timing, basis and content.* As soon as practical after the close of the hearing, the ALJ issues a written decision in the case. The decision is based on the evidence of record and contains separate numbered findings of fact and conclusions of law.

(b) *Notice and effect.* A copy of the decision is mailed to the parties and is binding on them unless—

(1) A party requests review by the Appeals Council within the stated time period, and the Council reviews the case;

(2) The Appeals Council denies the request for review and the party seeks judicial review by filing an action in a Federal district court;

(3) The decision is revised by an ALJ or the Appeals Council; or

(4) The decision is a recommended decision directed to the Council.

§ 498.76 Removal of hearing to Appeals Council.

(a) At any time before the ALJ receives oral testimony, the Council may remove to itself any pending request for a hearing.

(b) Notice of removal is mailed to each party.

(c) The Council conducts the hearing in accordance with the rules that apply to ALJ hearings under this subpart.

§ 498.78 Remand by the Administrative Law Judge.

(a) If HCFA or the OIG requests remand, and the affected party concurs in writing or on the record, the ALJ may remand any case properly before him or her to HCFA or the OIG for a determination satisfactory to the affected party.

(b) The ALJ may remand at any time before notice of hearing decision is mailed.

Subpart E—Appeals Council Review

§ 498.80 Right to request Appeals Council review of Administrative Law Judge's decision or dismissal.

Either of the parties has a right to request Appeals Council review of the ALJ's decision or dismissal order, and the parties are so informed in the notice of the ALJ's action.

§ 498.82 Request for Appeals Council review.

(a) *Manner and time of filing.* (1) Any party that is dissatisfied with an ALJ's decision or dismissal of a hearing request, may file a written request for review by the Appeals Council.

(2) The requesting party or its representative or other authorized official must file the request with the OHA within 60 days from receipt of the notice of decision or dismissal, unless the Council, for good cause shown by the requesting party, extends the time for filing. The rules set forth in § 498.40(c) apply to extension of time for requesting Appeals Council review. (The date of receipt of notice is determined in accordance with § 498.22(c)(3).)

(b) *Content of request for review.* A request for review of an ALJ decision or dismissal must specify the issues, the findings of fact or conclusions of law with which the party disagrees, and the basis for contending that the findings and conclusions are incorrect.

§ 498.83 Appeals Council action on request for review.

(a) *Request by HCFA or the OIG.* The Appeals Council may dismiss, deny, or grant a request made by HCFA or the OIG for review of an ALJ decision or dismissal.

(b) *Request by the affected party.* The Council will grant the affected party's request for review unless it dismisses the request for one of the following reasons:

(1) The affected party requests dismissal of its request for review.

(2) The affected party did not file timely or show good cause for late filing.

(3) The affected party does not have a right to review.

(4) A previous determination or decision, based on the same facts and law, and regarding the same issue, has become final through judicial affirmance or because the affected party failed to timely request reconsideration, hearing, Council review, or judicial review, as appropriate.

(c) *Effect of dismissal.* The dismissal of a request for Appeals Council review is binding and not subject to further review.

(d) *Review panel.* If the Council grants a request for review of the ALJ's decision, the review will be conducted by a panel of at least two members of the Council, designated by the Chairperson or Deputy Chairperson, and one individual designated by the Secretary from the U.S Public Health Service.

§ 498.85 Procedures before the Appeals Council on review.

The parties are given, upon request, a reasonable opportunity to file briefs or other written statements as to fact and law, and to appear before the Appeals Council to present evidence or oral arguments. Copies of any brief or other written statement must be sent in accordance with § 498.17.

§ 498.86 Evidence admissible on review.

(a) The Appeals Council may admit evidence into the record in addition to the evidence introduced at the ALJ hearing, (or the documents considered by the ALJ if the hearing was waived), if the Council considers that the additional evidence is relevant and material to an issue before it.

(b) If it appears to the Council that additional relevant evidence is available, the Council will require that it be produced.

(c) Before additional evidence is admitted into the record—

(1) Notice is mailed to the parties (unless they have waived notice) stating that evidence will be received regarding specified issues; and

(2) The parties are given a reasonable time to comment and to present other evidence pertinent to the specified issues.

(d) If additional evidence is presented orally to the Council, a transcript is prepared and made available to any party upon request.

§ 498.88 Decision or remand by the Appeals Council.

(a) When the Appeals Council reviews an ALJ's decision or order of dismissal, or receives a case remanded by a court, the Council may either issue a decision or remand the case to an ALJ for a hearing and decision or a recommended decision for final decision by the Council.

(b) In a remanded case, the ALJ initiates additional proceedings and takes other actions as directed by the Council in its order of remand, and may take other action not inconsistent with that order.

(c) Upon completion of all action called for by the remand order and any other consistent action, the ALJ promptly makes a decision or, as specified by the Council, certifies the case to the Council with a recommended decision.

(d) The parties have 20 days from the date of a notice of a recommended decision to submit to the Council any exception, objection, or comment on the findings of fact, conclusions of law, and recommended decision.

(e) After the 20-day period, the Council issues its decision adopting, modifying or rejecting the ALJ's recommended decision.

(f) If the Council does not remand the case to an ALJ, the following rules apply:

(1) The Council's decision—

(i) Is based upon the evidence in the hearing record and any further evidence that the Council receives during its review;

(ii) Is in writing and contains separate numbered findings of fact and conclusions of law; and

(iii) May modify, affirm, or reverse the ALJ's decision.

(2) A copy of the Council's decision is mailed to each party.

§ 498.90 Effect of Appeals Council decision.

(a) The decision of the Appeals Council is binding unless—

(1) The affected party has a right to judicial review and timely files a civil action in a district court of the United States; or

(2) The Council reopens and revises its decision in accordance with § 498.102.

(b) Section 498.5 specifies the circumstances under which an affected party has a right to seek judicial review.

§ 498.95 Extension of time for seeking judicial review.

(a) Any affected party that is dissatisfied with an Appeals Council decision and is entitled to judicial review must commence civil action within 60 days from receipt of the notice of the Council's decision (as determined under § 498.22(c)(3)), unless the Council extends the time in accordance with paragraph (c) of this section.

(b) The request for extension must be filed in writing with the Council before the 60-day period ends.

(c) For good cause shown, the Council may extend the time for commencing civil action.

Subpart F—Reopening of Decisions Made by Administrative Law Judges or the Appeals Council

§ 498.100 Basis, timing, and authority for reopening an ALJ or Council decision.

(a) *Basis and timing for reopening.* An ALJ of Appeals Council decision may be reopened, within 60 days from the date of the notice of decision, upon the motion of the ALJ or the Council or upon the petition of either party to the hearing.

(b) *Authority to reopen.* (1) A decision of the Appeals Council may be reopened only by the Appeals Council.

(2) A decision of an ALJ may be reopened by that ALJ, by another ALJ if that one is not available, or by the Appeals Council. For purposes of this paragraph, an ALJ is considered to be unavailable if the ALJ has died, terminated employment, or been transferred to another duty station, is on leave of absence, or is unable to conduct a hearing because of illness.

§498.102 Revision of reopened decision.

(a) *Revision based on new evidence.* If a reopened decision is to be revised on the basis of new evidence that was not included in the record of that decision, the ALJ or the Appeals Council—

(1) Notifies the parties of the proposed revision; and

(2) Unless the parties waive their right to hearing or appearance—

(i) Grants a hearing in the case of an ALJ revision; and

(ii) Grants opportunity to appear in the case of a Council revision.

(b) *Basis for revised decision and right to review.* (1) If a revised decision is necessary, the ALJ or the Appeals Council, as appropriate, renders it on the basis of the entire record.

(2) If the decision is revised by an ALJ, the Appeals Council may review that revised decision at the request of either party or on its own motion.

§498.103 Notice and effect of revised decision.

(a) *Notice.* The notice mailed to the parties states the basis or reason for the revised decision and informs them of their right to Appeals Council review of an ALJ revised decision, or to judicial review of a Council reviewed decision.

(b) *Effect*—(1) *ALJ revised decision.* An ALJ revised decision is binding unless it is reviewed by the Appeals Council.

(2) *Appeals Council revised decision.* A Council revised decision is binding unless a party files a civil action in a district court of the United States within the time frames specified in §498.95.

C. Correction of Cross References

References to Subpart O of Part 405 of this chapter are corrected or, if unnecessary or inappropriate, are removed as follows:

§ 405.705 [Amended]

1. In paragraph (b), the parenthetical reference to "see Subpart O of this Part 405" is removed.

§ 405.1901 [Amended]

2. In paragraph (e)(6), the parenthetical reference to "See § 405.1505(m)" is removed.

§ 405.1905 [Amended]

3. In paragraph (b), the parenthetical reference is revised to read "(Appeals procedures are set forth in Part 498 of this Chapter.)".

§ 405.2402 [Amended]

4. In paragraph (f), "Subpart O of this part." is changed to "Part 498 of this chapter.".

§ 405.2404 [Amended]

5. In paragraph (b)(3), "Subpart O of this part." is changed to "Part 498 of this chapter."

§ 416.25 [Amended]

6. In paragraph (f), "Part 405, Subpart O of this chapter." is changed to "Part 498 of this chapter.".

§ 416.35 [Amended]

7. In paragraph (b)(3), "Part 405, Subpart O of this chapter." is changed to "Part 498 of this chapter.".

§ 420.3 [Amended]

8. In paragraph (a), "Subpart O of Part 405 of this chapter" is changed to "Part 498 of this chapter".

§ 431.153 [Amended]

9. In paragraph (d)(1), "Part 405., Subpart O of this title" is changed to "Part 498 of this chapter".

§ 485.74 [Amended]

10. "Part 405, Subpart O of this chapter," is changed to "Part 498 of this chapter,".

§ 489.16 [Amended]

11. In paragraph (c)(2), "Part 405, Subpart O of this chapter." is changed to "Part 498 of this chapter.".

§ 489.53 [Amended]

12. In paragraph (d), "Subpart O of Part 405 of this chapter." is changed to "Part 498 of this chapter,".

§ 1001.3 [Amended]

13. In the first line, "Subpart O of Part 405 of this title" is changed to "Part 498 of this title".

§ 1001.128 [Amended]

14. a. In paragraph (b), the cross reference is changed to "Subpart D of Part 498 of this title".

b. In paragraph (c), the cross-reference is changed to "Subpart E of Part 498 of this title".

§ 1001.134 [Amended]

15. In paragraph (b)(2)(ii), "Subpart O of Part 405 of this title" is changed to "Part 498 of this title".

§ 1001.201 [Amended]

16. In paragraph (c), "Subpart O of Part 405 of this title" is changed to "Part 498 of this title".

§ 1004.100 [Amended]

17. In paragraph (g), "Subpart O of Part 405 of this title" is changed to "Part 498 of this title".

§ 1004.130 [Amended]

18. In paragraph (a)(1), the cross reference is changed to "Part 498 of this title".

(Catalog of Federal Domestic Assistance Program, No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 4, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 13, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-13124 Filed 6-11-87; 8:45 a.m.]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Superfund and Clean Water Act; Natural Resource Damage Assessments Response to Comments

AGENCY: Department of the Interior.

ACTION: Notice of response to comments.

SUMMARY: This notice responds to the comments received by the Department on whether an amendment should be

proposed to the final natural resource damage assessment rule to add an exception to the damage determination decision rule for "special resources." As described in the final rule, damages are for compensation to the public for injuries to public natural resources. The final rule stipulates that damages are the lesser of restoration or replacement costs, or a diminution of use value. The final rule establishes procedures for assessing damages to natural resources resulting from a discharge of oil or a release of a hazardous substance and compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, or under the Clean Water Act (CWA). For the reasons set out in this notice, the Department has determined that it is not appropriate to propose an amendment at this time relating to "special resources."

Section 301(c) of CERCLA requires the promulgation of two types of regulations, standard, simplified "type A" procedures, and alternative "type B" procedures to be used in individual cases. The final rule establishing the general assessment process and containing the type B procedures was published on August 1, 1986 (51 FR 27674). The final type A rule containing simplified, standardized procedures for assessments in coastal and marine environments was published on March 20, 1987 (52 FR 9042). Both rules will be codified as one rule at 43 CFR Part 11.

In the preamble to the August 1, 1986, rule, the Department requested additional public comment on the concept of a "special resources" exception to the damage determination decision rule. This notice presents the Department's response to those comments and the Department's reasons for not proposing an amendment to the final rule for a special resource exception at this time.

ADDRESS: CERCLA 301 Project, Room 4354, Department of the Interior, 1801 C Street, NW., Washington, DC 20240 [Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday].

FOR FURTHER INFORMATION CONTACT: David Rosenberger (202) 343-1301; Linda Burlington (202) 343-1301; Willie Taylor (202) 343-7531; Alison Ling (415) 556-8807.

SUPPLEMENTARY INFORMATION: The concept of a special resource exception was proposed by the Department in a Notice of Proposed Rulemaking published on December 20, 1985 (50 FR 52126). A request for additional comments on the special resources exception was published with the final rule published on August 1, 1986 (51 FR at 27724), with comments requested by September 29, 1986. The comment period was extended retroactively from November 13, 1986, to November 28, 1986 (51 FR 41131). At that time the Department indicated that it would respond to the comments submitted and would, if necessary, propose amendments to the final rule relating to special resources.

I. Background

Proposed Rule

In the December 20, 1985, Notice of Proposed Rulemaking the Department proposed that the natural resource damage assessment rule provide an exception to the general common law rule that damages are the lesser of restoration or replacement costs, or a diminution of use values for a narrow class of resources called "special resources." The proposed rule would have allowed the trustee to elect to use restoration or replacement costs as the measure of damages when a special resource was injured, so long as the restoration or replacement costs were not "grossly disproportionate to the benefits gained."

Special resources were defined in the proposed rule as those natural resources that had been set aside and committed to a specific use by law before the discharge of oil or release of a hazardous substance was detected. The term included resources set aside primarily to preserve wildlife habitat or other unique and sensitive environments. It did not include resources set aside but committed to multiple-use management, resources listed on administratively determined lists for special protection, or resources protected by regulatory statutes. The intent of this concept was to create a very narrow exception to the general common law definition of damages to address situations where Congress or State legislatures have explicitly determined that certain natural resources are worthy of protection even if their use values are relatively low.

Many comments were received on the special resources exception included in the December 20, 1985, proposed rule. These comments were diverse and reflected differing perceptions of the distinction the Department had drawn in the definition of special resources. For example, many comments indicated that the provisions relating to special resources were too vague, and gave the trustee too much discretion in determining what a special resource is and what the reasonable cost would be for the restoration or replacement of a special resource. Some comments stated that the definition in the proposed rule was so narrow as to restrict the trustee's authority to choose which resources would warrant damages for full restoration or replacement costs. Other comments questioned whether the Department had the statutory authority to create any such exception to the general common law definition of damages.

Final Rule

In the final rule published August 1, 1986, the Department deleted the special resource exception from the rule, requesting further comment on the concept of a special resource exception. The Department was uncertain whether such an exception would be necessary and what the effects of any such exception would be. In addition, the Department was unsure if an exception would result in inappropriate cost shifting or whether any exception would actually result in furthering the intent of a Congressional or a State legislature's treatment or management of particular natural resources.

To assist the Department in reexamining the concept, additional public comment was requested on the following three issues: (1) Should there be an exception to the general common law definition of damages for special resources? (2) If there is an exception for special resources, what natural resources should be included in the definition of special resources? and (3) What is the rational basis for including some natural resources and excluding others from the classification of special resources?

II. Responses to Comments

Ten comments were received on the issues raised by the Department. These comments and the Department's response to these comments are summarized below.

Issue 1: Should there be an exception to the general common law definition of damage for special resources?

The comments were evenly divided on this issue. Several comments agreed that a narrow exception was appropriate. Other comments stated that failure to maintain an exception would be wholly inconsistent with the intent of Congress, in that Congress intended that restoration costs should be the presumptive measure of damages. Another comment noted that, with respect to certain natural resources, the exception is required as a matter of law. This comment stated that, unless there is this exception, the Department will be in violation of laws such as the

Endangered Species Act and the Migratory Bird Treaty Act.

Other comments stated that neither the statutory language of CERCLA nor its legislative history authorized such an exception. One comment stated that if Congress had intended that differential treatment of natural resources be made in conducting assessments under CERCLA, it would have said so. The comment therefore concluded that the Department does not have the authority to do so. Another comment noted that the purpose of CERCLA is compensation, not punishment. This comment pointed out that other environmental and conservation statutes contain pollution penalties already, so CERCLA should not be used for such purposes. Another comment stated that the exception in the proposed rule threatened to swallow the rule, since special resources were defined broadly as resources committed by law to any specific use.

In response to these comments, the Department notes that it agrees that there is no specific statutory provision in CERCLA providing for or prohibiting a special resource exception. The Department also notes that there is no explicit language in CERCLA that states that damages are to be solely in the form of restoration costs. Because CERCLA does not require that restoration costs be the sole measure of damages and because the legislative history specifically states that the general common law definition of damages is to be followed, the Department does not believe that restoration costs are the presumptive measure of damages. The Department points out that the legislative history of the Act indicates that Congress intended that traditional common law notions of damages should apply. The Department considers that the language contained in section 301(c) provides sufficient authority to develop "best available" procedures to determine damages including, if necessary, providing for exceptions to the damage determination decision rule. The Department also agrees that a broad exception could swallow the rule, and that there would have to be a workable basis for establishing a well-crafted, narrow exception, if one were to be provided.

The Department agrees with the comments stating that the assessment of damages should be based on compensation for injuries to natural resources, not pollution penalties. A fundamental principle of the theory developed in the rule is that natural resource damages are compensatory, not punitive (see 51 FR 27680, August 1, 1986).

The Department does not agree that a special resources exception is required within the rule to avoid violating the Endangered Species Act or the Migratory Bird Treaty Act. Both of those acts are fully applicable to the effects of any discharge or release, cleanup, and restoration efforts undertaken by Federal and State trustees. However, those acts do not mandate the replacement of habitat or species covered, but rather establish penalties for taking and regulatory procedures for the protection of the species and their habitat. Potentially responsible parties may be subject to the penalty provisions of the acts if they have violated their terms, and the trustee must comply with the procedural requirements of § 11.17(b) of the rule in the development of restoration plans.

Another comment disputed the Department's interpretation of the common law rule, stating that the common law recognizes in numerous instances, e.g., government condemnation of property, that the measure of damages is the costs of repair or replacement, not diminution in value.

The Department recognizes that there are exceptions to the common law rule. The Department believes, however, that it has correctly interpreted the application of the general common law principle of compensation for injuries to natural resources.

Several comments stated that there are resources, that, if injured, should be restored or replaced, even if this remedy is more costly than the costs associated with a diminution of use. These comments noted that a special resource exception is the only means of ensuring adequate funds to undertake the necessary restoration or replacement. Another comment noted that sharp increases in environmental liability litigation, with large damage claims, has caused a serious crisis in the availability of insurance to cover this type of risk. This comment stated that, since damages under CERCLA are awarded on a no-fault basis, it is especially important to avoid the imposition of excessive awards. One comment also pointed out that to require payment of restoration costs that exceed the value society attached to the resource would channel society's resources into lesser valued uses.

The Department notes that the purpose of section 301(c) of CERCLA is to establish regulations that provide procedures for the assessment of damages for injury to, destruction of, or loss of natural resources. The Act also states that the regulations are to consider the ability of the resource to recover. Therefore, the Department notes that the purpose of a natural resource damage assessment, performed in accordance with this rule, is to arrive at an award that compensates for injuries to natural resources, rather than ensuring immediate and full restoration of the injured resources. The Department points out that the rule will not result in excessive awards. The purpose of the rule is to measure compensation for injury to natural resources. By comparing restoration and replacement costs against diminution of use, appropriate and reasonable compensation can be derived, using traditional principles of common law, as intended by Congress.

One comment noted that it would be premature to consider such a significant deviation from the common law rule before there is evidence that the rule is somehow defective with respect to such resources. Other comments felt that, due to the flexibility in the type B rule of allowing the use of nonmarket valuation methods where markets do not exist, it is unlikely that the rule will be found to provide socially inadequate or inappropriate compensation.

One of the comments indicated that, if experience shows that the rule does not cover such resources, the Department can consider some exception in the two-year review. Another comment, however, stated that an exception could be justified, even in the absence of "on the ground experience," since the effectiveness of the exception could be assessed at the biennial review of the rule.

The Department agrees that it would be premature to consider such a significant deviation from the common law approach of the rule before there is evidence that the rule is shown to be defective with respect to certain resources. The Department points out that the procedures described in the type B rule, particularly the nonmarket methodologies, do measure a broad spectrum of public uses, and provide methodologies for assessment of damages applicable to all natural resources. The Department acknowledges that one way to determine the need for a special resource exception would be to construct an exception at this time and review that exception at the biennial review. However, as discussed elsewhere, the Department believes that, however crafted, if there is an exception there would be a tendency to designate everything as a "special" resource. As

such, any special resource exception at this time could very likely negate the general common law rule. Consequently, the justifiable need for a carefully crafted special resource exception might be impossible to determine because of the potential for inappropriate invocation of any special resource exception. The Department notes that the biennial review will provide an appropriate opportunity to determine whether an exception to the damage determination rule for "special" resources needs to be reconsidered.

Finally one comment suggested that a narrow exception might be allowed that would include: (a) A requirement that Congress make an express determination, and state the basis for its determination, or that a State legislature propose such a determination (subject to approval under the terms of CERCLA) that certain resources are to be designated as "special" because their value to the public or the environment is such that they are worthy of protection, even though their use values may be relatively low; and (b) a requirement that the legislative action is being taken for the express purpose of identifying special resouces under the CERCLA natural resource damage assessment regulations. The comment concluded that these requirements could help avoid much uncertainty and litigation over the class of resources deemed "special" for purposes of damage assessments under CERCLA.

The Department believes that it would not be appropriate to shift the responsibility for determining the need for and potential scope of a special resource exception to Congress, when the responsibility for developing the full scope of the assessment regulations has already been delegated to the President, and in turn, the Department.

Issue 2: If there is an exception, what natural resources should be included in the definition?

Several of the comments stated that there should be a broad definition of special resources. Some of these comments indicated that all natural resources that are considered by the trustee, or pursuant to the law of a State, to be environmentally unique, irreplaceable, or are given specific protection should be included in any definition. Other comments suggested that it is the importance of the resources to the environment, not whether the legislature made the necessary findings and erected the correct protective scheme, that should determine whether a resource is a special resource. Other comments noted that the definition should include resources that are identified for special protection under international treaties to which the United States is a party, as well as resources identified administratively as falling within a protected class.

Some comments gave examples of resources or areas that should be given special protection. The examples given included: Designated critical habitat areas for rare, threatened, and endangered species; areas that have been set aside by Congress or a State legislature as unique ecosystems; ecosystems that are extremely fragile with long recovery times; unique and rare plant and animal communities; areas seasonally important to fish and wildlife populations; shellfish or finfish spawning or nursery areas; critical areas for groundwater recharge; aquifers; forest preserves where development is significantly limited; wildlife sanctuaries; wetlands; National or State wildlife refuges; game management areas; Bureau of Land Management "areas of critical environmental concern;" and National Marine Sanctuaries or National Estuarine Research Reserves; and marine mammals that are protected under regulations adopted pursuant to statutes.

The Department acknowledges that, for one reason or another, almost all Federal or State resources that are defined as natural resources pursuant to section 101(16) of CERCLA could arguably be included within a definition of a special resource. The Department notes that a broad definition of a special resource proposed by some comments would result in a large degree of uncertainty, thereby greatly increasing litigation over the validity of the assessments. Therefore, the creation of a broad special resource exception would, for all practical purposes, change the primary damage measurement decision rule.

Some of the comments stated that, if there is to be such an exception, it should be very narrow in scope. One of these comments noted that any exception must be limited to truly unique resources that cannot be addressed adequately by the rule. Another comment stated that such an exception could include species listed as threatened or endangered pursuant to the Endangered Species Act and the critical habitats specifically designated by that Act, and the unique areas in National Parks and National Monuments. The comment suggested that the Department could use the definition in the proposed type B rule as a starting point, if necessary, and then develop a list of resources considered special to avoid misunderstandings, with additions or deletions proposed after there has been some actual experience with the rule.

As stated earlier, the Department agrees that any exception to the general damage determination rule would have to be carefully worded to be workable and to not abrograte the general common law rule. The Department notes that any listing of resources might result in a perceived inequitable treatment for those resources that might be considered "special" by some, but were not included on the published list.

Some of the comments stated that the timing of the grant of protection is not relevant, while others stated that inclusion of a particular resource should be allowed so long as it could have been included with other similar protected resources pursuant to existing law. One of these comments suggested that, if a particular post-discovery designation is improper and unrelated to previously enacted legislation and regulations, it can be corrected through administrative or court review.

The Department points out that, because of the fact that damage assessments calculated in accordance with the final rule are accorded the rebuttable presumption, some element of predictability is necessary. To allow a post-event determination of the "special" nature of the resources injured would result in findings that are both unpredictable and possibly punitive in nature.

One comment suggested that it may be appropriate for a trustee to pursue restoration based on either: (a) Generic criteria that define environmental values and that meet with scientifically accepted concepts of value; or (b) a measurement of intrinsic value. One comment noted that measurements of intrinsic value are currently possible, but the methodologies are still evolving. However, the comment suggested that these methodologies could be applied on a case-by-case basis. The comment concluded that a valuation methodology should encompass aesthetic, ecological, and educational values that are difficult to quantify, as well as the recreational and commercial values that are somewhat more amenable to appropriately applied standard economic methodologies.

The Department notes that techniques to define environmental, including "intrinsic," values in scientifically accepted ways were reviewed in the preparation of the final rule. Those methodologies, which were found to meet the CERCLA mandated "best available procedures," were incorporated into the final rule. In the preamble to the final rule, the

Department noted that it was impossible to review all potential damage determination methodologies and, therefore, allowed the use of any damage determination methodology that might meet the acceptance criterion of "willingness to pay" in a cost-effective manner. The Department also notes other methodologies to measure damages exist that do not meet this criterion. However, if a rebuttable presumption is sought for the damage assessment, all of the guidance found in the regulation must be followed.

Issue 3: What is the rational basis for including some resources and excluding others from the classification?

The comments that supported the creation of an exception expressed their views of the basis for the classification. Some of these comments stated that only retention of the concept of special resources, and a broad definition of these resources, can result in a fair assessment of damages, and allow States to properly discharge their duties as trustees in accordance with their own law. One comment stated that, since fines for "taking" of endangered species are not used for their restoration or replacement, funds should be made available for restoring or replacing lost and injured endangered species or their designated critical habitats. One comment suggested that, because the market often ignores the environmental value of natural resources, market mechanisms that might otherwise serve to protect the resource from degradation fail. Another comment stated that the services provided by special resources are more difficult to replace, and should be valued more highly. Therefore, the comment concluded, these resources contain inherent values beyond their quantifiable loss of use value to humans.

The Department notes that the methodologies in the final rule, when taken together, do allow for appropriate compensation for injury by balancing restoration or replacement costs against the diminution of use values. As discussed earlier, these methodologies are available to determine damages to all natural resources, including endangered species. The Department points out that the rule does require that all sums recovered as damages shall be used to restore or replace the injured resources, whether restoration or replacement costs or diminution of use value was the basis of the damage determination. Therefore, these sums are not only available for restoration or replacement, but are required to be used for such purposes. Also, the Department points out that the injured resource, in the majority of cases, will already have been the focus of cleanup or remedial actions.

The Department agrees that market value methodologies may not always be the applicable procedures for determining damages. For that reason, the Department included in the rule, at § 11.83, other techniques to determine damages that can be used when appropriate. These methodologies allow for the determination of damages for all injured natural resources covered by CERCLA. In addition, the Department recognized that other methodologies might be developed to determine damages for injuries to natural resources. Therefore, the rule expressly provides that other methodologies than those listed in the rule may be used, so long as they meet the acceptance criterion contained in § 11.83 of the rule.

III. The Department's Decision

The Department put forth the concept of "special resources" in a Notice of Proposed Rulemaking, December 20, 1985, that would have allowed a narrow exception to the damage determination decision rule. The special resource concept was deleted from the final rule and further comment was requested regarding such an exception. Upon review of the comments received, the Department has determined that it is not appropriate to propose an amendment at this time to the damage determination decision rule relating to "special resources." The rationale behind this decision is discussed below and in the response to comments section provided above.

Widely divergent points of view were expressed by the comments. While some comments contended that no exception be proposed, others supported an exception and suggested an extensive array of resources for consideration. The rationale for inclusion or exclusion of particular resources was equally diverse. This diversity highlights the difficulties in determining the need for and scope of any exception at this time to the damage determination decision rule.

A special resource exception would allow for a significant departure from the general common law principle of damages. Such an exception, therefore, would have to be carefully constructed to facilitate a clear, well-defined understanding as to its meaning and application within the damage determination decision rule. Without careful construction, any proposed exception could swallow the rule. The exception would become the rule, and thus be contrary to both the intent of CERCLA and the rule in determining the proper compensation for injury to natural resources.

There is no explicit language in CERCLA stating that restoration costs are to form the basis of the compensation for injuries to the natural resources. In addition, the legislative history of CERCLA indicates that Congress intended that the traditional common law notion of damages should apply to the damage determination decision rule. Because of this, the Department does not believe that restoration costs should be the presumptive measure of damages. The Department recognizes that this issue may be considered in a pending judicial review of the final rule. CERCLA does, however, state that damages received in compensation are to be applied to restore the injured natural resources.

The fundamental purpose of a natural resource damage claim is to provide compensation for injury to natural resources, not to provide penalties for environmental pollution or for the "taking" of natural resources. Other laws and other provisions of CERCLA already provide such measures. A broad exception could result in penalties, rather than appropriate compensation for injuries sustained. Section 301(c) of CERCLA mandates the development of "best available procedures" to determine damages for injuries to natural resources. These procedures are to also include consideration of the ability of the ecosystem or natural resource to recover. The final rule, as published, has fulfilled this mandate. All natural resources specified in section 101(16) of CERCLA are included within the final rule and "best available procedures" have been provided to determine compensation.

The final rule contains the flexibility to properly measure damages to all natural resources covered by CERCLA. Thus, the Department does not believe that it is necessary to make a change in the damage determination decision rule at this time.

IV. Biennial Review

CERCLA specifically requires a biennial review and, as appropriate, revision of the damage assessment regulations. The Department will collect information on the implementation of the rule by natural resource trustees and will consider all suggestions for revisions. Federal and State trustees are requested to communicate to the Department, at the address at the beginning of this notice, their experiences as they apply all aspects of the natural resource damage assessment rule.

Dated: June 8, 1987.

Gale A. Norton,

Associate Solicitor, Division of Conservation and Wildlife.

[FR Doc. 87-13332 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[Gen. Docket No. 85-301; FCC 87-187]

Subscriber Terminal Devices Connected to Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends Parts 15 and 76 of its rules to establish uniform technical standards for converters, decoders, and other subscriber terminal devices connected to cable systems. The revised rules require that all such devices that are external to the TV receiver comply with requirements for TV interface devices in Part 15, Subpart H of the rules. The Commission also amends the Part 15, Subpart H, rules to include certain provisions that will apply only to subscriber terminal devices. All such devices will be subject to the certification procedures of Part 2, Subpart J of the rules. The Commission also modifies its rules to clarify that terminal equipment that is an integral built-in feature of a television receiver will be subject to the Part 15, Subpart C standards applied to television receivers. The Commission takes this action to eliminate the disparity in the current rules between terminal devices that are cable operator owned and those that are subscriber owned. Under the former rules structure, a given model of terminal device was alternately subject to Part 76 standards if it was owned or supplied by a cable operator or to Part 15 standards if it was owned by a cable subscriber.

EFFECTIVE DATE: July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau (202) 632-6302, or John Reed, Office of Engineering and Technology (202) 653-7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket 85-301, adopted May 14, 1987, and released June 5, 1987.

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

Summary of Report and Order

1. On August 7, 1986, the FCC adopted a *Further Notice of Proposed Rule Making (Further Notice),* Gen. Docket No. 85-301, 51 FR 31147 (1986), seeking comment on a revised proposal to require all external, stand-alone cable terminal devices to comply with the emission limits and other technical requirements of Part 15, Subpart H, for TV interface devices. The Commission indicated that it sought to end the disparity in the current rules between cable operator owned or supplied devices, which currently are subject to Part 76 of the rules, and subscriber owned devices, which currently are subject to the different standards of Part 15. As in the initial *Notice of Proposed Rule Making* in this proceeding, 50 FR 42729 (1985), the Commission observed that stand-alone cable terminal devices are similar to TV interface devices such as VCRs in their nature, purpose, and interference potential. Thus, the Commission indicated that it believed it would be appropriate to subject such equipment to the same standards that apply to TV interface devices. The Commission also observed that there are certain differences between cable terminal devices and other TV interface devices such that the regulations for terminal devices may need to differ in some respects from those applied to TV interface devices in general. It proposed specific amendments to Part 15, Subpart H to address some of these issues and requested comment on others. The Commission also proposed to regulate terminal equipment and circuitry that is an integral, built-in feature of a television receiver under the same Part 15, Subpart C standards to which the receiver is otherwise subject.

2. The majority of parties responding to the *Further Notice* argued that cable terminal devices should be subject to either the Part 76 field strength emission limits or to an alternative approach, proposed by NCTA, that would subject signals generated internally by the device to the Part 15 emission standards and signals introduced into the device by the cable system to the Part 76 signal leakage limits. These parties contended that the Part 15 emission limits are insufficient to protect against harmful interference to broadcast and other radio services. They also submitted that cable terminal devices differ from other TV interface devices, because it is difficult for cable operators to distinguish between emissions from a terminal device and emissions from the cable system.

3. In this *Report and Order* the Commission concluded that neither the record nor its own experience with cable terminal devices and cable-ready TV interface devices indicates any data or information indicating harmful interference to broadcasters, users of other radio services, or cable systems from devices that have been regulated under Part 15 of its rules. Thus, it decided to regulate all cable terminal devices under the Part 15 technical standards as proposed in the *Further Notice.* Under the revised rules, cable terminal equipment and circuitry that is an integral part of a TV receiver will be subject to the Part 15, Subpart C, radio receiver standards. Cable terminal devices that are external to the TV receiver will be required to comply for the most part with the standards of Part 15, Subpart H. However, to provide for certain differences between cable terminal equipment and other TV interface devices, the Commission added several provisions to this subpart that will apply only to cable terminal devices.

4. To further ensure that external terminal devices operate in compliance with the Part 15 standards, the Commission provided that all such devices will be subject to the certification procedures of Part 2, Subpart J of the rules in the same manner as required for TV interface devices. The new rules also provide a transition process for gradually bringing all terminal devices into compliance with the TV interface device standards.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the final rules will not have a significant economic impact on a substantial number of small entities because the new regulations that would apply to such entities are not burdensome. The proposed rule changes are intended to assist all manufacturers, cable operators, cable subscribers, and regulatory agencies by establishing uniform standards for all terminal devices and to assign responsibility in cases of interference resulting from subscriber supplied devices.

6. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement upon the public. Implementation of any new or modified requirement or burden will

be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

7. Accordingly, *It Is Ordered* that under the authority contained in sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, Parts 15 and 76 of the Commission's Rules and Regulations *Are Amended* as set forth below.

8. *It Is Further Ordered* that this proceeding is terminated.

List of Subjects

47 CFR Part 15

Radio frequency devices.

47 CFR Part 76

Cable television service.

Rule Change

A. Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—[AMENDED]

1. The authority citation for Part 15 is revised to read as follows:

Authority: Secs. 4, 301, 302, 303 and 304 of the Communications Act of 1934, as amended.

2. Section 15.4 is amended by revising paragraph (u) to read as follows:

§ 15.4 General definitions.

* * * * *

(u) *TV interface device.* A restricted radiation device that (1) produces a radio frequency carrier modulated by a video signal derived from an external or internal signal source, and which feeds the modulated radio frequency energy by conduction to the antenna terminals of a conventional television broadcast receiver, or (2) serves, as its primary function, to interconnect a cable system to a television receiver or other subscriber premise equipment.

Note: A TV interface device defined under paragraph (u)(1) of this section may be a stand alone RF modulator, or a composite device consisting of an RF modulator, video source and other components. If such device is located within a television broadcast receiver, it shall be subject to the same requirements as a television broadcast receiver under Part 15, Subpart C. Devices defined under paragraph (u)(2) of this section that are external to a television broadcast receiver are subject to the provisions of Part 15, Subpart H.

* * * * *

3. Section 15.602 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 15.602 Conditions of operation.

* * * * *

(b) The output signals of a TV interface device as defined under § 15.4(u)(1) shall be coupled to the TV receiver by either wires or coaxial cable provided by the manufacturer of the device.

(c) Where specialized connecting cables and/or hardware are required to properly connect the output of a TV Interface Device as defined under § 15.4(u)(2) to a TV receiver, that equipment shall be provided to the user by the grantee of the equipment authorization for the device.

4. Section 15.606 is amended by adding a new paragraph (c) to read as follows:

§ 15.606 Transfer switch.

* * * * *

(c) A TV Interface Device as defined in § 15.4(u)(2) is not required to to be equipped with antenna input capability. Where such a device includes this capability, it shall be equipped with a transfer switch that complies with the technical standards of paragraph (a) of this section.

5. Section 15.616 is amended by revising paragraph (a) and (c) (the Note following paragraph (c) remains unchanged) and by adding a new paragraph (d) to read as follows:

§ 15.616 Equipment authorization requirements for the TV interface device and attachments thereto.

(a) Except as otherwise indicated in paragraph (d) of this section, a TV interface device shall be certified pursuant to Subpart J of Part 2 of this chapter to show compliance with the technical specifications in this subpart.

* * * * *

(c) To determine compliance with the technical requirements of this subpart, the TV interface device must be fully exercised with all external devices or accessories that are intended to be marketed and used with it. Measurements shall be made in accordance with the applicable procedures set forth in the *Recommended FCC Measurement Procedure for the TV Interface Device,* MP-3, or equivalent procedures, provided the applicant for certification or the party verifying the equipment, as appropriate, can adequately demonstrate that such procedures are in fact equivalent.

Note: * * *

(d) A TV interface device, as defined under § 15.4(u)(1), that is marketed to consumers shall be certified to show compliance with this subpart. A TV interface device, as defined under § 15.4(u)(2), first introduced or marketed after October 20, 1987, or manufactured or imported after July 20, 1989, shall be certified to show compliance with the provisions of this subpart, except that, alternatively, until these dates such devices shall comply with the former requirements and new § 15.623.

6. Section 15.618 is amended by revising the heading and paragraph (c) to read as follows:

§ 15.618 Composite TV interface devices.

* * * * *

(c) A composite TV interface device as defined in § 15.4(u)(1) shall comply with the technical specifications of this subpart, except that (1) the emanations of a tuner section of such device shall not exceed the technical limits in Subpart C of this part, and (2) the emanations of a TV interface device incorporating a field disturbance sensor shall not exceed the limits in Subparts F and H of this part, whichever is higher for each frequency.

* * * * *

7. Part 15 is amended by adding a new § 15.623 to read as follows:

§ 15.623 Information to user.

(a) The provisions of this section shall apply only to TV interface devices, as defined in § 15.4(u)(2), marketed to consumers on or after October 20, 1987.

(b) Information shall be provided to the user of a device about the interference potential of the device and simple measures that a user can take to correct interference. (See, *e.g.,* § 15.838). Such information shall be included in a conspicuous place in the instruction manual.

(c) The instruction manual provided with a device shall inform the user that if the device causes interference, or disrupts cable service, the cable operator may disconnect service to the user until such interference or disruption is corrected.

B. Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—[AMENDED]

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

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

2. Section 76.5(x) is amended by adding a note at the end of paragraph (x) to read as follows:

§ 76.5 Definitions.

* * * * *

(x) * * *

Note.—Terminal devices interconnected to subscriber terminals of a cable system shall comply with Subpart H of Part 15.

* * * * *

3. Section 76.605 is amended by adding a note at the end of the section to read as follows:

§ 76.605 Technical standards.

* * * * *

Note.—The requirements of this section shall not apply to devices subject to the provisions of §§ 15.601 through 15.626.

4. Section 76.617(a) is revised to read as follows:

§ 76.617 Responsibility for interference.

(a) Interference generated by a radio frequency (RF) device subject to Part 15 of the rules shall be the responsibility of the operator of the device in accordance with the provisions of Part 15 of this chapter: *Provided*, that the operator of a cable system to which the device is connected shall be responsible for detecting any signal leakage where that leakage would cause interference outside the subscriber's premises and/or would cause the cable system to exceed the Part 15 signal leakage standards. In cases where signal leakage occurs, the cable operator shall be required only to discontinue service to the subscriber until the problem is corrected.

* * * * *

William J. Tricarico,
Secretary.

[FR Doc. 87-13452, Filed 6-11-87; 8:45 am]

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47 CFR Part 22

[CC Docket No. 85-388; FCC 87-178]

Amendment Rules Concerning Rural Cellular Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has modified the rules governing the filing and processing of cellular applications for Rural Service Areas (RSAs), those areas outside defined Metropolitan Statistical Areas (MSAs) and New England County Metropolitan Areas (NECMAs). Specifically the Commission modified the boundaries originally proposed by United TeleSpectrum, Inc. (United), altered the antenna height-power limitations, and the Cellular Geographic Service Area (CGSA) coverage requirements. This action is taken in response to petitions and related pleadings filed in response to *The First Report and Order*, published July 28, 1986, 51 FR 26895.

EFFECTIVE DATE: July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald Mark Goldstein, Mobile Services Division, Common Carrier Bureau; Tele: 202-632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CC Docket 85-388, Adopted May 5, 1987 and released June 8, 1987. The complete text of Commission Decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140 Washington, DC 20037.

Summary of Order on Reconsideration

1. The Federal Communications Commission has issued its reconsideration of *The First Report and Order, Amendment of the Commission's Rules For Rural Cellular Service, (Order)*, CC Docket No. 85-388, 51 FR 26895 (1986). More than 15 petitions for reconsideration and over 140 modification proposals of the Rural Service Area (RSA) Boundaries, almost all of which requested multiple modification proposals, were filed. Several parties, including Comp Comm, Inc. and Richard L. Vega & Associates, requested modifications proposals that affected most of the RSAs. Over 45 parties filed oppositions or responses to these modification proposals. Several parties filed settlements.

2. In reviewing the modification proposals the Commission examined whether the party requesting the modification provided justification to warrant modifying the RSA. Generally, the Commission rejected requests that sought to define RSAs based upon other than county boundaries, such as interstate highways or LATAs. In addition, for those RSAs that contained non-contiguous counties, the Commission split those counties into two or more distinct RSAs. If a modification was unopposed and set forth satisfactory reasons to justify the modification, the modification was generally granted. Many of those opposing modifications presented sufficient economic and demographic reasons to persuade the Commission that the public interest would not be served by granting the opposed modifications.

3. Concerning the counties that the Office of Management and Budget subsequently added to its listing of MSAs in 1983, the Commission adhered to its previously adopted conclusion that counties added to the top 90 MSAs must be applied for as though they were non-MSAs. Counties in this category were either grouped into existing RSAs or placed in newly created RSAs. The Commission issued a chart summarizing many of the modification requests, which is attached as Appendix C to the Order and further issued a list of the Final Rural Cellular Service Area Boundaries, attached as Appendix D to the Order. There are now 422 RSA Boundaries.

4. The Commission further made technical and procedural changes in the Order to facilitate its goal of expeditiously providing cellular service to rural America. The Commission deleted the 75% coverage area requirement for Cellular Geographic Service Areas. However, the Commission retained the requirement that service to each CGSA commence within 18 months after the issuance of a construction permit and that the entire system be operational within 36 months after the permit is issued. The Commission retained the provision that no *de minimis* extensions of the CGSA or 39 dBu contour will be permitted in the application stage. It stressed that applications that fail to conform with that provision will be returned as defective. In addition, the Commission permitted RSA operators to utilize the newly adopted cellular height-power standards for Effective Radiated Power (ERP) of 500 watts and Height Above Average Terrain (HAAT) of 500 feet provided that RSA cell base stations are more than 24 miles from any MSA.

5. The Commission anticipated as soon as the remaining issues in this Docket are resolved, the ownership, eligibility, and transfer and settlement requirements issues pending in a separate proceeding, it could then proceed to implement this needed service in the upcoming months through the acceptance of applications, scheduling lotteries, and licensing procedures.

6. Final Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) it is certified that the final rule will not have a significant impact on a substantial number of small entities. This action is expected to promote efficient and expedient authorization of cellular licenses in the RSAs and lower the administrative costs associated with the process of granting licenses in these RSAs.

7. Authority for reconsideration of the rule making is contained in sections 1.4(i) and (j), 301, 303 and 306 of the

Communications Act of 1934, as amended, and Section 553 of the Administrative Procedure Act.

Ordering Clause

8. That the Petitions for Reconsideration and Requests for Modification of the Rural Service Area Boundaries are granted to the extent set forth in the Order and are otherwise denied.

List of Subjects in 47 CFR Part 22

Communications Common Carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Rural areas.

William J. Tricarico, Secretary,

Federal Communications Commission.

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES

	Market No.
Alabama	
1. Franklin	307
Marion	
Winston	
Cullman	
Morgan	
Lawrence	
Blount	
2. Jackson	308
De Kalb	
Cherokee	
3. Larmar	309
Fayette	
Pickens	
Sumter	
Greene	
Choctaw	
Hale	
Marengo	
4. Bibb	310
Perry	
Dallas	
Wilcox	
Lowndes	
Chilton	
5. Cleburne	311
Talladega	
Clay	
Randolph	
Coosa	
Tallapoosa	
Chambers	
6. Washington	312
Clarke	
Monroe	
Conecuh	
Escambia	
7. Butler	313
Covington	
Crenshaw	
Pike	
Coffee	
Geneva	
8. Lee	314
Macon	
Bullock	
Barbour	
Henry	
Alaska	
1. Wade Hampston	315
Nome	
Kobuk	
North Slope	
Yokon-Koyokuk	
Fairbanks North Star	
Southeast Fairbanks	
2. Bethel	316
Dillingham	
Bristol Bay	
Kodiak Island	
Kenai Peninsula	
Matanuska-Susitna	
Valdez-Cordova	
Aleutian Island	
3. Haines	317
Juneau	
Wrangell-Petersburg	
Ketchikan-Gateway	
Sitka	
Skagway-Yakutat-Angoon	
Prince of Wales-Outer Ketchikan	
Arizona	
1. Movhave	318
2. Coconino	319
Yavapai	
3. Navajo	320
Apache	
4. Yuma	321
5. Gila	322
Pinal	
6. Graham	323
Greenlee	
Santa Cruz	
Cochise	
Arkansas	
1. Madison	324
Carroll	
Boone	
Newton	
2. Marion	325
Baxter	
Fulton	
Izard	
Stone	
Searcy	
3. Sharp	326
Randolph	
Lawrence	
Independence	
Jackson	
4. Clay	327
Greene	
Craighead	
Poinsett	
Mississippi	
5. Cross	328
St. Francis	
Lee	
Monroe	
Phillips	
Arkansas	
6. Cleburne	329
White	
Woodruff	
Prairie	
7. Pope	330
Yell	
Perry	
Conway	
Van Buren	
8. Franklin	331
Johnson	
Logan	
Scott	
9. Polk	332
Montgomery	
Pike	
Howard	
Sevier	
10. Garland	333
Hot Spring	
Clark	
Dallas	
Grant	
11. Hempstead	334
Lafayette	
Nevada	
Columbia	
12. Ouachita	335
Calhoun	
Bradley	
Union	
Cleveland	
Lincoln	
Drew	
Ashley	
Desha	
Chicot	
California	
1. Delnorte	336
Siskiyou	
Humboldt	
Trinity	
2. Modoc	337
Lassen	
Plumas	
3. Alpine	338
Amador	
Calaveras	
Tuolumne	
Mariposa	
4. Merced	339
Madera	
5. San Benito	340
San Luis Obispo	
6. Mono	341
Inyo	
7. Imperial	342
8. Tehama	343
Glenn	
Colusa	
9. Mendocino	344
Lake	
10. Serra	345
Nevada	
11. El Dorado	346
12. Kings	347
Colorado	
1. Moffat	348
Rio Blanco	
Routt	
Jackson	
Grand	
2. Logan	349
Sedgwick	
Phillips	
Morgan	
Washington	
Yuma	
3. Garfield	350
Eagle	
Summit	
Clear Creek	
Pitkin	
Gunnison	
Delta	
Mesa	
Montrose	
4. Park	351
Lake	
Chaffee	
Fremont	
Custer	
5. Elbert	352
Lincoln	
Kit Carson	
Cheyenne	
6. San Miguel	353
Ouray	
Dolores	
San Juan	
Hinsdale	
Montezuma	
La Plata	
7. Saguache	354
Mineral	
Rio Grande	
Alamosa	
Cornejos	
Archuleta	
8. Kiowa	355
Crowley	
Otero	
Bent	
Prowers	
9. Costilla	356

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Huerfano	
Las Animas	
Baca	
Connecticut	
1. Litchfield	357
2. Windham	358
Delaware	
1. Kent	359
Sussex	
Florida	
1. Monroe	360
Collier	
Hendry	
2. Glades	361
Highlands	
Okeechobee	
Indian River	
3. Hardee	362
De Soto	
Charolotte	
4. Citrus	363
Hernando	
Lake	
Sumter	
5. Putnam	364
Flagler	
6. Dixie	365
Levy	
Gilchrist	
7. Hamilton	366
Suwannee	
Columbia	
Union	
8. Jefferson	367
Madison	
Taylor	
Lafayette	
9. Calhoun	368
Gulf	
Liberty	
Franklin	
10. Walton	369
Holmes	
Jackson	
Washington	
Georgia	
1. Whitfield	370
Murray	
Gordon	
Pickens	
Gilmer	
Fannin	
Union	
Towns	
2. Dawson	371
Lumpkin	
White	
Habersham	
Hall	
Banks	
Franklin	
Stephens	
Rabun	
Barrow	
3. Chattooga	372
Floyd	
Polk	
Bartow	
4. Jasper	373
Putnam	
Morgan	
Greene	
Oglethorpe	
Taliaferro	
Wilkes	
Lincoln	
Elbert	
Hart	
5. Haralson	374
Carroll	
Heard	
Troup	
Coweta	
6. Spalding	375

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Lamar	
Upson	
Pike	
Meriwether	
Monroe	
Crawford	
Taylor	
Talbot	
Harris	
7. Hancock	376
Baldwin	
Wilkinson	
Laurens	
Washington	
Johnson	
8. Warren	377
Glascock	
Jefferson	
Emanuel	
Candlier	
Bulloch	
Screven	
Jenkins	
Burke	
Treutlen	
9. Marion	378
Schley	
Macon	
Dooly	
Crisp	
Sumter	
Webster	
Terrell	
Randolph	
Clay	
Quitman	
Stewart	
10. Bleckley	379
Pulaski	
Dodge	
Wilcox	
Telfair	
Ben Hill	
Turner	
Irwin	
Coffee	
Jeff Davis	
Wheeler	
Montgomery	
11. Toombs	380
Tattnall	
Evans	
Appling	
Bacon	
Ware	
Pierce	
Brantley	
12. Liberty	381
Long	
McIntosh	
Wayne	
Glynn	
Camden	
13. Early	382
Calhoun	
Baker	
Miller	
Decatur	
Mitchell	
Grady	
Thomas	
Seminole	
14. Worth	383
Tift	
Berrien	
Colquitt	
Cook	
Lanier	
Lowndes	
Clinch	
Echols	
14. Charlton	384
Atkinson	
Brooks	
Hawaii	
1. Kauai	385
2. Kalawao	386
Maui	
3. Hawaii	387

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Idaho	
1. Boundary	388
Bonner	
Kootenai	
Shoshone	
Benewah	
Latah	
Nez Perce	
Lewis	
Clearwater	
2. Idaho	389
Adams	
Washington	
Valley	
Payette	
Gem	
3. Lemhi	390
Custer	
Boise	
4. Elmore	391
Owyhee	
Canyon	
5. Butte	392
Blaine	
Camas	
Gooding	
Lincoln	
Twin Falls	
Jerome	
Minidoka	
Cassia	
6. Clark	393
Fremont	
Jefferson	
Madison	
Teton	
Bingham	
Bonneville	
Power	
Bannock	
Caribou	
Oneida	
Franklin	
Bear Lake	
Illinois	
1. Jo Daviess	394
Stephenson	
Carroll	
Ogle	
De Kalb	
Whiteside	
Lee	
2. Bureau	395
La Salle	
Stapk	
Putnam	
Marshall	
Livingston	
Ford	
Iroquois	
3. Mercer	396
Knock	
Warren	
Henderson	
Hancock	
Fulton	
McDonough	
Schuyler	
4. Adams	397
Brown	
Cass	
Pike	
Scott	
Morgan	
Calhoun	
Greene	
Macoupin	
5. Mason	398
Logan	
De Witt	
Piatt	
Moultrie	
6. Montgomery	399
Christian	
Shelby	
Bond	
Fayette	
Effingham	
Marion	
7. Vermilion	400

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Douglas	
Coles	
Edgar	
Cumberland	
Clark	
Jasper	
Crawford	
8. Washington	401
Jefferson	
Randolph	
Perry	
Franklin	
Jackson	
Williamson	
Union	
Johnson	
Alexander	
Pulaski	
Massac	
9. Clay	402
Richland	
Lawrence	
Wayne	
Edwards	
Wabash	
Hamilton	
White	
Saline	
Gallatin	
Pope	
Hardin	
Indiana	
1. Newton	403
La Porte	
Storke	
Pulaski	
Jasper	
Benton	
White	
2. Kosciusko	404
Noble	
Steuben	
Lagrange	
3. Huntington	405
Grant	
Blackford	
Jay	
4. Miami	406
Fulton	
Cass	
Carroll	
Clinton	
Wabash	
5. Warren	407
Fountain	
Montgomery	
Parke	
Putham	
6. Randolph	408
Henry	
Wayne	
Rush	
Fayette	
Union	
Franklin	
7. Owen	409
Greene	
Knox	
Daviess	
Martin	
Pike	
Dubois	
Perry	
Spencer	
8. Brown	410
Bartholomew	
Lawrence	
Jackson	
Orange	
Washington	
Crawford	
Harrison	
9. Decatur	411

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Jennings	
Ripley	
Ohio	
Switzerland	
Jefferson	
Scott	
Iowa	
1. Mills	412
Montgomery	
Adams	
Fremont	
Page	
Taylor	
2. Union	413
Clarke	
Lucas	
Riggold	
Decatur	
Wayne	
3. Monroe	414
Wapello	
Appanoose	
Davis	
Van Buren	
Jefferson	
4. Muscatine	415
Louisa	
Henry	
Des Moines	
Lee	
Washington	
5. Jackson	416
Jones	
Cedar	
Clinton	
6. Iowa	417
Keokuk	
Poweshiek	
Mahaska	
Jasper	
Marion	
7. Audubon	418
Guthrie	
Cass	
Adair	
Madison	
8. Monona	419
Crawford	
Harrison	
Shelby	
9. Ida	420
Sac	
Calhoun	
Carroll	
Greene	
10. Humboldt	421
Wright	
Webster	
Hamilton	
Boone	
Story	
11. Hardin	422
Grundy	
Marshall	
Tama	
Benton	
12. Winneshiek	423
Allamakee	
Fayette	
Clayton	
Buchanan	
Delaware	
13. Mitchell	424
Howard	
Floyd	
Chickasaw	
Butler	
14. Kossuth	425
Winnebago	
Worth	
Hancock	
Cerro Gordo	
Franklin	
15. Dickinson	426
Emmet	
Palo Alto	
Pocahontas	
Buena Vista	
Clay	
16. Lyon	427

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Osceola	
Sioux	
O'Brien	
Plymouth	
Cherokee	
Kansas	
1. Cheyenne	428
Rawlins	
Decatur	
Sherman	
Thomas	
Sheridan	
2. Norton	429
Phillips	
Smith	
Graham	
Rooks	
Osborne	
3. Jewell	430
Republic	
Washington	
Mitchell	
Cloud	
Clay	
Lincoln	
Ottawa	
4. Marshall	431
Nemaha	
Riley	
Pottawatomie	
Geary	
5. Brown	432
Doniphan	
Jackson	
Atchison	
Leavenworth	
6. Wallace	433
Logan	
Gove	
Greeley	
Wichita	
Scott	
Lane	
7. Trego	434
Ellis	
Russell	
Ness	
Rush	
Barton	
Pawnee	
8. Ellsworth	435
Saline	
Dickinson	
Rice	
McPherson	
Marion	
9. Morris	436
Wabaunsee	
Chase	
Lyon	
Greenwood	
10. Franklin	437
Coffey	
Anderson	
Linn	
Woodson	
Allen	
Bourbon	
Miami	
11. Hamilton	438
Kearny	
Finney	
Stanton	
Grant	
Haskell	
Morton	
Stevens	
Seward	
12. Hodgeman	439
Gray	
Ford	
Meade	
Clark	
13. Edwards	440
Stafford	
Kiowa	
Pratt	
Commanche	
Barber	
14. Reno	441

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Harvey	
Kingman	
Harper	
Sumner	
Cowley	
15. Elks	442
Wilson	
Neosho	
Crawford	
Chautauqua	
Montgomery	
Labette	
Cherokee	
Caldwell	
Lyon	
Trigg	
Kentucky	
1. Fulton	443
Hicksman	
Carlisle	
Ballard	
McCracken	
Graves	
Marshall	
Calloway	
2. Union	444
Webster	
Hopkins	
Crittenden	
Livingston	
3. Meade	445
Breckinridge	
Hancock	
Ohio	
Grayson	
McLean	
Muhlenberg	
Butler	
Edmonson	
Todd	
Logan	
Warren	
Simpson	
Allen	
4. Spencer	446
Anderson	
Hardin	
Nelson	
Washington	
Mercer	
Marion	
LaRue	
Green	
Taylor	
5. Barren	447
Monroe	
Metcalf	
Adair	
Cumberland	
Russell	
Clinton	
Wayne	
McCreary	
Hart	
6. Madison	448
Garrard	
Boyle	
Casey	
Lincoln	
Rockcastle	
Pulaski	
Laurel	
7. Trimble	449
Carroll	
Gallatin	
Henry	
Franklin	
Owen	
Grant	
Pendleton	
Harrison	
Shelby	
8. Mason	450
Lewis	
Fleming	
Bath	
Montgomery	
Rowan	
Bracken	
Robertson	
Nicholas	
Menifee	
9. Elliott	451
Lawrence	
Morgan	
Magoffin	
Johnson	
Martin	
Floyd	
Pike	
10. Powell	452
Estill	
Wolfe	
Lee	
Jackson	
Owsley	
Breathitt	
Perry	
Knot	
Letcher	
11. Clay	453
Leslie	
Whitley	
Knox	
Bell	
Harlam	
Louisiana	
1. Claiborne	454
Union	
Lincoln	
Bienville	
Jackson	
2. Morehouse	455
West Carroll	
Richland	
Madison	
Franklin	
Tensas	
East Carroll	
3. De Soto	456
Red River	
Sabine	
Natchitoches	
Vernon	
4. Caldwell	457
Winn	
La Salle	
Catahoula	
Concordia	
5. Beauregard	458
Allen	
Evangeline	
Avoyelles	
St. Landry	
Acadia	
Jefferson Davis	
Cameron	
Vermillion	
Pointe Coupee	
6. Iberville	459
Iberia	
St. Mary	
Assumption	
7. West Feliciana	460
East Feliciana	
St. Helena	
Tangipahoa	
Washington	
8. St. James	461
St. Charles	
St. John the Baptist	
9. Plawquemines	462
Maine	
1. Oxford	463
Franklin	
2. Somersent	464
Piscataquis	
Aroostook	
3. Sagodaahoo	465
Kennebec	
Waldo	
Knox	
Lincoln	
4. Washington	466
Hancock	
Maryland	
1. Garrett	467
2. Kent	468
Talbot	
Caroline	
Dorchester	
St. Mary's	
Somerset	
Wicomico	
Worchester	
Calvert	
Queen Anne's	
3. Frederick	469
Massachusetts	
1. Franklin	470
2. Barnstable	471
Dukes	
Nantucket	
Michigan	
1. Goebic	472
Ontonagon	
Houghton	
Keweenaw	
Baraga	
Iron	
Marquette	
Dickinson	
Menominee	
2. Alger	473
Delta	
Schoolcraft	
Luce	
Chippewa	
Mackinac	
3. Emmet	474
Charlevoix	
Antrim	
Grand Tranverse	
Kalkaska	
4. Cheboygan	475
Presque Isle	
Otsego	
Montmorency	
Alpena	
Crawford	
Oscoda	
Alcona	
5. Manistee	476
Wexford	
Missaukee	
Mason	
Lake	
Osceola	
Leelanau	
Benzie	
6. Roscommon	477
Ogemaw	
Iosco	
Clare	
Gladwin	
Arenac	
7. Newaygo	478
Mecosta	
Isabella	
Montcalm	
Gratiot	
8. Allegan	479
9. Cass	480
St. Joseph	
Hillsdale	
Lenawee	
Branch	
10. Tuscola	481
Sanilac	
Huron	
Minnesota	
1. Kittson	482
Roseau	
Marshall	
Pennington	
Red Lake	
2. Lake of the Woods	483

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Beltrami	
Clearwater	
Norman	
Mahnomen	
3. Koochiching	484
Itasca	
4. Lake	485
Cook	
5. Wilkin	486
Becker	
Otter Tail	
Traverse	
Grant	
Douglas	
Big Stone	
Stevens	
Pope	
Swift	
Todd	
Wadena	
6. Hubbard	487
Cass	
Crow King	
Morrison	
Aitkin	
Carlton	
Mille Lacs	
Kanabec	
Pine	
Isanti	
7. Chippewa	488
Kandiyohi	
Meeker	
Renville	
McLeod	
Sibley	
Nicollet	
8. Lac Qui Parle	489
Yellow Medicine	
Lincoln	
Lyon	
Redwood	
9. Pipestone	490
Murray	
Cottonwood	
Watonwan	
Rock	
Nobles	
Jackson	
Martin	
Brown	
10. Le Sueur	491
Rice	
Blue Earth	
Waseca	
Steele	
Faribault	
Freeborn	
11. Goodhue	492
Wabasha	
Dodge	
Winona	
Mower	
Fillmore	
Houston	
Mississippi	
1. Tunica	493
Tate	
Marshall	
Coahoma	
Quitman	
Panola	
Lafayette	
2. Benton	494
Tippah	
Alcorn	
Tishomingo	
Prentiss	
Union	
Pontotoc	
Lee	
Itawamba	
3. Bolivar	495
Sunflower	
Tallahatchie	
Leflore	
Carroll	
Holmes	
4. Yalobusha	496
Grenada	
Calhoun	
Chickasaw	
Clay	
Monroe	
5. Washington	497
Issaquena	
Warren	
Sharkey	
Humphreys	
Yazoo	
6. Montgomery	498
Webster	
Choctaw	
Oktibbeha	
Lowndes	
Attala	
Winston	
Noxubee	
7. Leake	499
Neshoba	
Kemper	
Scott	
Newton	
Lauderdale	
8. Claiborne	500
Jefferson	
Adams	
Franklin	
Wilkinson	
Amite	
Lincoln	
Pike	
9. Copiah	501
Simpson	
Lawrence	
Jefferson Davis	
Walthall	
Marion	
10. Smith	502
Jasper	
Clarke	
Covington	
Jones	
Wayne	
11. Lamar	503
Forrest	
Perry	
Greene	
George	
Pearl River	
Missouri	
1. Atchison	504
Nodaway	
Worth	
Gentry	
Holt	
Andrew	
2. Harrison	505
Mercer	
Putnam	
Grundy	
Sullivan	
3. Schuyler	506
Scotland	
Clark	
Adair	
Knox	
Lewis	
4. De Kalb	507
Daviess	
Clinton	
Caldwell	
Livingston	
Carroll	
5. Linn	508
Macon	
Shelby	
Chariton	
Randolph	
6. Marion	509
Monroe	
Ralls	
Audrain	
Pike	
7. Saline	510
Howard	
Johnson	
Pettis	
Cooper	
8. Callaway	511
Montgomery	
Lincoln	
Warren	
9. Bates	512
Henry	
Vernon	
St. Clair	
Cedar	
10. Benton	513
Hickory	
Camden	
Polk	
Dallas	
11. Moniteau	514
Morgan	
Cole	
Miller	
Osage	
Gasconade	
12. Maries	515
Crawford	
Dent	
Pulaski	
Phelps	
13. Washington	516
St. Francois	
St. Genevieve	
14. Barton	517
Dade	
Lawrence	
McDonald	
Barry	
15. Stone	518
Taney	
Douglas	
Ozark	
Howell	
16. Laclede	519
Webster	
Wright	
Texas	
17. Shannon	520
Reynolds	
Iron	
Oregon	
Carter	
Ripley	
18. Perry	521
Madison	
Wayne	
Bollinger	
Cape Girardeau	
19. Stoddard	522
Scott	
Mississippi	
New Madrid	
Dunklin	
Pemiscot	
Butler	
Montana	
1. Lincoln	523
Flathead	
Glacier	
Sanders	
Lake	
Teton	
Pondera	
2. Toole	524
Liberty	
Hill	
Blaine	
Chouteau	
3. Phillips	525
Valley	
Garfield	
4. Daniels	526
Sheridan	
Roosevelt	
McCone	
Richland	
Dawson	
Wibaux	
5. Mineral	527

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Missoula	
Powell	
Lewis & Clark	
Ravalli	
Granite	
6. Deer Lodge	528
Silver Bow	
Jefferson	
Broadwater	
Meagher	
Judith Basin	
Wheatland	
7. Fergus	529
Petroleum	
Golden Valley	
Musselshell	
Sweet Grass	
Stillwater	
8. Beaverhead	530
Madison	
Gallatin	
Park	
9. Carbon	531
Big Horn	
Treasure	
Rosebud	
10. Prarie	532
Custer	
Fallon	
Powder River	
Carter	
Nebraska	
1. Sioux	533
Dawes	
Box Butte	
Sheridan	
Scott's Bluff	
Banner	
Kimball	
Morill	
Cheyenne	
Garden	
Deuel	
2. Cherry	534
Kaya Paha	
Brown	
Rock	
Boyd	
Holt	
Garfield	
Wheeler	
3. Knox	535
Antelope	
Cedar	
Dixon	
Pierce	
Madison	
Stanton	
Wayne	
Cuming	
Thurston	
Burt	
4. Grant	536
Arthur	
Hooker	
McPherson	
Thomas	
Logan	
Blaine	
Loup	
Custer	
Valley	
Sherman	
Greeley	
Howard	
5. Boone	537
Nance	
Merrick	
Platte	
Polk	
Colfax	
Butler	
Dodge	
Washington	
Saunders	
6. Keith	538

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Perkins	
Lincoln	
Dawson	
Buffalo	
7. Hall	539
Hamilton	
York	
Seward	
8. Chase	540
Dundy	
Hayes	
Hitchcock	
Frontier	
Red Willow	
Gosper	
Furnas	
Phelps	
Harlen	
Kearney	
Franklin	
9. Adams	541
Webster	
Clay	
Nuckolls	
Fillmore	
Thayer	
Saline	
Jefferson	
10. Cass	542
Otoe	
Gage	
Johnson	
Nemaha	
Pawnee	
Richardson	
Nevada	
1. Humboldt	543
Pershing	
Churchill	
2. Lander	544
Eureka	
Elko	
3. Storey	545
Douglas	
Lyon	
Carson City	
4. Mineral	546
Esmeralda	
Nye	
5. White Pine	547
Lincoln	
New Hampshire	
1. Coos	548
Grafton	
Sullivan	
Chesire	
2. Carroll	549
Balknap	
Merrimack	
New Jersey	
1. Hunterdon	550
2. Ocean	551
3. Sussex	552
New Mexico	
1. San Juan	553
McKinley	
Cibola	
Rio Arriba	
Taos	
2. Cofax	554
Union	
Mora	
Harding	
3. Catron	555
Valencia	
Socorro	
Sierra	
4. Santa Fe	556
San Miguel	
Torrance	
Guadalupe	
De Baca	
Quay	
Curry	
Roosevelt	
Los Alamos	
5. Grant	557

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Hidalgo	
Luna	
6. Lincoln	558
Chaves	
Otero	
Eddy	
Lea	
New York	
1. Jefferson	559
St. Lawrence	
Lewis	
2. Franklin	560
Clinton	
Essex	
Hamilton	
Fulton	
3. Chautauqua	561
Cattaraugus	
Genessee	
Wyoming	
Allegany	
Steuben	
4. Yates	562
Senaca	
Schuyler	
Cayuga	
Tompkins	
Cortland	
Chenango	
5. Otsego	563
Delaware	
Schoharie	
Sullivan	
Ulster	
North Carolina	
1. Cherokee	564
Clay	
Graham	
Macon	
Swain	
Haywood	
Jackson	
Transylvania	
2. Yancey	565
Mitchell	
Avery	
Watauga	
Caldwell	
3. Ashe	566
Wilkes	
Alleghany	
Surry	
4. Henderson	567
Polk	
Rutherford	
Cleveland	
McDowell	
Lincoln	
5. Anson	568
Montgomery	
Richmond	
Scotland	
6. Chatham	569
Moore	
Lee	
7. Rockingham	570
Caswell	
Person	
Granville	
Vance	
Warren	
Franklin	
8. Northampton	571
Halifax	
Nash	
Wilson	
Edgecombe	
9. Camden	572
Pasquotank	
Perquimans	
Chowan	
Gates	
Hertford	
Bertie	
10. Harnett	573
Johnston	
Wayne	
11. Hoke	574

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Robeson	
Bladen	
Columbus	
12. Sampson	575
Duplin	
Pender	
13. Greene	576
Lenoir	
Jones	
Craven	
Carteret	
Pamlico	
14. Pitt	577
Martin	
Washington	
Tyrrell	
Dare	
Beaufort	
Hyde	
15. Cabarrus	578
Rowan	
Iredell	
Davie	
Stanley	
North Dakota	
1. Divide	579
Williams	
Mountrail	
Burke	
Renville	
McLean	
Ward	
2. Bottineau	580
Rolette	
McHenry	
Pierce	
Benson	
Towner	
Cavalier	
Ramsey	
3. Barnes	581
La Moure	
Dickey	
Pembina	
Walsh	
Nelson	
Griggs	
Steele	
Traill	
Ransom	
Sargent	
Richland	
4. McKenzie	582
Dunn	
Billings	
Golden Valley	
Stark	
Slope	
Bowman	
Hettinger	
Adams	
Grant	
Sioux	
Mercer	
Oliver	
5. Kidder	583
Stutsman	
Emmons	
Eddy	
Foster	
Sheridan	
Wells	
Logan	
McIntosh	
Ohio	
1. Williams	584
Defiance	
Henry	
Pauling	
2. Sandusky	585
Erie	
Seneca	
Huron	
3. Ashtabula	586
4. Mercer	587

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Darke	
Shelby	
Logan	
Union	
5. Hancock	588
Hardin	
Wyandot	
Crawford	
Marion	
6. Morrow	589
Ashland	
Licking	
Knox	
Wayne	
Holmes	
Coshocton	
7. Tuscarawas	590
Harrison	
Muskingum	
Guernsey	
Noble	
Monroe	
8. Clinton	591
Fayette	
Highland	
Brown	
Adams	
9. Ross	592
Pike	
Jackson	
Scioto	
Gallia	
10. Perry	593
Morgan	
Hocking	
Athens	
Vinton	
Meigs	
11. Columbiana	594
Oklahoma	
1. Cimarron	585
Texas	
Beaver	
2. Harper	596
Ellis	
Woodward	
Woods	
Major	
Alfalfa	
3. Grant	597
Kay	
Noble	
Logan	
Pawnee	
Payne	
Lincoln	
4. Nowata	598
Craig	
Ottawa	
Washington	
Delaware	
Cherokee	
Adair	
5. Roger Mills	599
Dewey	
Custer	
Blaine	
Kingfisher	
6. Seminole	600
Okfuskee	
Okmulgee	
Hughes	
McIntosh	
Muskogee	
Pittsburgh	
7. Beckham	601
Washita	
Harmon	
Greer	
Kiowa	
Caddo	
Grady	
8. Jackson Tillman	602
Cotton	
Stephens	
Jefferson	
9. Garvin	603

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Murray	
Carter	
Love	
Pontotoc	
Johnston	
Marshall	
Coal	
Atoka	
Bryan	
10. Haskell	604
Latimer	
Pushmataha	
Chockaw	
McCurtian	
Oregon	
1. Clatsop	605
Columbia	
Tillamook	
Yamhill	
2. Hood River	606
Wasco	
Sherman	
Gilliam	
Morrow	
Jefferson	
Wheeler	
3. Umatilla	607
Union	
Wallowa	
Grant	
Baker	
Malheur	
4. Lincoln	608
Benton	
Linn	
5. Coos	609
Douglas	
Curry	
Josephine	
6. Crook	610
Deschutes	
Harney	
Klamath	
Lake	
Pennsylvania	
1. Crawford	611
Warren	
Venango	
Forest	
2. McKean	612
Elk	
Cameron	
3. Potter	613
Tioga	
Clinton	
4. Bradford	614
Sullivan	
Wyoming	
5. Wayne	615
Pike	
6. Lawrence	616
Butler	
Clarion	
Armstrong	
7. Jefferson	617
Indiana	
Clearfield	
8. Union	618
Columbia	
Snyder	
Montour	
Northumberland	
Schuylkill	
9. Greene	619
Fayette	
10. Bedford	620
Fulton	
Franklin	
11. Huntingdon	621
Mifflin	
Juniata	
12. Lebanon	622
Rhode Island	
1. Newport	623
South Carolina	
1. Oconee	624
Abbeville	
2. Laurens	625

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Greenwood	
McCormick	
Edgefield	
Saluda	
Newberry	
3. Cherokee	626
Union	
Chester	
Fairfield	
Lancaster	
York	
4. Chesterfield	627
Kershaw	
Lee	
Sumter	
Darlington	
Marlboro	
5. Dillon	628
Marion	
Horry	
6. Clarendon	629
Williamsburg	
Georgetown	
7. Calhoun	630
Orangeburg	
Barnwell	
Bamberg	
Allendale	
8. Hampton	631
Colleton	
Jasper	
Beaufort	
South Dakota	
1. Harding	632
Perkins	
Butte	
Lawrence	
2. Corson	633
Ziebach	
Dewey	
Campbell	
Walworth	
Potter	
3. McPherson	634
Edmunds	
Brown	
Faulk	
Spink	
4. Marshall	635
Roberts	
Day	
Clark	
Grant	
Codington	
Hamlin	
Deuel	
5. Custer	636
Fall River	
Shannon	
6. Haakon	637
Stanley	
Jackson	
Bennett	
Jones	
Lyman	
Mellette	
Todd	
Tripp	
Gregory	
7. Sully	638
Hughes	
Hyde	
Hand	
Buffalo	
Jerauld	
Brule	
Aurora	
Davison	
Douglas	
Charles Mix	
8. Kingsbury	639
Brookings	
Beadle	
Sanborn	
Miner	
Lake	
Moody	
9. Hanson	640
McCook	
Hutchinson	
Turner	
Lincoln	
Bon Homme	
Yankton	
Clay	
Union	
Tennessee	
1. Lake	641
Obion	
Dyer	
Lauderdale	
Crockett	
Gibson	
Weakley	
Henry	
Carroll	
Benton	
Stewart	
Houston	
Humphreys	
2. Cannon	642
De Kalb	
Coffee	
Warren	
White	
Van Buren	
Grundy	
Smith	
3. Macon	643
Trousdale	
Roane	
Cumberland	
Clay	
Jackson	
Putnam	
Pickett	
Overton	
Fentress	
Scott	
Morgan	
Campbell	
Claiborne	
Hancock	
4. Hamblen	644
Greene	
Cocke	
Grainger	
Jefferson	
Sevier	
5. Fayette	645
Haywood	
Madison	
Hardeman	
Chester	
Henderson	
McNairy	
Hardin	
Decatur	
Perry	
Wayne	
Hickman	
Lewis	
Lawrence	
6. Giles	646
Marshall	
Lincoln	
Moore	
Bedford	
Franklin	
7. Bledsoe	647
Rhea	
Meigs	
Bradley	
McMinn	
Polk	
Monroe	
Loudon	
8. Johnson	648
9. Maury	649
Texas	
1. Dallam	650
Hartley	
Oldham	
Deaf Smith	
Sherman	
Moore	
2. Hansford	651
Ochiltree	
Lipscomb	
Hutchinson	
Roberts	
Hemphill	
Carson	
Gray	
Wheeler	
Armstrong	
Donley	
Collingsworth	
3. Parmer	652
Castro	
Swisher	
Bailey	
Lamb	
Hale	
Cochran	
Hockley	
Yoakum	
Terry	
Lynn	
4. Briscoe	653
Hall	
Childress	
Floyd	
Motley	
Cottle	
Crosby	
Dickens	
King	
Garza	
Kent	
Stonewall	
5. Hardeman	654
Foard	
Knox	
Haskell	
Shackelford	
Throckmorton	
Baylor	
Wilbarger	
Archer	
Young	
Stephens	
6. Jack	655
Palo Pinto	
Montague	
Cooke	
7. Fannin	656
Hunt	
Rains	
Lamar	
Delta	
Hopkins	
Wood	
Red River	
Franklin	
Titus	
Camp	
Upshur	
Morris	
Cass	
Marion	
8. Gaines	657
Andrews	
Dawson	
Martin	
Borden	
Howard	
Glasscock	
Scurry	
Mitchell	
Sterling	
Fisher	
Nolan	
Coke	
9. Runnels	658
Coleman	
Eastland	
Brown	
Mills	
Comanche	
Erath	
Somervell	
Hamilton	
Bosque	
Hill	
10. Navarro	659

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Van Zandt	
Henderson	
Limestone	
Falls	
Milam	
Robertson	
Leon	
Anderson	
Freestone	
11. Cherokee	660
Rusk	
Panola	
Nacogdoches	
Angelina	
San Augustine	
Shelby	
Sabine	
12. Hudspeth	661
Culberson	
Jeff Davis	
Presidic	
Brewster	
13. Reeves	662
Pecos	
Terrell	
14. Loving	663
Ward	
Crane	
Upton	
Reagan	
Irion	
Crockett	
Schleicher	
Sutton	
Winkler	
15. Concho	664
Menard	
Llano	
Kimble	
McCulloch	
Mason	
Kerr	
Gillespie	
Kendall	
Blanco	
Burnet	
Lampasas	
San Saba	
16. Burleson	665
Lee	
Bastrop	
Caldwell	
Gonzales	
Lavaca	
Jackson	
Matagorda	
Wharton	
Colorado	
Fayette	
Austin	
Washington	
17. Newton	666
Jasper	
Tyler	
Polk	
San Jacinto	
Walker	
Grimes	
Madison	
Houston	
Trinity	
18. Edwards	667
Real	
Bandera	
Kinney	
Uvalde	
Medina	
Maverick	
Zavala	
Frio	
Dimmit	
LaSalle	
Val Verde	
19. Atascosa	668
McMullen	
Duval	
Live Oak	
Jim Wells	
Jim Hogg	
Zapata	
Starr	
Brooks	
Kennedy	
Kleberg	
Willacy	
20. Wilson	669
Karnes	
Bee	
Goliad	
DeWitt	
Refugio	
Calhoun	
Arkansas	
21. Chambers	670
Utah	
1. Box Elder	671
Cache	
Rich	
2. Morgan	672
Summit	
Wasatch	
3. Juab	673
Millard	
Sanpete	
Sevier	
4. Beaver	674
Iron	
Washington	
5. Carbon	675
Daggett	
Uintah	
Emery	
Grand	
Duchesne	
6. Piute	676
Wayne	
Garfied	
Kane	
San Juan	
Vermont	
1. Franklin	677
Orleans	
Essex	
LaMoille	
Washington	
Caledonia	
Orange	
2. Addison	678
Rutland	
Windsor	
Bennington	
Windham	
Virginia	
1. Lee	679
Wise	
Dickenson	
Buchanan	
Russell	
2. Tazewell	680
Galax City	
Smyth	
Bland	
Wythe	
Grayson	
3. Giles	681
Pulaski	
Montgomery	
Carroll	
Floyd	
Patrick	
4. Bedford	682
Bedford City	
Franklin	
Henry	
5. Bath	683
Rockbridge	
Alleghany	
Buena Vista City	
Clifton Forge City	
Covington City	
Lexington City	
6. Highland	684
Augusta	
Rockingham	
Nelson	
Harrisonburg City	
Stauton City	
Waynesboro City	
7. Buckingham	685
Charlotte	
Halifax	
Prince Edward	
Cumberland	
8. Amelia	686
Nottoway	
Mecklenburg	
Brunswick	
Lunenburg	
9. Greensville	687
Sussex	
Southampton	
Surry	
Isle of Wight	
Emporia City	
Franklin City	
10. Frederick	688
Clarke	
Shenandoah	
Page	
Rappahannock	
Fauquier	
Warren	
Winchester City	
11. Madison	689
Fredericksburg City	
Culpeper	
Orange	
Spotsylvania	
Louisa	
Stafford	
12. Caroline	690
King George	
King William	
King & Queen	
Essex	
Middlesex	
Richmond	
Westmoreland	
Northumberland	
Lancaster	
Mathews	
Northampton	
Accomack	
Washington	
1. Clallam	691
Jefferson Island	
San Juan	
Skagit	
2. Okanogan	692
Chelan	
Douglas	
3. Ferry	693
Stevens	
Pend Oreille	
4. Grays Harbor	694
Mason	
5. Kittitas	695
Grant	
Lincoln	
Adams	
6. Pacific	696
Wahkiahum	
Lewis	
Cowlitz	
7. Skamania	697
Klickitat	
8. Whitman	698
Walla Walla	
Columbia	
Garfield	
Asotin	
West Virginia	
1. Mason	699
Jackson	
Roane	
Calhoun	
2. Wetzel	700

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Tyler	
Pleasants	
Ritchie	
Gilmer	
Lewis	
Doddridge	
3. Monongalia	701
Marion	
Harrison	
Taylor	
Barbour	
Preston	
4. Grant	702
Pendleton	
Hardy	
Hampshire	
Morgan	
Berkeley	
Jefferson	
5. Tucker	703
Randolph	
Upshur	
Webster	
Braxton	
Clay	
Nicholas	
Pochahontas	
6. Lincoln	704
Mingo	
Logan	
Boone	
McDowell	
Wyoming	
7. Raleigh	705
Fayette	
Mercer	
Summers	
Monroe	
Greenbrier	
Wisconsin	
1. Burnett	706
Washburn	
Polk	
Barron	
2. Bayfield	707
Ashland	
Iron	
Sawyer	
Rusk	
Price	
3. Vilas	708
Oneida	
Florence	
Lincoln	
Langlade	
Forest	
Taylor	
4. Marinette	709
Oconto	
Menominee	
Shawano	
Door	
Kewaunee	
Manitowoc	
5. Pierce	710
Dunn	
Pepin	
Buffalo	
6. Trempealeau	711
Clark	
Jackson	
Monroe	
7. Wood	712
Portage	
Waupaca	
Juneau	
Adams	
Marquette	
Green Lake	
Waushara	
8. Vernon	713
Crawford	
Richland	
Grant	
Sauk	
Iowa	
Lafayette	
Green	
9. Columbia	714

APPENDIX D.—RURAL SERVICE AREA BOUNDARIES—Continued

	Market No.
Dodge	
Jefferson	
Walworth	
Fond Du Lac	
Wyoming	
1. Park	715
Hot Springs	
Big Horn	
Washakie	
2. Sheridan	716
Johnson	
Campbell	
Crook	
Weston	
3. Lincoln	717
Teton	
Carbon	
Uinta	
Sublette	
Fremont	
Sweetwater	
4. Niobrara	718
Albany	
Platte	
Goshen	
Laramie	
5. Converse	719
Puerto Rico	
1. Rincon Municipio	720
2. Adjuntas Municipio	721
Guanica Municipio	
Guayanilla Municipio	
Lajas Municipio	
Lares Municipio	
Las Marias Municipio	
Maricao Municipio	
Penuelas Municipio	
Sabana Grande Municipio	
San Sebastian Municipio	
Yauco Municipio	
3. Ciales Municipio	722
Jayuya Municipio	
Morovis Municipio	
Orocovia Municipio	
Utuado Municipio	
4. Aibonito Municipio	723
Arroyo Municipio	
Barranquitas Municipio	
Coamo Municipio	
Comerio Municipio	
Guayama Municipio	
Maunabo Municipio	
Patillas Municipio	
Salinas Municipio	
Santa Isabel Municipio	
Yabucoa Municipio	
5. Ceiba Municipio	724
Naguabo Municipio	
6. Vieques Municipio	725
7. Culebra Municipio	726
U.S. Virgin Islands	
1. Island of St. Thomas	727
Island of St. John and environs	
2. Island of St. Croix and environs.	728
Guam	
1. Island of Guam and environs.	729
All Other U.S. Possessions or Territories.	
1. All other U.S. Possessions or Territories.	Numbers to be assigned at later date

Appendix E—RSA Blocks

	Number of RSA's
Block 1:	
Alabama	8
Florida	10
Georgia	14
Mississippi	11
North Carolina	15
South Carolina	8
Tennessee	9
Puerto Rico	7
U.S. Virgin Islands	2
Guam	1
All Other U.S. Territories and Possessions	
Total	85
Block 2:	
Alaska	3
Arizona	6
California	12
Colorado	9
Hawaii	3
Idaho	6
Montana	10
Nevada	5
New Mexico	6
Oregon	6
Utah	6
Washington	8
Wyoming	5
Total	85
Block 3:	
Arkansas	12
Kansas	15
Louisiana	9
Missouri	19
Oklahoma	10
Texas	21
Total	86
Block 4:	
Connecticut	2
Delaware	1
Kentucky	11
Maine	4
Maryland	3
Massachusetts	2
Michigan	10
New Hampshire	2
New Jersey	3
New York	5
Ohio	11
Pennsylvania	12
Rhode Island	1
Vermont	2
Virginia	12
West Virginia	7
Total	88
Block 5:	
Illinois	9
Indiana	9
Iowa	16
Minnesota	11
Nebraska	10
North Dakota	5
South Dakota	9
Wisconsin	9
Total	78

Note.—Order of Blocks Scheduled for Lottery: 1. Block 2; 2. Block 5; 3. Block 3; 4. Block 1; 5. Block 4.

Rules

47 CFR Part 22 is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.903 is amended by revising paragraph (a) to read as follows:

§ 22.903 Cellular System Service Areas.

(a) The Cellular Geographic Service Area (CGSA) of the cellular system shall be defined by the applicant as the area intended to be served. No CGSA, which includes areas within a Metropolitan Statistical Area (MSA), or in New England, a New England County Metropolitan Area (NECMA), as modified in paragraph (e), of this section, may extend beyond the boundaries of the MSA or NECMA, except where any such extensions are *de minimis* and do not include areas within another central MSA or NECMA. At the time of initial application filing, no CGSA or 39 dBu contour may extend beyond the boundaries of the Rural Service Area (RSA). RSA applications that have *de minimis* extensions will be returned as defective. For MSAs and NECMAs below the top 90, the boundaries of the CGSA must include at least 75% of either the land area or population of the MSA or NECMA. This 75% coverage requirement is not applicable to RSAs. The CGSA must be drawn on one or more U.S. Geological Survey map(s) with a scale of 1:250,000. For RSAs the map need only depict the particular CGSA within the RSA, and must clearly depict on the face of the map the longitude, latitude and scale pursuant to § 22.2. Within the CGSA the applicant must depict each base station site and its respective 39 dBu contour as determined by the methods described in paragraph (c) of this section. An applicant must state that the combined 39 dBu contours of all base stations will cover at least 75% of the total CGSA.

* * * * *

3. Section 22.904 is amended by revising paragraph (c) to read as follows:

§ 22.904 Power limitations.

* * * * *

(c) Stations serving Rural Service Areas will be required to operate at the effective radiated power listed in paragraph (a) of this section, in the event the base station is located less than 24 miles from an adjacent MSA or NECMA. If the base station is located more than 24 miles from an adjacent MSA or NECMA, the station may operate at the effective radiated power listed in paragraph (b) of this section. If interference is alleged to cellular systems operating in any MSAs or NECMAs, the Rural Service Area stations will be required to reduce power immediately to the power limitations specified in §§ 22.904(a) and 22.905(a), until the Commission authorizes operation at an increased power.

* * * * *

4. Section 22.905 is amended by revising paragraph (b) to read as follows:

§ 22.905 Antenna height-power for base stations.

* * * * *

(b) For RSA facilities located 24 miles or more from an MSA or NECMA.

Antenna height (AAT) (feet)	Effective radiated power (ERP) (watts)
500	500
550	397
600	323
700	223
800	166
900	126
1,000	98
1,250	57
1,500	37
2,000	20
2,500	13
3,000	10
3,500	9
4,000	8
5,000	7

For AATs between the above listed values, linear interpolation should be used.

* * * * *

5. Section 22.913 is amended by revising paragraph (a)(10) to read as follows:

§ 22.913 Content and form of applications.

(a) * * *

(10) An exhibit setting forth the information required by § 22.13(a)(1). In addition, all applicants other than publicly traded corporations must disclose parties with any ownership interest in another cellular application for the same market. In addition, for Rural Service Areas, an exhibit indicating the state and counties included in the applicant's CGSA.

* * * * *

[FR Doc. 87-13424 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-185; RM-5189, RM-5514]

Radio Broadcasting Services; Clearfield, St. Marys and Boalsburg, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230B1 for Channel 228A at Clearfield Pa., as the community's first local wide area coverage FM service, and modifies the license of Station WQYX(FM) to specify the higher powered channel, at the request of Clearfield Broadcasters, Inc. The counterproposal of Elk-Cameron Broadcasting Co. to substitute Channel 230B1for Channel 232A at St. Marys, Pa. and modify its license for Station WKBI-FM to specify the higher powered channel, is denied since the allocation would serve fewer persons. The late-filed request of Mrs. Davies Bahr for the allocation of a first local FM Class A allotment at Boalsburg, Pa. will be the subject of a separrate Notice of Proposed Rule Making. Channel 230B1 at Clearfield requires a site restriction of 3.5 kilometers south to avoid a short-spacing to Station WKBI-FM, St. Marys, Pennsylvania. Canadian concurrence has been received since Clearfield is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 20, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-185, adopted May 7, 1987, and released June 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Pennsylvania is amended by deleting Channel 228A and adding Channel 230B1 at Clearfield.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13426 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-418; RM-5494]

Radio Broadcasting Services; Bedford, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 298A to Bedford, Pennsylvania, as the community's second local FM service, at the request of Cessna Communications, Inc. Channel 298A can be allocated to Bedford in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence in the allotment has been received. With this action, this proceeding is terminated.

DATES: Effective Date: July 20, 1987. The window period for filing applications for open on July 21, 1987, and close on August 19, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-418, adopted May 5, 1987, and released June 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Bedford, Pennsylvania, is amended by adding Channel 298A.

Mark N. Lipp,

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

[FR Doc. 87-13428 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-133; RM-5215]

Television Broadcasting Services; Crystal River, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 39 to Crystal River, Florida, as a first television allotment at the request of William F. Parrish. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 20, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-133, adopted April 24, 1987, and released June 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§73.606(b) [Amended]

2. In §73.606(b), the Table of Allotments is amended, in the entry for Crystal River, Florida, by adding UHF Channel 39-.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-13427 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 310

Bridge Toll Procedural Rules; Rescission of Regulation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of regulation.

SUMMARY: This document rescinds the FHWA regulation on the bridge toll procedural rules because the provisions are obsolete.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Edward J. Mullaney, Office of the Chief Counsel, (202) 366-1356, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The provisions contained in 49 CFR Part 310 were issued to govern procedures in proceedings before the Federal Highway Administrator authorized by section 4 of the Bridge Act of 1906, as amended (33 U.S.C. 494), section 503 of the General Bridge Act of 1946, as amended (33 U.S.C. 526), and section 6 of the International Bridge Act of 1972 (33 U.S.C. 535(d)). These statutes require that tolls charged for transit over certain bridges must be reasonable and just. Authority was conferred in the Federal Highway Administrator to determine whether such tolls were reasonable and just and to prescribe the reasonable rates of toll to be charged. In proceedings under this part the Administrator determined: (a) Whether there were sufficient grounds to initiate formal adjudication concerning the reasonableness and justness of a toll schedule or amortization period; (b) whether a rate or rates of toll or amortization period were reasonable and just; and (c) the reasonable rate or rates of toll or amortization period to be prescribed in a case in which the existing rate or rates or amortization period were found to be unreasonable, unjust, or both.

On April 2, 1987, Congress enacted the Federal-Aid Highway Act of 1987 (the Act). (Pub. L. 100-17, 101 Stat. 132). Section 135 of the Act repealed the legislation providing for Federal regulation and review of toll increases on certain toll bridges. Toll increases on these deregulated facilities must be just and reasonable but will not be subject to review by the Department of Transportation. For this reason, Part 310

is no longer operative, and is, therefore, rescinded.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. No economic impacts are anticipated as a result of this action. Accordingly, a full regulatory evaluation is not required.

The FHWA finds good cause to rescind the regulation contained in 49 CFR Part 310 without a notice and opportunity for comment and without 30 day delay in effective date required under the Administrative Procedure Act since this rulemaking action is mandated by statute. Therefore, public comment is not necessary. For the same reason, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because such action would not result in the receipt of useful information.

List of Subjects in 49 CFR Part 310

Administration practice and procedure, Bridges, Highways and roads.

Authority: Sec. 135 of Pub. L. 100–17, 101 Stat. 132; 23 U.S.C. 315; 49 CFR 1.48.

PART 310—BRIDGE TOLL PROCEDURAL RULES—[REMOVED]

In consideration of the foregoing, the FHWA hereby removes Part 310, Bridge Toll Procedural Rules, from Title 49, Code of Federal Regulations.

Issued on: June 5, 1987.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87–13436 Filed 6–11–87; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 52, No. 113
Friday, June 12, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Expanded Enrollment Opportunity Under the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its Federal Employees Health Benefits (FEHB) Program regulations to expand the enrollment opportunity that allows Federal employees to enroll or change enrollment when a spouse loses non-Federal health insurance coverage under certain conditions. This revision would (1) enable divorced Federal employees to provide FEHB coverage for their children if the children lose non-Federal health insurance under the spouse's plan; (2) permit Federal employees to enroll or change to a family enrollment upon the involuntary loss of health insurance coverage by the non-federally employed individual; and (3) permit annuitants to provide FEHB coverage for family members who lose non-Federal coverage.

DATE: Comments must be received on or before August 11, 1987.

ADDRESSES: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632-4634.

SUPPLEMENTARY INFORMATION: In January of 1984, OPM issued final FEHB regulations to allow a Federal employee to enroll or change to a self and family enrollment if a non-federally employed spouse lost health insurance coverage because of a layoff from his or her employment. Since publication of these regulations, we have received many comments and questions from Federal agencies, employees, annuitants, and Congressional offices. We have found that while the regulations have helped to ease the effects of private sector layoffs on some Federal employees and their eligible family members, there are several groups of individuals that the regulations did not help. These include divorced Federal employees whose children lose health insurance coverage under a former spouse's non-Federal plan, Federal employees whose spouses did not meet the "layoff" requirement, and annuitants. In an effort to provide relief for these individuals, we are proposing to revise the regulations in the three areas addressed below.

I. Enrollment/Change Opportunity for a Federal Employee Whose Former Spouse Loses Non-Federal Coverage

Under current regulations, a Federal employee may enroll or change to a self and family enrollment if his or her *spouse* loses non-Federal health insurance coverage. If the Federal employee and spouse are divorced, the employee may maintain a self-only enrollment or be covered under a current spouse's plan while children of the employee and former spouse are covered under the former spouse's non-Federal plan. If the *former spouse* loses coverage, the Federal employee may not enroll or change enrollment because the individual who lost coverage is no longer the employee's spouse. Our proposed revision would permit the Federal employee to enroll or change to a self and family enrollment to cover his or her children, provided these children were covered by the former spouse's non-Federal plan and the former spouse lost this coverage involuntarily. This would ensure that the Federal employee's children have continuous health insurance coverage.

II. Change of the Qualifying Event From the Non-Federal Employee's Layoff to the Involuntary Loss of Health Insurance Coverage

We have found that there is considerable confusion about the definition of the word "layoff." We have also learned of situations in which the non-Federal employee loses health insurance coverage but remains employed, and thus would not meet the regulation's "layoff" requirement. We therefore propose to revise the regulation to eliminate this requirement and instead require that the non-Federal employee lose health insurance coverage *involuntarily*. For purposes of this regulation, an involuntary loss of coverage is one that is not initiated by, or the direct result of an action by, the non-Federal employee. For example, if the non-Federal employee cancels his or her health insurance or voluntarily resigns from his or her employment (and thereby loses coverage), the loss of health insurance coverage would not be considered involuntarily.

The employing office would administer our proposed revision in the same way it has been administering the current regulation, and would continue to require documentation from the non-Federal employer that the individual's group health insurance was involuntarily terminated. An example of acceptable documentation would be a letter from the employer confirming that the individual did not voluntarily cancel his or her health insurance. If the employing office determines that the loss of coverage by the non-federally employed individual is involuntary, the Federal employee must register to enroll or change within the timeframes specified in the regulation. If the non-Federal employee is eligible for and elects to temporarily continue the employer-provided group insurance (as provided by the Consolidated Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-272), the "loss of coverage" (as stated in the regulation) would occur whenever the temporary continuation of coverage ends. The Federal employee would then have 31 days from that date to enroll or change enrollment. If the employee requests an opportunity to enroll or change after expiration of the specified timeframe, the employing office will determine if he or she is eligible for belated registration under the provisions of 890.301(b).

III. Extension of Enrollment Change Opportunity to Annuitants

The current regulation does not permit an annuitant to change from self only to a self and family enrollment if a spouse loses non-Federal health insurance coverage. Thus, annuitants who want to ensure continuous health benefits coverage for family members must maintain a self and family enrollment even though non-federally employed

spouse may currently have health insurance through his or her employment. Our proposed revision would give annuitants who have a self only enrollment the same opportunity as employees to change to self and family is a spouse or former spouse loses non-Federal health insurance coverage involuntarily.

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 these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Fedeal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95-454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C. 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98-615, 98 Stat. 3195, and Title II of Pub. L. 99-251, 100 Stat. 20.

2. In § 890.301, paragraph (y) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(y) *Loss of coverage under spouse's non-Federal plan.* (1) An employee whose spouse loses his or her non-Federal health insurance coverage involuntarily may register to enroll within 31 days before and ending 31 days after the spouse's loss of coverage. An employee whose children lose coverage under a former spouse's non-Federal plan because the former spouse loses health insurance coverage involuntarily, may register to enroll within 31 days before and ending 31 days after the former spouse's loss of coverage.

(2) An employee or annuitant whose spouse loses his or her non-Federal health insurance coverage involuntarily may charge enrollment from self only to self and family within the period beginning 31 days before and ending 31 days after the spouse's loss of coverage. An employee or annuitant whose children lose coverage under a former spouse's non-Federal plan because the former spouse loses health insurance coverage involuntarily, may change enrollment from self only to self and family within the period beginning 31 days before and ending 31 days after the former spouse's loss of coverage.

* * * * *

[FR Doc. 87-13406, Filed 6-11-87; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Docket No. 3300S]

General Crop Insurance Regulations—Hybrid Sorghum Seed, Oat, Rye, Almond, Wheat and Barley Endorsements; Wheat and Barley Winter Coverage Options; Late Planting Agreement Option; and Prevented Planting Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to issue a new Part 401 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), effective for the 1988 and succeeding crop years, to contain one set of crop insurance regulations and a master policy of insurance applicable to all such regulations now contained in over 40 individual policies to cover insurance on that many different crops.

The intended effect of this proposed rule is to provide a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, that will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

It is also proposed to add ten new sections to be known as 401.101 (Wheat Endorsement), 401.102 (Wheat Winter Coverage Option), 401.103 (Barley Endorsement), 401.104 (Barley Winter Coverage Option), 401.105 (Oat Endorsement), 401.106 (Rye Endorsement), 401.107 (Late Planting Agreement Option), 401.108 (Prevented Planting Endorsement), 401.109 (Hybrid Sorghum Seed Endorsement), and 401.110 (Almond Endorsement), effective for the 1988 and succeeding crop years, containing the provisions for insuring hybrid sorghum seed, wheat, barley, oats, almonds, and rye, and the provisions for Late Planting Agreement and Prevented Planting. FCIC will propose to amend the title of 7 CFR Part 400, Subpart A; 7 CFR Parts 418, 419, 427, 429, 439, and 442, so that they are effective only through the 1987 crop year by separate document. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 13, 1987, to be sure of consideration.

DATES: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

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

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

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

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, proposes to publish in 7 CFR Part 401, one set of regulations and one master policy which will contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When and endorsement is published in a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be revoked and later removed and reserved.

Simultaneously with the proposal herein to issue a new 7 CFR Part 401, General Crop Insurance Regulations, FCIC also proposes to issue ten sections to be known as 401.101, 102, 103, 104, 105, 106, 107, 108, 109, and 110 (Wheat Endorsement; Wheat Winter Coverage Option; Barley Endorsement; Barley Winter Coverage Option; Oat Endorsement; Rye Endorsement; Late Planting Agreement Option; Prevented Planting Endorsement; Hybrid Sorghum Seed Endorsement; and Almond Endorsement; respectively), effective for the 1988 and succeeding crop year, containing the provisions for insuring hybrid sorghum seed, wheat, barley, oats, almond, and rye, and applicable options, and provisions for late planting and prevented planting insurance.

Upon publication of 7 CFR Part 401 and sections 401.101, 102, 103, 104, 105, 106, 107, 108, 109, and 110 as a final rule, the provisions for insuring wheat, barley, oats, rye, almonds, and winter coverage options for wheat and barley, and the provisions for late planting and prevented planting insurance contained therein will supersede those provisions contained in 7 CFR Parts 418, 419, 427, 429, 439, and 442, (the Wheat, Barley, Oat, Rye, Almond, and Prevented Planting Insurance regulations, respectively) and 7 CFR Part 400, Subpart A (the Late Planting Agreement Option), effective with the beginning of the 1988 crop year.

The provisions contained in the Prevented Planting Endorsement (7 CFR Part 442) apply to several crops not included in section 401.108 herein, therefore, the provisions of 7 CFR Part 442 will not be terminated until all crops covered by those provisions are transferred as endorsements to 7 CFR Part 401.

The provisions for insuring wheat and barley under the winter coverage option are new for the 1988 crop year and are being offered for the first time as adjuncts to the wheat and barley crop insurance endorsements.

The provisions contained in the proposed § 401.109, Hybrid Sorghum Seed Endorsement, are new and provide procedures for insuring hybrid sorghum seed for the first time.

In establishing the General Crop Insurance Regulations, FCIC has incorporated general insurance and policy provisions, presently found in all separately issued crop insurance regulations under 7 CFR Chapter IV, into the proposed 7 CFR Part 401.

Several new additions are proposed to the general insurance policy and are found in § 401.8, as follows:

1. *Partnerships:* This issue is addressed in Section 2.d of the policy and provides that, unless the application clearly indicates that insurance is requested for a partnership or joint venture, insurance will cover only the crop share of the person making application for insurance. If insurance for a partnership or joint venture is requested, all general partners must be listed on the application.

2. *Dual Coverage:* Section 2.i of the policy provides that you must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on your share of the insured crop. More than one policy on your share may result in FCIC voiding the policies and collecting the premium. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. However, the insured is still permitted to obtain other hail and fire insurance not issued under the Act.

3. *Food Security Act:* Although your violation of a number of federal statutes including the Federal Crop Insurance At may cause cancellation, termination, or voidance of your insurance contract, FCIC includes cautionary language in Section 2.j of the policy to make all insureds aware that loss of crop insurance will result from violation of the provisions of the Food Security Act (the Act), referred to as the sodbuster, swampbuster, and controlled substance provisions, with respect to producing crops on highly erodible land or coverted wetlands, or producing controlled substance crops. If you are found to be in violation of these provisions, we are required by the Act to cancel your insurance policy for the crop year in which the violation occurred, resulting in you losing all crop insurance benefits for that year. We will recover any and all monies paid to you or received by you and your premium will be refunded.

4. *Claim for Damages:* Section 9.1 of the policy describes the obligations of FCIC with respect to payment of damages (compensatory, punitive, or other), attorney fees, or other charges in connection with any claim for indemnity under FCIC's exemption from punitive and other damages which are not available in suite against FCIC. No policy of insurance either issued or reinsured by FCIC, will be the basis of a claim for damages which the FCIC would not be liable for unless the claimant establishes that the claim is based on the failure of a company selling FCIC insurances, or a company whose policies are reinsured by FCIC, or agents of those companies, to properly follow FCIC instructions and procedures, or unless the companies or agents were acting outside the scope of their authority.

5. *Meaning of Terms:* Section 17 of the policy, while incorporating and explaining terminology generally found in all present policies for crop insurance, now includes a variety of additional terms which should be noted by the insured for purposes of clarity and clear understanding of the policy provisions. Of particular note in section 17 are the conditions for the further division of the insurance unit according to applicable guidelines provided by the actuarial table on file in the service office. Crop endorsements may provide that the unit may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table, and abide by certain conditions for each proposed unit.

6. *Dates, Reports, and Notices:* Special notations are contained in section 21 of the policy for the information of the insured regarding important dates which should be met under the policy, required reports which must be filed to comply with insurance provisions, and special notices which must be submitted to FCIC in order to be eligible for the program's benefits.

In adding each new endorsement for wheat, barley, oats, almonds, and rye as outlined below, FCIC is proposing changes in the provisions for insuring each crop. Additional minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions.

The Wheat Endorsement (Section 401.101)

The proposed changes in contract provisions contained in the wheat endorsement are as follows:

1. Section 1.—Add a provision to specify that wheat destroyed in order to comply with an ASCS program will not be insured. This provision is added to prevent insurance from attaching to wheat not intended for harvest as grain but for grazing and eventual destruction to comply with an ASCS program.

2. Section 4.—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 7.—Clarify that appraised production to be counted on irrigated acreage will include production lost due to inadequate irrigation not caused by an insurable cause of loss. This change will eliminate continued problems associated with the determination of production to count when there is inadequate irrigation. The number of green garlic bulblets allowed for quality adjustment has been reduced from 6 to 2. This special grade change is made in accordance with the changes in the U.S. grain standards.

5. Section 8.—Change the cancellation and termination dates to April 15 in Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.

6. Section 10.—Add definitions for "Adequate stand" and "Harvest."

The Barley Endorsement (Section 401.103)

The proposed changes in contract provisions contained in the barley endorsement are as follows:

1. Section 1.—Add a provision to specify that barley destroyed in order to comply with an ASCS program will not be insured. This provision is added to prevent insurance from attaching to barley not intended for harvest as grain but for grazing and eventual destruction to comply with an ASCS program.

2. Section 4.—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 7.—Clarify that appraised production to be counted on irrigated acreage will include production lost due to inadequate irrigation not caused by an insurable cause of loss. This change will eliminate continued problems associated with determination of production to count when there is inadequate irrigation.

5. Section 10—Add definitions for "Adequate stand" and "Harvest."

The Oat Endorsement (Section 401.105)

The proposed changes in contract provisions contained in the oat endorsement are as follows:

1. Section 1.—Remove silage and hay as insurable under the oat policy. Add a provision to specify that oats destroyed in order to comply with an ASCS program will not be insured. This provision is added to prevent insurance from attaching to oats not intended for harvest as grain but for grazing and eventual destruction to comply with an ASCS program.

2. Section 4.—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 7.—Clarify that appraised production to be counted on irrigated acreage will include production lost due to inadequate irrigation not caused by an insurable cause of loss. This change will eliminate continued problems associated with determination of production to count when there is inadequate irrigation.

5. Section 10.—Add definitions for "Adequate stand" and "Harvest."

The Rye Endorsement (Section 401.106)

The proposed changes in contract provisions contained in the rye endorsements are as follows:

1. Section 1.—Add a provision to require mechanical incorporation of the seed into the soil.

2. Section 4.—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 6.—Add a provision requiring a producer to provide written notice if the rye is to be harvested for silage or hay.

5. Section 7.—Clarify that appraised production to be counted on irrigated acreage will include production lost due to inadequate irrigation not caused by an insurable cause of loss. This change will eliminate continued problems associated with determination of production to count when there is inadequate irrigation.

6. Section 8.—Change the Cancellation and Termination dates to September 30 for all states.

7. Section 10.—Add definitions for "Adequate stand" and "Harvest."

The Late Planting Agreement Option (Section 401.107)

The provisions contained in 7 CFR Part 400, Subpart A, the Late Planting Agreement Option, are duplicated herein in order to become effective when elected by producers under the endorsements for those crops which are eligible for the Late Planting Agreement Option.

In adding provisions for late planting as a new § 401.107 herein, no changes are made to the provisions (contained in 7 CFR Part 500, Subpart A), and only minor editorial changes have been made

to provide compatibility with the new general crop insurance policy.

The Prevented Planting Endorsement (Part 401.108)

The provisions contained in 7 CFR Part 442, the Prevented Planting Endorsement, are duplicated herein in order to become effective when elected by producers under the endorsements for those crops which are eligible for the Prevented Planting Endorsement.

In adding provisions for prevented planting as a new § 401.108 herein, no changes are made to the provisions and only minor editorial changes have been made to provide compatibility with the new general crop insurance policy.

The Hybrid Sorghum Seed Endorsement (Part 401.109)

The provisions of the Hybrid Sorghum Seed Endorsement are herein offered for the first time, effective for the 1988 crop year.

The Hybrid Sorghum Seed Endorsement is designed to complement the grain sorghum program already in effect while providing insurance coverage in certain areas where hybrid grain sorghum seed is produced

The Almond Endorsement (Part 401.110)

Proposed changes in contract provisions contained in the almond endorsement are as follows:

1. Section 3.—Change the acreage reporting date from December 31 to January 15. The sales closing date is December 31. The December 31 acreage reporting date did not allow any time between sales closing and acreage reporting.

2. Section 5.—Change the date insurance attaches from December 11 to January 1. This date is changed because in the 1986 policy insurance attached for the next crop year before the cancellation date.

3. Section 6.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 10.—Replace the definition of "contiguous land" with "non-contiguous land". Non-contiguous land is used as a criterion for unit division.

5. Section 10.—Redefine "total meat pounds" to include rejects.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments submitted pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, Wheat endorsement, Wheat endorsement (Winter Coverage Option), Barley endorsement, Barley endorsement (Winter Coverage Option), Oat Endorsement, Rye endorsement, Late planting agreement option, Prevented planting endorsement, Hybrid sorghum seed endorsement, Almond endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation (FCIC) proposes to add a new Part 401, effective for the 1988 and subsequent contract years, as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

Sec.
401.1 Applicability.
401.2 Availability of federal crop insurance.
401.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.
401.4 OMB control numbers.
401.5 Creditors.
401.6 Good faith reliance on misrepresentation.
401.7 The contract.
401.8 The application and policy.
401.9–401.100 [Reserved]
401.101 Wheat endorsement.
401.102 Wheat (Winter Coverage Option).
401.103 Barley endorsement.
401.104 Barley (Winter Coverage Option).
401.105 Oat endorsement.
401.106 Rye endorsement.
401.107 Late planting agreement option.
401.108 Prevented planting endorsement.
401.109 Hybrid sorghum seed endorsement.
401.110 Almond endorsement.

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

§ 401.1 Applicability.

The provisions of this part are applicable only to crops for which a crop endorsement is published as a section to 7 CFR Part 401 and then only for the crops and crop years designated by the applicable section.

§ 401.2 Availability of federal crop insurance.

(a) Insurance shall be offered under the provisions of this section on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended, (the Act). The crops and counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

(b) The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. These contracts are clearly identified as being reinsured by the Corporation.

(c) No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation.

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the person.

(e) If the mulitple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(g) An insured whose contract with the Corporation or with a company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility.

(h) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for insurance under the Act and the present status of any such applications or insurance.

§ 401.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.

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

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance or a coverage level and price from among those contained in the actuarial table for the crop year.

§ 401.4 OMB control numbers.

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

§ 401.5 Creditors.

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

§ 401.6 Good faith reliance on misrepresentation.

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

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

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

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

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

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

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

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

§ 401.7 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the crop as provided in the policy and the crop endorsement. The contract shall consist of the application, the policy, the crop endorsement and any amendments thereto, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. No indemnity shall be paid unless the insured complies with all terms and conditions of the contract. The forms referred to in the contract are available at the applicable service offices.

§ 401.8 The application and policy.

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

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

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

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

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

General Crop Insurance Policy

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

Note.—THIS IS A CONTRACT WITH THE FEDERAL CROP INSURANCE CORPORATION, A UNITED STATES GOVERNMENT AGENCY. THE TERMS OF THE CONTRACT ARE PUBLISHED IN THE FEDERAL REGISTER UNDER THE PROVISIONS OF THE FEDERAL REGISTER ACT (44 U.S.C. 1501), AND MAY NOT BE WAIVED OR VARIED IN ANY WAY BY THE CROP INSURANCE AGENT OR ANY OTHER AGENT OR EMPLOYEE OF FCIC.

AGREEMENT TO INSURE: We will provide the insurance described in this policy and the applicable endorsement in return for the premium and your compliance with *ALL* provisions of the crop insurance contract. If a conflict exists between the terms of this policy and the crop endorsement, the terms of the crop endorsement control.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Terms and Conditions

1. Causes of loss.

a. You are insured only against unavoidable loss of production directly caused by specific causes of loss contained in the crop endorsement.

b. We do not insure against any loss caused by:

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

(2) The failure to follow recognized good farming practices for the insured crop;

(3) Water contained by any governmental, public, or private dam or reservoir project;

(4) Flooding on any unit subject to a flood or water flowage easement;

(5) Flooding on any unit located between any body of water and a primary flood control structure for that body of water;

(6) Failure or breakdown of irrigation equipment or facilities;

(7) Failure to carry out a good irrigation practice for the insured crop;

(8) Any cause not specified in the crop endorsement as an insured cause of loss; or

(9) Any other cause set out as an uninsured cause of loss in the crop endorsement.

2. Crop, acreage, and share insured.

a. The crop insured is the crop specified in the crop endorsement and no other, which is planted for harvest as the insured crop, which is grown on insurable acreage, and for which a guarantee or amount of insurance

and premium rate are provided by the actuarial table.

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

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

(1) The time of loss; or

(2) The beginning of harvest.

d. Unless the application clearly indicates that insurance is requested for a partnership or joint venture, insurance will cover only the crop share of the person making application for insurance.

e. We do not insure any acreage:

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

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table or the crop endorsement (you may elect to insure irrigated acreage on a non-irrigated basis by reporting it as non-irrigated on the acreage report and adjusting the basis used to establish your guarantee accordingly);

(3) Which is destroyed, it is practical to replant to the insured crop, but the insured crop is not replanted;

(4) Initially planted after the final planting date, unless we allow and you agree in writing on our form, to coverage reduction (the Late Planting Option applies only on selected crops);

(5) Of a volunteer crop;

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

(7) Planted with a crop other than the insured crop;

(8) Which does not meet rotation requirements required by the crop endorsement or actuarial table;

(9) Of a second crop following any crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table;

(10) Used for wildlife protection or management;

(11) On which a crop has not been planted and harvested in at least one of the three previous crop years; or

(12) Which has been strip mined.

f. If insurance is provided for an irrigated practice, we will insure as irrigated, and you must report as irrigated, only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good irrigation practice for the insured crop.

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

h. We may restrict the amount of acreage which we will insure to the amount allowed under any acreage limitation program established by the United States Department of Agriculture if we advise you of that limit prior to the time insurance attaches.

i. You must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on your share of the insured crop. More than one policy on your share will result in our voiding the policies and collecting the premium from you unless the violation of this provision is found by us to have been inadvertent. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. Nothing in this paragraph prevents the insured from obtaining other hail and fire insurance not issued under the Act and which is subject to the provisions of section 9 hereof.

j. Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, you are specifically directed to the provisions of Title XII of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated thereunder, generally referred to as the sodbuster, swampbuster, and controlled substance provisions. Your insurance policy will be cancelled if you are determined to be in violation of these provisions. We will recover any and all monies paid to you or received by you and your premium will be refunded.

3. Report of acreage, share, and practice (acreage report).

You must report on our form:

a. All insured and uninsured acreage of the crop in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

The insurable practices are contained in the actuarial table. You must designate separately any acreage which is not insurable. The report must indicate if you do not have a share of the insured crop in the county. The report must be submitted each year on or before the acreage reporting date for the crop for the county. This report may be used as the basis to determine your premium and indemnity or we may compute premiums and indemnities on the acreage, share, and practice which is determined to have actually been in existence. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Because underreporting of acreage and share would have the effect of reducing your premium and any indemnity which may be due, you may not revise your report after the reporting date except with our approval. Errors in reporting units may be corrected by us to conform to applicable guidelines at the time of adjusting a loss.

4. Production guarantees, coverage levels or amounts of insurance, and prices for computing indemnites.

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

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

c. You may change the amount of insurance or coverage level and price election on or before the sales closing date for the crop year.

d. You must report production to us for the previous crop year by the earlier of the acerage reporting date or 45 days after the sales closing date for the current crop year (See section 21).

If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75% of the yield used by us to determine your guarantee for the previous crop year. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the current crop year. If you have filed a claim for any crop year, the production used to determine the indemnity payment will be the production report for that year.

5. Annual premium.

a. The annual premium is earned and payable at the time insurance attaches.

b. If you are eligible for a premium reduction based on your experience under previous crop policies, you may retain that experience under certain conditions as set out in the crop endorsement.

c. Your premium payment, plus any accrued interest, will be considered delinquent if any amount due us is not paid on or before the termination date specified in the crop endorsement.

6. Amount due us.

(a) Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance due us. For the purpose of premium amount due us, the interest will start on the first day of the month following the first premium billing date.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start on the date of payment of the unearned amount to you. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Dispute Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year and will vary with each publication.

(c) All amounts paid will be applied first to reduction of accrued interest, then to reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection. Those expenses will be paid before the application of any amounts to interest or principal.

(e) Any amount due us may be deducted from any indemnity payment due you or from any replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies and from any amounts due you from any other United States Government Agency.

7. Insurance period.

a. Insurance attaches on each unit or part of a unit when the insured crop is planted or on the calendar date for the beginning of the insurance period if specified in the crop endorsement, and ends at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on a unit; or

(4) The calendar date for the end of the insurance period contained in the crop endorsement.

8. Notice of Damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want out consent to replant the insured crop damaged by an insured cause of loss;

(b) During the period before harvest the insured crop on a unit is damaged by an insured cause of loss and you decide not to further care for or harvest any part of it;

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

(d) After consent to put acreage to another use is given, additional damage due to an insured cause of loss occurs.

Insured acreage may not be put to another use until we have appraised the insured crop and given written consent. We will not consent to another use if the insured crop can be replanted. You must notify us when such acreage is replanted or put to another use.

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

(3) If a loss is anticipated by you on any unit within 15 days of or during harvest, notice of probable loss must be given to us within 72 hours of your discovery. A representative sample of the unharvested insured crop, as required by the crop endorsement, must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest ths sample.

(4) In addition to the notices required by this section, if you intend to claim an indemnity on any unit, a notice of loss must be given not later than 10 days after the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) Harvest of the unit; or

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

b. You may not destroy and replant any of the insured crop on which you intend to claim a replanting payment, until we give written consent.

c. You must obtain written consent from us before you destroy any of the insured crop which is not harvested.

9. Claim for Indemnity.

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

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit; or

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

b. We will not pay any indemnity unless you:

(1) Establish the total production and, if applicable, the value received for the insured crop on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

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

c. The indemnity will be determined on each unit in accordance with the applicable crop endorsement and the actuarial table.

d. If the information reported by you on the acreage report results in a lower premium than the premium determined to be due on the basis of the share and acreage determined to actually exist, the guarantee on the unit will be computed on the information contained in the acreage report but all production from insurable acreage, whether or not reported as insurable, will count against the guarantee.

e. The total production to be counted for a unit will include all production determined in accordance with the crop endorsement.

f. The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

g. If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made in accordance with the applicable Form FCI-78 or FCI-78-A, "Request To Exclude Hail And Fire."

h. If allowed by the crop endorsement, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit (as determined on the final planting date).

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

(a) On which our appraisal determines that production exceeds the level set by the crop endorsement;

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

(c) On which one replanting payment has already been allowed for the crop year.

(2) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the crop endorsement.

If the information reported by you on the acreage report results in a lower premium than the premium determined to be due based on the acreage and share determined actually to have existed, the replanting payment will be reduced proportionately.

i. You must not abandon any acreage to us.

j. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

k. An indemnity will not be paid unless you comply with all policy provisions.

l. Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. (State and local laws to the contrary are not applicable to this insurance contract.) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by the final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date and submit to us the properly completed FCIC claim form. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year and will vary with each publication.

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

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

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

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. (For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire).

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to the applicable indemnity. The transfer must be on our form and approved by us. Both you and the person to whom you transfer your interest are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under the contract consistent with the transferee's interest.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee may submit all notices and forms required to protect the insurance contract and to claim an indemnity.

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

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your

right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit, and separate records including the same information for production of the crop from any uninsured acreage. The records must be kept for three years from the end of the crop year to which they pertain. Failure to keep and maintain such records may result in: (a) Cancellation of the contract for that crop year; (b) assignment of production to units by us; or (c) a determination that no indemnity is due, whichever we elect. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Contract term, cancellation, and termination.

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

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

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. If the amount is paid by deduction from an indemnity or other U.S. Department of Agriculture payment, the date of payment:

(1) If deducted from an indemnity, will be the date you sign the properly completed claim form; or

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

d. The cancellation and termination dates are contained in the crop endorsement.

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

f. The contract will terminate if no premium is earned for three consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election or amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the price election or amount of insurance which you are conclusively presumed to have elected unless you elect a different price election or amount of insurance prior to the sales closing date. All contract changes will be available at your service office by the contract change date contained in the crop endorsement. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purpose of the crop insurance contract:

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

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

c. "ASCS farm serial number" means the number assigned to the farm by the ASCS County Office Committee.

d. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. "Crop endorsement" means the endorsement to the policy contained in this part which sets forth the terms and conditions of insurance applicable to the named crop.

f. "Crop year" means the period within which the crop is normally grown and will be designed by the calendar year in which the insured crop is normally harvested.

g. "Harvest" (DEFINED IN THE CROP ENDORSEMENT).

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

i. "Insured" means the person who submitted the application accepted by us and does not extend to any other person having a share or interest in the crop such as a partnership, landlord, or any other person unless specifically indicated on the application and accepted by us.

j. "Insured crop" means the crop insured under the provisions of the applicable crop endorsement.

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

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

m. "Production report" means previous year yield information including planted acreage and harvested production, reported by you, that is supportable by written verifiable records from a buyer of the insured crop or by measurement of farm stored production.

n. "Section" means a unit of measure under the rectangular survey system describing a tract of land usually one mile square and generally containing approximately 640 acres.

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

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

q. "Unit" means all insurable acreage of the crop in the county on the date insurance attaches for the crop year:

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

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

Land rented for cash, a fixed commodity payment, a crop share with a minimum payment, or any consideration other than a share in the insured crop on such land will be considered as owned by the lessee. Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in the endorsement or by written agreement with us. Units will be determined when the acreage is reported but may be adjusted to reflect the actual unit division when adjusting a loss. However, no further division may be made at loss adjustment time. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

r. "Verifiable records" mean documents indicating a quantity of production or acreage determined by us, other government agencies, buyers, processors, packers, storage facilities or other third parties acceptable to us. The documents must include the name of the producer and entity making the measurement, the date of the measurement, and the crop type, class, or variety.

18. Descriptive headings.

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

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations (7 CFR Part 400, Subpart J).

20. Notices.

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

21. Dates, reports, and notices.

To preserve your rights under this insurance contract you are required to file a number of reports and notices with us by certain dates. The actual content requirements and time limits of those reports and notices are set out elsewhere in this

contract and you must refer to those sections for those requirements.

As a convenience to you and without limitation on our rights under this contract, a short description of most of the dates, reports and notices have been compiled in this section. Omission of any date, report or notice, or any of the requirements thereof, from this section does not relieve you of the requirement to comply with the terms of this contract. (Note that certain specific crops may require other notices and reports because of their individual characteristics. You are referred to the crop endorsement for any such requirements.)

a. "Acreage report"—A report required by section 3 of this contract. This report contains, in addition to other information, the report of the insured's share of all acreage of an insured crop in the county whether insurable or uninsurable and must be filed prior to the final acreage reporting date contained in the actuarial table for the county for the crop insured.

b. "Another use, Notice of"—The written notice required when an insured wishes to put acreage to another use (See: Section 8).

c. "Application"—A form required by Subpart D of Part 400 of 7 CFR and each individual program regulation. The application for insurance form must be completed and filed in the service office prior to the sales closing date (contained in the actuarial table) of the initial insurance year for each crop year for which an insurance endorsement is requested by the insured.

d. "Assignment of indemnity"—A transfer of contract rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

e. "Billing date"—The first date upon which an insured is billed for insurance coverage and which generally falls at or near harvest time. Interest accruing on any unpaid premium balance attaches 30 days after the billing date.

f. "Cancellation date"—The date on or before which the insured or the Corporation may cancel the insurance policy for the subsequent crop year by giving written notice.

g. "Claim for indemnity" (See: Section 9)—A claim made by the insured for damage or loss to an insured crop and submitted to the Corporation not later than 60 days after the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit; or

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

h. "Claim for indemnity, Notice of"—The loss notice required to be given by the insured 10 days after certain occurrences (See: Section 8).

i. "Contract change date"—The date by which FCIC makes any contract changes available for inspection in the service office (See: Section 16).

j. "Damage, notice of"—See: Probable loss, Notice of.

k. "Earliest planting date"—The earliest date established for planting the insured crop and qualifying for a replant payment (See: Actuarial Table and Section 9.h.(1)(b)).

l. "End of insurance period, Date of"—The date upon which the insured's crop insurance coverage ceases (See: Section 7).

m. "Insurance attaches, Date"—The date insurances attaches on the crop, generally after planting is completed or the calendar date in the crop endorsement (See: Section 7).

n. "Intent to abandon, Notice of"—The written notice to the Corporation by the insured indicating that because of damage from an insured cause, the insured has decided to no longer care for or harvest any part of the crop.

o. "Late planting agreement"—Available on selected crops. An amendment to the insurance contract which allows an insured whose planting has been delayed, to plant a crop after the final planting date in exchange for a reduction in coverage.

p. "Probable loss, notice of"—A written notice required to be filed in the service office whenever an insured believes that the insured crop has been damaged to the extent that a loss is probable (See: Section 8).

q. "Production report"—A written record showing the insured's annual production and used to determine the yield guarantee. (See: Section 4). The report contains previous year yield information including planted acreage and harvested production. This report must be supported by written records from a warehouseman or buyer of the insured crop or by measurement of farm stored production.

r. "Replanting, Notice of completion"—The notice required to be given by the insured to the Corporation when replanting is completed (See: Section 8).

s. "Reporting date"—The acreage reporting date (contained in the Actuarial Table) by which you are required to report all your insurable and uninsurable acreage in the county in which you have a share and your share at the time insurance attaches.

t. "Sales closing date"—The date contained in the actuarial table on file in the respective service office which sets out the final date when an application for insurance may be filed.

u. "Termination date"—The date upon which the Corporation may cancel the insurance policy for non-payment of premium.

§ 401.9–401.100 [Reserved]

§ 401.101 Wheat Endorsement.

The provisions of the Wheat Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Wheat Endorsement

1. Insured Crop.

a. The crop insured will be wheat planted for harvest as grain.

b. In addition to the wheat not insurable in section 2 of the general crop insurance policy, we do not insure any wheat:

(1) if the seed has not been mechanically incorporated into the soil;

(2) if the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such wheat; or

(3) destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted wheat and for fall-planted wheat only where insurance is not offered for spring-planted wheat.

2. Causes of loss.

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

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual premium.

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

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the wheat policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

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

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

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

(5) Participation must be continuous.

4. Insurance period.

In lieu of the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when the wheat is planted except that:

(1) In counties with an April 15 cancellation date, insurance will attach on fall-planted wheat on April 16 following planting if it is determined that there is an adequate stand on this date to produce a normal crop;

(2) If you have optional winter coverage in effect, or if optional winter coverage is provided by the actuarial table and you purchase such coverage before the winter wheat sales closing date, insurance will attach at the time of planting; or

(3) If optional winter coverage is provided by the actuarial table and you fail to purchase such coverage and there is an adequate stand on the spring final planting date to produce a normal crop, insurance will attach on the spring final planting date.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the wheat;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which wheat is normally harvested:

(a) Alaska: September 25;

(b) All other states: October 31.

5. Unit division.

Wheat acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured wheat is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The wheat is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. the acreage planted to the insured wheat is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Wheat planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss.

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the wheat for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity.

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

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

(2) Subtracting therefrom the total production of wheat to be counted (see subsection 7.b.);

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

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature wheat production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.5 percent; or

(2) Mature wheat production which, due to insurable causes, has a test weight of less than 53 pounds per bushels or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act contains: more than 100 percent kernel damage; more the 12 percent shrunken kernels; more than 2 green garlic bulblets or the equivalent of dry or partly dry garlic bulblets in at 1000-gram sample; or is smutty or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured wheat by the price per bushel of U.S. No. 2 wheat; and

(b) Multiplying the result by the number of bushels of such wheat.

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

(3) Any harvested production from other volunteer plants growing in the wheat will be counted as wheat on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good wheat farming practices;

(b) Potential production lost on acreage reported by you as irrigated due to an inadequate water supply at the time of planting or the failure to apply sufficient water necessary for a good wheat irrigation practice;

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

(d) Any unharvested production.

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

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

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and termination dates

The cancellation and termination dates are:

State and County	Cancellation date	Termination date
All Alaska Counties except those listed below; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties, South Dakota and all South Dakota counties north and east thereof; Vermont; and Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin and all Wisconsin Counties north and west thereof; Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	April 15	April 15.
All other Colorado Counties except those listed below; all Iowa Counties except those listed below; Kansas; Nebraska; New Mexico; Oklahoma; Texas; all other Wisconsin Counties and all other states except those listed below.	September 30	September 30.
Archuleta, Custer, Delta, Dolores, Eagle, Carfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa and all Iowa countries north thereof; Massachusetts; all other Montana Counties; New York; Rhode Island; all other South Dakota Counties; and all other Wyoming Counties.	September 30	November 30.
Matanuska-Susitna County, Alaska; Arizona; California; Idaho; Nevada; Oregon; Utah; and Washington	October 31	November 30.

9. Contract changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date of counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties.

10. Meaning of terms

a. "Adequate stand" means a sufficient population of plants to produce at least the yield used to determine the guarantee.

b. "Harvest" means combining or threshing, or cutting for hay or silage.

§ 401.102 Wheat (Winter Coverage Option)

The provisions of the Winter Coverage Option for Wheat for the 1988

and subsequent crop years are as follows:

Federal Crop Insurance Corporation, Wheat Endorsement, Winter Coverage Option

(This is a continuous Option)

Insured's Name ______
Address ______
Contract No. ______
Crop Year ______
Identification No. ______
SSN ______
Tax ______

In consideration of the additional premium as set by the Actuarial Table (FCI-35), the insurance provided is attached to and made part of the Wheat Endorsement subject to the following terms and conditions:

1. You must have a wheat endorsement.

2. Coverage under this option for fall-planted wheat will begin at the time of planting and will end on the spring final planting date for wheat in the country.

3. When there is not an adequate stand on the spring final planting date to produce the farm unit production guarantee, you have the option to:

a. Continue to provide sufficient care for the insured wheat crop through harvest;

b. Replant all destroyed acreage to a spring variety of wheat and receive a replanting payment in accordance with subsection 9.h. of the general crop insurance policy;

c. Plant to an alternate crop; or

d. With our written consent destroy the acreage of the insured crop, leave such acreage idle for the remainder of the crop year, and accept our appraisal of the production to count toward the farm unit guarantee.

4. In case of damage to the wheat under this option, you must provide us with written notice prior to the spring final planting date for wheat.

Insured's Signature ______
Date ______
Agent's Signature ______
Date ______

§ 401.103 Barley Endorsement.

The provisions of the Barley Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation, Barley Endorsement

1. Insured Crop

a. The crop insured will be barley planted for harvest as grain. A mixture of barley with either oats or wheat or both planted for harvest as grain may also be insured if provided by the actuarial table. The production from such mixture will be considered as barley on a weight basis.

b. In addition to the barley not insurable in section 2 of the general crop insurance policy, we do not insure any barley:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such barley; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted barley and for fall-planted barley only where insurance is not offered for spring-planted barley.

2. Causes of Loss

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

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an uavoidable cause occurring after the beginning of planting;

unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

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

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the barley policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

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

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

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

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when the barley is planted except that:

(1) In counties with an April 15 cancellation date, insurance will attach on fall-planted barley on April 16 following planting if it is determined that there is an adequate stand on this date to produce a normal crop;

(2) If you have optional winter coverage in effect, or if optional winter coverage is provided by the actuarial table and you purchase such coverage before the winter barley sales closing date, insurance will attach at the time of planting; or

(3) If optional winter coverage is provided by the actuarial table and you fail to purchase such coverage, and there is an adequate stand on the spring final planting date to produce a normal crop, insurance will attach on the spring final planting date.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the barley;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) final adjustment of a loss; or

(4) The following dates of the calendar year in which barley is normally harvested:

(a) Alaska—September 25;

(b) All other states—October 31.

5. Unit Division

Barley acreage that would othewise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured barley is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The barley is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured barley is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Barley planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the barley for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For the purposes of this section and Section 8 of the general crop insurance policy, the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity

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

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

(2) Subtracting therefrom the total production of barley to be counted (see subsection 7.b.);

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

(4) Multiplying this result by your share.

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

(1) Mature barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.5 percent; or

(2) Mature barley production which, due to insurable causes, has a test weight of less than 40 pounds per bushels or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act contains: less than 85 percent sound barley; more than 8 percent damaged kernels; more than 35 percent thin barley; more than 5 percent black barley; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured barley by the price per bushel of U.S. No. 2 barley; and

(b) Multiplying the result by the number of bushels of such barley.

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

(3) Any harvested production from other volunteer plants growing in the barley will be counted as barley on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good barley farming practices;

(b) Potential production lost on acreage reported by you as irrigated due to an inadequate water supply at the time of planting or the failure to apply sufficient water necessary for a good barley irrigation practice;

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

(d) Any unharvested production.

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

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

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and termination dates

The cancellation and termination dates are:

State and county	Cancellation date	Termination date
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; Connecticut; Kansas; Massachusetts; and New York.	Sept. 30	Nov. 30
New Mexico except Taos County; Oklahoma; Missouri; Illinois; Indiana; Ohio; Pennsylvania; New Jersey; and all states south and east thereof.	......do	Sept. 30
Arizona; California; Clark and Nye Counties, Nevada.	Oct. 31	Nov. 30
All other Colorado Counties; all other Nevada Counties; Taos County, New Mexico and all other states.	Apri. 15	Apr. 15

9. Contract changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties.

10. Meaning of terms

a. "Adequate stand" means a sufficient population of plants to produce at least the yield used to determine the guarantee.

b. "Harvest" means combining, threshing, or cutting for hay or silage.

§ 401.104 Barley (Winter Coverage Option)

The provisions of the Winter Coverage Option for Barley for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation, Barley Endorsement Winter Coverage Option

(This is a Continuous Option)

Insured's Name ____________
Address ____________
Contract No. ____________
Crop Year ____________
Identification No. ____________
SSN ____________
Tax ____________

In consideration of the additional premium as set by the Actuarial Table (FCI–35), the insurance provided is attached to and made part of the Barley Endorsement subject to the following terms and conditions:

1. You must have a barley endorsement.

2. Coverage under this option for fall-planted barley will begin at the time of planting and will end on the spring final planting date for barley in the county.

3. When there is not an adequate stand on the spring final planting date to produce the farm unit production guarantee, you have the option to:

a. Continue to provide sufficient care for the insured barley crop through harvest;

b. Replant all destroyed acreage to a spring variety of barley and receive a replanting payment in accordance with subsection 9.h. of the general crop insurance policy;

c. Plant to an alternate crop; or

d. With our written consent destroy the acreage of the insured crop, leave such acreage idle for the remainder of the crop year, and accept our appraisal of the production to count toward the farm unit guarantee.

4. In case of damage to the barley under this option, you must provide us with written notice prior to the spring final planting date for wheat.

Insured's Signature ____________
Date ____________
Agent's Signature ____________
Date ____________

§ 401.105 Oat Endorsement.

The provisions of the Oat Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation, Oat Endorsement

1. Insured Crop

a. The crop insured will be oats planted for harvest as grain and grain mixtures in which oats are the predominant grain.

b. In addition to the oats not insurable in section 2 of the general crop insurance policy, we do not insure any oats:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such oats; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted oats and for fall-planted oats only where insurance is not offered for spring-planted oats.

2. Causes of Loss

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

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general policy.

3. Annual Premium

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

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the oat policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

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

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

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

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy, the following will apply:

a. Insurance attaches on each unit or part of a unit when the oats are planted except that, in counties with an April 15 cancellation date, insurance on fall-planted oats attaches on April 16 following planting if it is determined that there is an adequate stand on April 16 to produce a normal crop.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the oats;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) the following dates of the calendar year in which oats are normally harvested:

(a) Alaska—September 25;

(b) All other states—October 31.

5. Unit Division

Oat acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premiums as provided for by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured oats is located in separate, legally identifiable sections (except in Florida) or, in the absence of second descriptions (and in all of Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The oats are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured oats is located in a single section of ASCS Farm Serial Number and consists of acreage on which both an irrigated and a nonirrigated practice are carried out, provided:

(1) Oats planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planning pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the oats for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

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

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

(2) Subtracting therefrom the total production of oats to be counted (see subsection 7.b.);

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

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

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

(2) Mature oat production which, due to insurable causes, has a test weight of less than 27 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains less than 80 percent sound oats or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured oats by the price per bushel of U.S. No. 2 oats; and

(b) Multiplying the result by the number of bushels of such oats.

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

(3) Any harvested production from other volunteer plants growing in the oats will be counted as oats on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good oat farming practices;

(b) Potential production lost on acreage reported by you as irrigated due to an inadequate water supply at the time of planting or the failure to apply sufficient water necessary for a good oat irrigation practice;

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

(d) Any unharvested production.

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

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

(b) Further damaged by an insured cause before the acreage is put to another use and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and County; Cancellation and Termination Date

Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; New Mexico except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia and all counties east thereof—September 30

Arizona; California except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties—October 31

All other California counties; Taos County, New Mexico; all other Virgina counties and all other states—April 15

9. Contract Changes

The contract change date is December 31 preceding the cancellation date for counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties.

10. Meaning of Terms

a. "Adequate stand" means a sufficient population of plants to produce at least the yield used to determine the guarantee.

b. "Harvest" means combining, threshing or cutting for hay or silage.

§ 401.106 Rye Endorsement.

The provisions of the Rye Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation, Rye Endorsement

1. Insured Crop

a. The crop insured will be rye planted for harvest as grain.

b. In addition to the rye not insurable in section 2 of the general crop insurance policy, we do not insure any rye:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such rye; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted rye and for fall-planted rye only where insurance is not offered for spring-planted rye.

2. Causes of Loss

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

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting:

unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop policy.

3. Annual Premium

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

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the rye policy for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

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

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

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

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of the insurance period is October 31 of the year in which the rye is normally harvested.

5. Unit Division

Rye acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. the acreage planted to insured rye is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections of ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The rye is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. the acreage planted to the insured rye is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Rye planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the notice required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the rye for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

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

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

(2) Subtracting therefrom the total production of rye to be counted (see subsection 7.b.);

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

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature rye production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 16 percent; or

(2) Mature rye production which, due to insurable causes, has a test weight of less than 52 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains: more than 7 percent damaged kernels; more than 25 percent thin rye; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured rye by the price per bushel of U.S. No. 2 rye; and

(b) Multiplying the result by the number of bushels of such rye.

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

(3) Any harvested production from other volunteer plants growing in the eye will be counted as rye on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good rye farming practices;

(b) Potential production lost on acreage reported by you as irrigated, due to an inadequate water supply at the time of planting or the failure to apply sufficient water necessary for a good rye irrigation practice;

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

(d) Any unharvested production.

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

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

(b) Further damaged by an insured cause and is reappraised by us; or

(c) harvested.

8. Cancellation and Termination Dates

The cancellation and termination date for all states is September 30.

9. Contract Changes

The date by which contract changes will be available in your service office is June 30 preceding the cancellation date.

10. Meaning of Terms

a. "Adequate stand" means a sufficient population of plants to produce at least the yield used to determine the guarantee.

c. "Harvest" means combining, threshing, or cutting for hay or silage.

§ 401.107 Late planting agreement option.

The provisions of the Late Planting Agreement Option are as follows:

Federal Crop Insurance Corporation, Late Planting Agreement Option

1. General

The provisions contained in the Late Planting Agreement Option, are a duplication of 7 CFR Part 400, Subpart A, with minor editorial changes to provide compatibility with the General Crop Insurance Regulations (7 CFR Part 401), and become effective when elected by producers on the crop insurance endorsements herein which are eligible for the Late Planting Agreement Option.

2. Availability of the Late Planting Agreement Option

The Late Planting Agreement Option will be offered under the provisions contained in 7 CFR Part 401, within limits prescribed by and in accordance with the Federal Crop Insurance Act, as amended 9 U.S.C. 1501 *et seq.*), only on those crops identified in section 4 of this subpart. All provisions of the applicable endorsement for the insured crop apply, except those provisions which are in conflict with this subpart.

3. Definitions

For the purposes of the Late Planting Agreement Option:

(a) "Final planting date" means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(b) "Late Planting Agreement" means that agreement executed by the final planting date, between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(c) "Production guarantee" neans the guaranteed amount of production under the

provisions of the applicable endorsement for crop insurance (sometimes expressed in amounts of insurance).

4. Responsibilities of the Insured

The insured is solely responsible for the completion of the Late Planting Agreement Option and for the accuracy of the data provided on that Agreement. The provisions of this subpart do not relieve the insured of any responsibilities under the provisions of the insurance endorsement.

5. Applicability to Crops Insured

The provisions of this subpart will be applicable to the provisions for insuring crops under the following FCIC endorsements:

401.101 Wheat Endorsement
401.103 Barley Endorsement
401.105 Oat Endorsement
401.106 Rye Endorsement

The Late Planting Agreement Option will be available in all counties in which the Corporation offers insurance on these corps.

§ 401.107 Late planting agreement option.

The provisions of the Late Planting Agreement are as follows:

U.S. Department of Agriculture, Federal Crop Insurance Corporation, Late Planting Agreement

Insured's Name ______
Address ______
Contract No. ______
Crop Year ______
Crop ______

Notwithstanding the provisions of section 2 of the General Crop Insurance Regulations (7 CFR Part 401) regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted within twenty days after such date. Upon may making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced ten percent for each five days or portion thereof that the acreage is planted after the final planting date. Each ten percent reduction will be applied to the production guarantee or amount of insuance applicable on the final planting date.

The premium will be computed based on the guarantee or amount of insuance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option.

If planting continues under this Agreement after the acreage reporting date on file in the service office, the acreage reporting date will be extended to five days after the completion of planting the acreage to which insurance will attach under this Agreement.

Insured's Signature ______
Date ______
Corporation Representative's Signature and Code Number ______
Date ______

§ 401.108 Prevented planting endorsement.

(a) The provisions contained in the Prevented Planting Endorsement are a duplication of 7 CFR Part 442, with minor editorial changes made to provide compatibility with the General Crop Insurance Regulations (7 CFR Part 401), and become effective when elected by producers on the crop insurance endorsements therein which are eligible for the Prevented Planting Endorsement.

(b) The provisions of the prevented planting endorsement are as follows:

Federal Crop Insurance Corporation, Prevented Planting Endorsement

A prevented planting crop insurance endorsement on the qualifying crop will be available to all insureds having a qualifying crop insurance endorsement under the provisions of this Part and who participate in the ASCS Acreage Reduction Program or Set-aside Program. This endorsement is not continuous. Application must be made annually for the prevented planting endorsement not later than the sales closing date established by the actuarial table for the applicable qualifying crop.
(The is an Annual Election To Be Made by the Insured Before the Date Specified in Section 10.)

Agreement to insure: We will provide the insurance described in this endorsement in return for the premium and your compliance with all applicable provisions.

1. Applicable provisions

All provisions of the qualifying crop insurance endorsement and the prevented planting crop insurance application not in conflict with this endorsement are applicable.

2. Causes of loss

a. This insurance is against your being unavoidably prevented from planting insurable acreage to the qualifying crop or any other non-conserving crop during the insurance period. (You are required to plant to another non-conserving crop during the insurance period after you know or should have known that it is no longer feasible to plant the qualifying crop and you are not prevented from planting the other non-conserving crop by an insurable cause.) You must be prevented from planting by drought, flood, or other natural disaster which occurs within the insurance period. Limitations, exceptions, or exclusions on the causes insured against may be contained in the acturial table.

b. We will not insure against any prevention of planting:

(1) If your failure to plant was due to a cause other than those listed in subsection 2.a.; or

(2) If most producers in the surrounding area in similar circumstances were able to plant the qualifying crop or any other non-conserving crop.

3. Acreage and share insured

a. The acreage insured for each crop year will be the cultivated acreage in the county intended to be planted for harvest to the qualifying crop, in which you have a share, as reported by you or as determined by us, whichever we elect, and for which a premium rate is provided by the actuarial table.

b. The insured share is your share as landlord, owner-operator, or tenant in the qualifying crop if the crop had been planted at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the prevented planting date.

c. Unless otherwise specified by the actuarial table, we will not insure any acreage unless you have a valid crop insurance endorsement for the current crop year on the qualifying crop and the acreage is insurable under that endorsement.

d. You must participate in the ASCS acreage reduction or set-aside program for the qualifying crop in the applicable crop year on at least one farm which is part of the insured unit under this endorsement.

4. Report of acreage, share, type, and practice

You must report on our form:

a. All the cultivated acreage intended for planting to the qualifying crop in the county in which you have a share;

b. The intended type and practice; and

c. Your share at the time of reporting.

You must designate separately and cultivated acreage that is intended for planting to the qualifying crop that is not insurable. This report must be submitted not later than the sales closing date for the qualifyng crop. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine the insured acreage and share or we may deny liability on the unit. Any report submitted by you may be revised only upon our approval.

5. Amounts of Insurance and Coverage Levels.

a. The amount of insurance per acre is computed by multiplying the qualifying crop yield guarantee times the price election selected for the qualifying crop, times 0.35.

b. The coverage level is the same as that selected under your crop insurance endorsement for the qualifying crop.

6. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share.

b. Interest will accrue at the same rate and terms on any unpaid premium balance as on the qualifying crop insurance endorsement.

7. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payment due you or from any replanting payment, or from any loan or payment due you under any act of Congress or program administered by the United States Department of Agriculture or its agencies, and from any amount due you from any other United States Government Agency.

8. Insurance period

In lieu of section 7 of the general policy, prevented planting insurance attaches on the sales closing date of the qualifying crop insurance endorsement for the crop year and ends at the earlier of:

a. Planting of the insured acreage to the qualifying crop or any other non-conserving crop; or

b. The prevented planting date.

9. Notice of Damage or Loss and claim for indemnity

a. If you are prevented from planting the insured acreage and expect to claim an indemnity on the unit, you must give us notice in writing not later than five days after the prevented planting date.

b. Any claim for indemnity must be submitted to us on our form prior to the time a claim is or should be filed for the qualifying crop.

c. We will not pay any indemnity unless you:

(1) Establish that any prevention of planting on insured acreage was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed; and

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

d. The indemnity will be determined for the unit by:

(1) Multiplying the insured acreage times the amount of insurance as determined in section 5 of this endorsement;

(2) Subtracting therefrom the amount obtained by multiplying the planted acreage, times the amount of insurance; and

(3) Multiplying this result by your share.

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

10. Life of Contract: Cancellation and termination

a. This endorsement will be in effect only for the crop year specified on the application and may not be canceled by you for such crop year.

b. This endorsement may be renewed for each succeeding crop year if:

(1) You apply and report your intended acreage for planting not later than the sales closing date of the qualifying crop; and

(2) The qualifying crop insurance endorsement is not cancelled or terminated for the crop year.

11. Meaning of terms

For the purposes of prevented planting crop insurance:

a. "Cultivated acreage intended for planting" means land that was ready or, except for insured causes, could have been made ready for planting, but does not include land:

(1) On which a perennial forage crop is being grown or on which the qualifying crop or other non-conserving crop was planted prior to the prevented planting acreage reporting date; or

(2) Which was not or would not have been planted to comply with any other United States Department of Agriculture or State programs or for any other reason.

b. "Farm" means the land which is designated by ASCS under a single farm serial number.

c. "Insurable acreage" means the land classified as insurable by us for the qualifying crop and shown as such by the actuarial table.

d. "Non-conserving crop" means any crop planted for harvest as food, feed, or fiber.

e. "Planted acreage" means the insurable acreage:

(1) Planted to the qualifying crop or any non-conserving crop during the insurance period; or

(2) Which could have been planted to the qualifying crop or any non-conserving crop during the insurance period.

f. "Prevented planting date" means the latest final spring planting data established by the crop actuarial tables for any insurable crop in the county, except tobacco, plus any extended date or final planting date offered under any late planting agreement option. (In areas where there are no spring planting dates, we will use the latest final fall planting date.)

g. "Qualifying crop" means the ASCS program crop (barley, corn, cotton, ELS Cotton, grain sorghum, oats, rice, or wheat) which is also insured.

h. "Unit" means all insurable acreage in the county which you intend for planting to the qualifying crop prior to the prevented planting date for the crop year at the time insurance first attaches under this endorsement for the crop year. The unit will be determined when the acreage is reported.

i. "Yield guarantee" means the result of multiplying your yield for the qualifying crop by your coverage level for that crop.

§ 401.109 Hybrid sorghum seed endorsement.

The provisions of the Hybrid Sorghum Seed Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Hybrid Sorghum Seed Endorsement

1. Insured Corp

a. The crop insured will be female grain sorghum which is:

(1) Planted for harvest and the production is intended for use as commercial seed to produce grain sorghum, forage sorghum, or sorghum sudan; and

(2) Grown under a written contract executed with a seed company before the acreage reporting date.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price will be treated as a contract under which you have a share in the crop.

c. In addition to the female grain sorghum not insurable in section 2 of the general crop insurance policy, we do not insure any female grain sorghum:

(1) In rows planted with a mixture of female and male plants;

(2) Planted for any purpose other than for commercial seed;

(3) Grown under a contract with any seed company and that seed company refuses to provide us with the records we require to determine the dollar value per bushel of seed production for each hybrid variety; or

(4) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

2. Causes of Loss

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

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female seed;

(2) Deficiencies determined during grow-out of a sample of the insured seed crop, including inadequate purity or poor vigor;

(3) Failure to follow the grower provisions of the contract executed with the seed company;

(4) Frost or freeze after the date set by the actuarial table;

(5) Inadequate germination of the hybrid seed crop even though such inadequate germination was a direct result of an insured cause of loss unless inspected and accepted by us before harvest is completed; or

(6) Failure to plant the male seed at a time sufficient to assure adequate pollination of the female plants.

3. Report of Acreage, Share, Type, and Practice (Acreage Report)

In addition to the information required in section 3 of the general crop insurance policy for the acreage report, you must report the crop type.

4. Annual Premium

The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time of planting.

5. Insurance Period

In addition to the provision in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when both the male plant seed and the female plant seed are completely planted in accordance with the production managment practices of the seed company.

b. The Calendar date for the end of the insurance period is November 30 of the crop year.

6. Unit Division

Female grain sorghum acreage that would othewise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table, and if for each proposed unit:

a. you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; and

b. the acreage planted to insured female grain sorghum is located in separate legally identifiable sections, or in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The female grain sorghum is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice of probable loss at least 15 days before the beginning of harvest if you anticipate a germination rate of less than 80 percent on any unit. For purposes of Section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

8. Claim for Indemnity

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

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Subtracting from this product the sum of:

(a) The dollar amount obtained by multiplying seed production to count for each type and variety by the respective dollar value per bushel determined by us; plus

(b) The dollar amount obtained by multiplying non-seed production to count by the local market price of such production on the earlier of the date the loss is adjusted or the date such production is sold; and

(c) Multiplying this result by your share.

b. The total production to be counted for a unit will include all harvested and appraised seed and all harvested and appraised non-seed production.

(1) Total seed production to be counted will include:

(a) All production delivered to and accepted by the seed company;

(b) All production with a germination rate of 80 percent or more as determined by a certified seed test conducted from a cleaned sample taken at the time of delivery to the seed company or, if the mature production is appraised, at the time of appraisal; and

(c) All harvested and appraised production which does not qualify under (a) or (b) above because of damage caused by uninsured causes or the failure to follow grower provisions of the contract executed with the seed company.

(2) Total non-seed production to be counted will include all production that does not qualify as seed production.

(3) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good hybrid sorghum seed farming practices;

(b) Potential production lost due to failure to follow the grower provisions of the contract executed with the seed company;

(c) Not less than the dollar amount of insurance for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any harvested production.

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

(1) Not put to another use before harvest of hybrid sorghum seed becomes general in the county and is reappraised by us;

(2) Further damaged by an insured cause and is reappraised by us; or

(3) Harvested.

d. To determine the quantity of mature production, seed and non-seed production will be:

(1) Adjusted .12 percent for each .1 percentage point of moisture to 13.0 percent; and

(2) Measured at 56 pounds of production equaling one bushel.

e. When records of seed production provided by the seed company have been adjusted to a basis of 13.0 percent moisture and 56 pound test weight, (d) above will not apply for harvested production and the records of the seed company will be used to determine the amount of indemnity; provided that such production records were based on the same moisture and test weight criteria used to determine the dollar value per bushel of seed production.

9. Cancellation and Termination Dates

The cancellation and termination dates are April 15.

10. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date.

11. Production Reporting

The production reporting provision contained in section 4 of the general crop insurance policy will not be applicable to this contract.

12. Meaning of Terms

For the purposes of hybrid sorghum seed crop insurance:

a. "Adjusted Average Yield" means an expected yield level for a specific variety, in bushels per acre, determined by us and used to establish the value of seed production for the purpose of determining the amount of indemnity.

b. "Commercial Seed" means the offspring produced by crossing two individual seeds of different genetic character. The resultant offspring is the product intended for use on a commercial basis by an agricultural producer to produce a field crop type for grain sorghum, forage sorghum, or sorghum sudan.

c. "Female Plants" mean the plants grown for the purpose of producing commercial seed and from which the commercial seed is harvested.

d. "Grow-out" means the growing of a sample of the hybrid sorghum seed crop to determine progeny characteristics.

e. "Harvest" means combining, threshing, or picking of the seed and non-seed production.

f. "Inadequate germination" means less than 80 percent of the seed produced from female plants germinated as determined by a warm test using clean seed.

g. "Male Plants" means the plants grown for the purpose of shedding pollen on female plants.

h. "Seed Company" means a company which contracts with a grower to produce or grow plants for the production of hybrid seed.

i. "Type" means grain sorghum, forage sorghum, or sorghum sudan.

j. "Variety" means the seed produced from a pair of genetically identifiable parents.

§ 401.110 Almond endorsement.

The provisions of the Almond Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation, Almond Endorsement

1. Insured Crop

a. The crop insured will be almonds.

b. In addition to the almonds not insurable in section 2 of the general crop insurance policy, we do not insure any almonds:

(1) Which are not irrigated; or

(2) On which the trees have not reached the seventh growing season after being set out unless we agree in writing to insure such acreage.

c. Insurance may attach only by written agreement with us on any acreage with less than 90 percent of a stand, based on the original planting pattern.

2. Causes of Loss

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

a. Adverse weather conditions;

b. Fire;

c. Wildlife;

d. Earthquake;

e. Volcanic eruption;

f. Direct Mediterranean Fruit Fly damage; or

g. Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Report of Acreage, Share, and Practice (Acreage Report)

The date by which you must annually submit the acreage report described in section 3 of the general crop insurance policy is January 15.

4. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the almond policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

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

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

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

(5) Participation must be continuous.

5. Insurance Period

Insurance attaches for each crop year on January 1. The calendar date for the end of the insurance period is November 30 of the calendar year in which the almonds are normally harvested.

6. Unit Division

Almond acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. The acreage of insured almonds is located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Claim for Indemnity

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

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

(2) Subtracting therefrom the total production of almonds to be counted (see subsection 7.b.);

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

(4) Multiplying this result by your share.

b. The total production (total meat pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

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

(b) Not less than the guarantee for any acreage which is abandoned damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any appraised production on unharvested acreage.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and is reappraised by us; or

(b) Harvested.

(3) Almonds which cannot be marketed due to insurable causes will not be considered production.

8. Cancellation and Termination Dates

The cancellation and termination dates are December 31.

9. Contract Changes

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date.

10. Meaning of Terms

a. "Direct Mediterranean Fruit Fly damage" means the actual physical damage to the almonds which causes such almonds to be considered unmarketable and will not include unmarketability of such almonds as a result of a quarantine, boycott, or refusal to accept the almonds by any entity without regard to the actual physical damage to such almonds.

b. "Harvest" means the removal of the almonds from the orchard.

c. "Non-contiguous Land" means land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. "Total Meat Pounds" means the total pounds of good almond meats (whole, chipped and broken, and inshell meats) and rejects, except those resulting from insurable causes as determined by us. Unshelled almonds will be converted to meat pounds.

Done in Washington, DC on May 6, 1987.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-13470 Filed 6-11-87; 8:45 am]

BILLING CODE 3410-08-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24554; File No. S7-21-86]

Customer Protection Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is reproposing for comment amendments to its customer protection rule under the Securities Exchange Act ("Act") in connection with the treatment of repurchase agreements where the broker-dealer agrees to retain custody of the securities that are subject to those agreements ("hold in custody repurchase agreements"). The proposed amendments to Securities Exchange Act Rule 15c3-3 would require registered broker-dealers to obtain the repurchase agreement in writing, to make specific disclosures regarding the rights and liabilities of the counterparties to hold in custody repurchase agreements and to disclose that the Secuities Investor Protection Corporation ("SIPC") has taken the position that coverage under the Securities Investor Protection Act of 1970 is not available to repurchase agreement participants. The proposed amendments would further require registered broker-dealers to maintain possession and control of securities subject to hold in custody repurchase agreements with certain exemptions for intra-day deliveries of securities.

DATE: Comments to be received by June 29, 1987.

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

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

SUPPLEMENTARY INFORMATION: In September 1986, in response to failures of dealers in government securities and repurchase agreements, the Commission proposed amendments to its financial responsibility rules relating to the risk control and accountability for funds and securities involved in those transactions.[1] That proposal included amendments to the Commission's net capital rule, the securities count and recordkeeping rules an its customer protection rule, Securities Exchange Act Rule 15c-3-3. Subsequently, Congress enacted the Government Securities Act of 1986 which authorized the Department of the Treasury ("Treasury") to adopt financial responsibility rules for all brokers and dealers of U.S. government securities,

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[1] *See* Securities Exchange Act Release No. 23602, (September 4, 1986) 51 FR 32658 (September 15, 1986).

including those firms currently registered with the Commission. The Treasury has since adopted temporary rules that, in a large part, incorporate exiting Commission financial responsibility rules. The Treasury's recordkeeping and securities count rules require compliance with the Commission's Rule 17a-3 and 17a-13, including the amendments to those rules proposed in Release No. 23602. The Treasury's capital rule incorporates by reference the deductions from net worth in arriving at net capital for repurchase and reverse repurchase agreements proposed in that release. The Treasury's customer protection rule requires compliance with Rule 15c3-3, but adds to the provisions that were proposed in Release No. 23602. Today, the Commission proposes for comment amendments to Rule 15c3-3 that substantially conform to the Treasury's temporary customer protection rule.

The proposed amendments also include corrections to typographical errors in Rule 15c3-3a.

Discussion

The proposed amendments to Rule 15c3-3 announced in September were in response to, among other things, fraudulent practices of both unregistered and registered government securities broker-dealers involving repurchase agreements where the broker-dealer retained possession of the securities underlying the repurchase agreement ("hold in custody repo"). In a repurchase agreement ("repo"), the broker-dealer sells securities and agrees to repurchase the same or similar securities at a later date. In a hold in custody repo, the broker-dealer receives the funds from the sale of the securities but continues to maintain possession or control of the securities. Some of the failed broker-dealers allegedly used those securities in their business, although they had been sold to the repo counterparty. Those counter parties will be exposed to loss if coverage under the Securities Investor Protection Act of 1970 ("SIPA") is not available. The position of the Securities Investor Protection Corporation is that persons engaging in repurchase and reverse repurchase agreements are not customers of the broker-dealer within the meaning of SIPA and are therefore not covered under SIPA.[2]

The amendments to Rule 15c3-3 proposed in September would have required broker-dealers to: (i) Disclose the rights and liabilities of the parties to hold in custody repos including that SIPC has taken the position that SIPC coverage is not available to repo; counterparties; (ii) disclose to the counter-party which securities are being held on his behalf as subjects of the hold in custody repo and (iii) maintain possession and control of those securities free of lien, except for clearing liens imposed during the trading day for hold in custody repos exceeding $1 million.

The comments received by the Commission regarding the possession and control requirement were generally favorable. Some commentators asked whether the $1 million factor should be measured against the contract price of the repo or the value of the securities underlying the agreement. With respect to the confirmation of hold in custody securities to the repo counter-party, the commentators requested clarification on how specific the broker-dealer must be in making the disclosure. Because of legal uncertainties in the repo area, the commentators generally did not support the proposed requirement to disclose the rights and liabilities of repo counterparties. Some commentators believed that such a requirement might expose them to legal risk. Similar comments were received regarding the SIPC coverage disclosure requirement. The commentators believed that this requirement should be delayed pending resolution of the *Bevill, Bresler and Schulman* litigation.[3]

The Treasury, in designing its temporary regulation, considered the comments received by the Commission. Its temporary regulations, in many respects, respond to the concerns of the commentators. The Commission's amendments, proposed for comment today, would, with one exception, conform the treatment of hold in custody repos under the Commission's customer protection rule to the Treasury's temporary regulations.[4]

The Treasury's temporary regulation would require the broker-dealer to: (i) Obtain the hold in custody repurchase agreement in writing; (ii) disclose the identity of the securities that are the subjects of the agreement; (iii) disclose that SIPC takes the position that the counterparty is not protected under SIPA; and (iv) maintain the possession and control of the securities subject to hold in custody repos with certain exceptions. The exceptions would allow broker-dealers to substitute securities that are the subjects of hold in custody repos and use those securities during the trading day if the counterparty consents to the substitutions and the broker-dealer discloses that the securities will be subject to clearing liens during the trading day. For hold in custody repos exceeding $1 million, the consent may be included in the repurchase agreement. Prior consent, either oral or written, must be obtained on the day that the broker-dealer substitutes securities that are the subjects of hold in custody repos under $1 million.

As noted above, in its proposed amendments the Commission would have required broker-dealers to maintain possession or control free of any lien of securities that are the subjects of hold in custody repos under $1 million regardless of whether the counterparty consented to the use of those securities. Because of the large amounts of customer free credit balances that could be potentially converted to hold in custody repos, and because the rule will apply to repos involving securities other than government securities, the Commission remains concerned about the use of securities that are the subjects of hold in custody repos with smaller investors. The Commission requests comment on whether the customer protection rule should require possession or control of securities related to hold in custody repos under $1 million or allow those securities to be used for deliveries during the trading day with the counterparty's consent on the day the securities are used: The text of proposed amendments includes both alernatives.

In particular, the Commission requests comment on whether the continuous possession or control requirement will unduly burden the ability of small broker-dealers to engage in hold in custody repos. The Commission's alternative proposal would in effect allow substitution of securities for repurchase transactions of under one million dollars if the substitution were made on a contemporaneous basis. The Commission asks for comment on whether that kind of substitution is

[2] The United States District Court for the District of New Jersey decided in *Cohen* v. *Army Moral Support Fund (in re Bevill, Bresler and Schulman)*, Adv. Proc. No. 85-2103 (slip op.) (D.N.J. Oct. 23, 1986) that repo transactions were purchases and sales rather than secured loans. The practical effect of this decision was to extend coverage under the Securities Investor Protection Act to repo participants within that jurisdiction.

[3] *See* footnote 1 infra.

[4] In addition to the treatment of hold in custody repos that are under $1 million, which is described later in the release, the Commission has not incorporated some of the Treasury's modifications to Rule 15c3-3 that represent codifications of existing Commission interpretations. For example, the Commission's rule does not include a reference to § 403.4(f) because that section is merely a clarification of an existing Commission interpretation.

feasible, particularly with respect to book entry securities held by a custodian that might also clear for the broker-dealer. The Commission also asks for comment on whether, as a practical matter, the proposed requirement of oral consent can be enforced by regulatory examiners.

Costs and Benefits

The Commission requests comment on the costs and benefits of the proposed rule amendments and the effect of those costs and benefits on the repo market. Potential costs associated with the proposed amendments to Rule 15c3–3 may include the costs of obtaining written agreements and making the required disclosures. Costs may also be incurred in identifying securities that are subject to hold in custody repos and keeping the related disclosure current. Broker-dealers may also incur costs in applying the $1 million exemption to the possession and control requirement.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the objective of the proposed amendments is to further the purposes of the various financial responsibility rules which provide safeguards with respect to the financial responsibility and related practices of brokers and dealers and to require broker-dealers to maintain such records as necessary or appropriate in the public interest or for the protection of investors. The Analysis states that the proposed amendments would subject small broker-dealers to additional disclosure and accountability requirements. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Michael P. Jamroz, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549 (202) 272–3398.

Statutory Analysis

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

Text of Proposed Amendments

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

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

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

1. The authority citation for Part 240 continues to read in part as follows:

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

2. By adding paragraph (b)(4) to § 240.15c3–3 as follows:

Alternative 1:

§ 240.15c3–3 Customer protection-reserves and custody of securities.

* * * * *

(b) * * *

(4)(i) A broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a counterparty shall:

(A) Obtain the repurchase agreement in writing;

(B) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the trading day on which the transaction is initiated and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date or coupon rate as specified in the previous confirmation;

(C) Advise the counterparty that the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the counterparty with respect to the repurchase agreement;

(D) Maintain possession or control of securities that are the subject of the agreement.

(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3–3(c)(1), (c)(5) or (c)(6) of this title.

(iii) A broker or dealer shall not be in violation of the requirement to maintain possession or control pursuant to paragraph (b)(4)(i)(D) of this section during the trading day if:

(A) In the written repurchase agreement, the counterparty grants the broker or dealer the right to substitute other securities for those subject to the agreement;

(B) In the case of a repurchase transaction with a contract price of less than $1,000,000, the broker or dealer additionally has obtained, on any trading day on which a substitution is to occur, the prior consent of the counterparty, orally or in writing, to such substitutions and has kept a record of each such consent obtained, including the identities of the individuals requesting and agreeing to such consent; and

(C) In all cases, the provision in the written repurchase agreement governing the right, if any, to substitute is immediately proceded by the following disclosure statement, which much be prominently displayed:

Required Disclosure

The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute. If the buyer grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day. In the case of a repuchase transacton of less than $1,000,000, the [seller] is not permitted to substitute securities unless it has additionally obtained the [buyer's] prior consent to substitution on each trading day on which the [seller] wishes to make substitution. Regardless of the amount of the transaction, the [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.

(iv) A confirmation issued in accordance with paragraph (b)(4)(i)(B) of this section shall specify the issuer, maturity, coupon rate and market value of the security and shall further identify a CUSIP or GNMA pool number, as appropriate, unless other records of the broker or dealer issuing such confirmation identify the specific securites in whch the counterparty has an interest.

(v) This provision shall not apply to a repurchase agreement between the broker-dealer and another broker or dealer (including a government securities broker or dealer), a registered municipal securities dealer, or a general partner or director or principal officer of the broker or dealer or any person to the extent that his claim is explicitly subordinated to the claims of creditors of the the broker or dealer.

* * * * *

Alternative 2:

§ 240.15c3–3 Customer protection-reserves and custody of securities.

* * * * *

(b) * * *

(4)(i) A broker-dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a counterparty shall:

(A) Obtain the repurchase agreement in writing;

(B) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the trading day on which the transaction is initiated and at the end of any other day during which other securities are substituted if the substitution results in a change in the issuer, maturity date or coupon rate as specified in the previous confirmation;

(C) Advise the counterparty that the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the counterparty with respect to the repurchase agreement;

(D) Maintain possession or control of securities that are subject to the agreement.

(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of §§ 240.15c3-3(c)(1), (c)(5) or (c)(6) of this title.

(iii) In the case of a repurchase transaction with a contract price exceeding $1,000,000, the broker or dealer shall not be in violation of the requirement to maintain possession or control pursuant to paragraph (b)(4)(i)(D) of this section during the trading day if:

(A) In the written repurchase agreement, the counterparty grants the broker or dealer the right to substitute other securities for those subject to the agreement; and

(B) The provisions in the written repurchase agreement governing the right, if any, to substitute is immediately preceeded by the following disclosure statement, which must be prominently displayed:

Required Disclosure

The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute. If the buyer grants the right to substitute this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.

(iv) A confirmation issued in accordance with paragraph (b)(4)(i)(B) of this section shall specify the issuer, maturity, coupon rate and market value of the security and shall further identify a CUSIP or GNMA pool number, as appropriate, unless other records of the broker or dealer issuing such confirmation identify the specific securities in which the counterpart has an interest.

(v) This provision shall not apply to a repurchase agreement between the broker or dealer and another broker or dealer (including a government securities broker), a registered municipal securities dealer, or a general partner or director or principal officer of the broker or dealer or any person to the extent that his claim is explicitly subordinated to the claims of creditors of the broker or dealer.

* * * * *

(3) By revising § 240.15c3-3(m) as follows:

§ 240.15c3-3 Customer protection—reserves and custody of securities.

* * * * *

(m) Completion of sell orders on behalf of customers. If a broker or dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own) and if for any reason whatever the broker or dealer has not obtained possession of the securities from the customer within ten business days (30 calendar days for mortgage-backed securities) after the settlement date, the broker or dealer shall immediately thereafter close the transaction with the customer by purchasing securities of like kind and quantity: Provided, however, the term "customer" for the purpose of this paragraph (m) shall not include a broker or dealer who maintains a special omnibus account with another broker or dealer in compliance with section 4(b) of Regulation T.

* * * * *

4. By revising paragraph 9 of § 240.15c3-3a as follows:

§ 240.15c.3-3a Exhibit A—formula for determination of reserve requirement of brokers and dealers under § 240.15c3-3.

	Credits	Debits
* * * * *		
9. Market value of securities which are in transfer in excess of 40 calender days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	XXX	
* * * * *		

By the Commission.

June 4, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-13391 Filed 6-11-87; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-15771; File No. S7-20-87]

Distribution of Long-Term Capital Gains by Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Commission is proposing to amend an existing rule to allow registered investment companies to make an additional distribution of long-term capital gains where a failure to make the distribution may result in a special excise tax. The amendment is being proposed because of the effect of tax law changes on certain registered investment companies. The proposal would eliminate the need for these companies to obtain exemptive orders to make the desired distributions. The Commission is also proposing technical changes to clarify certain references in the existing rule.

DATE: Comments must be received on or before July 13, 1987.

ADDRESS: Comment letters should refer to File No. S7- 20 -87 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the above address.

FOR FURTHER INFORMATION CONTACT: Meryl Dewey, Staff Attorney, (202) 272-3038, or Brian M. Kaplowitz, Chief, (202) 272-2048, Office of Regulatory Policy, or Lawrence A. Friend, Chief Accountant, (202) 272-2106, Office of Disclosure Review, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is requesting public comment on a proposed amendment to rule 19b-1 (17 CFR 270.19b-1) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a-1 et seq.). Rule 19b-1 generally prohibits a registered investment company from distributing long-term capital gains more frequently than once with respect to any taxable year. The proposal would amend the rule to allow

certain investment companies to make one additional distribution of long-term capital gains for each taxable year if needed to avoid assessment of a special excise tax.

Background

Section 19(b) (15 U.S.C. 80a-19(b)) was adopted as part of the 1970 amendments to the Act.[1] The section prohibits registered investment companies from distributing, in contravention of such rules, regulations or orders as the Commission may prescribe, long-term capital gains more often than once every twelve months.[2] Subsequently, the Commission adopted rule 19b-1 to implement the section.[3] The rule prohibits, with minor exceptions, investment companies from distributing more than one long-term capital gains dividend with respect to any taxable year.[4]

The legislative history of section 19(b) and the administrative history of rule 19b-1 indicate that the limits placed on capital gains distributions were intended to prevent investors from confusing these distributions with income distributions[5] and to prevent certain abusive practices.[6] One such practice, discussed in a Commission report to Congress, was where an investment company sold portfolio securities primarily to realize a predetermined amount of gain, without consideration of whether the growth potential of the investment had been fully realized or whether the sale was consistent with the stated investment objectives of the company.[7] Further, the report indicated that dealers had on occasion relied on capital gains distributions to make an investment company seem more attractive to investors by encouraging the purchase of such company's shares in anticipation of these distributions without disclosing all the facts relating to such purchases.[8] The report also reflected concern that frequent distributions of long-term capital gains would increase administrative expenses.[9]

Discussion

The Tax Reform Act of 1986 imposes for each calendar year a 4% nondeductible excise tax ("Excise Tax") [10] on any regulated investment company ("RIC") that does not distribute by December 31st [11] to its shareholders at least 90% of its net aggregate short- and long-term capital gains ("Required Distribution") realized for the twelvemonth period ended on October 31st of that year.[12] Thus, the Excise Tax in effect requires a RIC to make a long-term capital gains distribution by the close of the calendar year.[13] The Excise Tax is imposed on undistributed amounts of the Required Distribution [14] and must be paid to the Internal Revenue Service by the following March 15th.[15]

The purpose of the Excise Tax is to encourage distributions during the calendar year in which they are earned so that they will be subject to income taxes to the investor for that year, rather than for subsequent years.[16] Because many RICs would need to make additional distributions to receive the favorable tax treatment afforded by Subchapter M of the Internal Revenue Code ("Code"),[17] distributions made to satisfy the Required Distribution could lead to violations of section 19(b) and rule 19b-1. Thus, unless a RIC's taxable year ended on October 31st,[18] the RIC would be forced to make two distributions with respect to a taxable year in order not to be subject to an additional tax, while section 19(b) and the rule generally permit only one.[19]

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[1] Investment Company Amendments Act of 1970, Pub. L. 91-547, section 11, 84 Stat. 1413, 1422 (1970).

[2] Section 19(b) of the Act provides that: It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains [as defined in the Internal Revenue Code] more often than once every twelve months.

[3] Investment Company Act Rel. No. 6834 (Nov. 23, 1971) (36 FR 232 (December 2, 1971)). The rule was later modified to allow certain unit investment trusts to make additional distributions of long-term capital gains resulting from specific events. Investment Company Act Rel. No. 10690 (May 15, 1979) (44 FR 29644 (May 22, 1979)).

[4] Paragraph (a) of rule 19b-1 allows regulated investment companies to make a supplemental distribution ("Spillover Distribution") of up to 10% of the prior distribution with respect to the same taxable year. (A regulated investment company, as is relevant here, is any management company registered under the Act, and which, among other things, derives at least 90% of its gross income from securities or currency-related holdings or transactions. I.R.C. section 851.) Further, under paragraph (e) of the rule, an investment company may make a special distribution otherwise prohibited by the rule in the event of "unforeseen circumstances," if it first files a request with the Commission to do so, and the Commission does not deny such request within 15 days after receipt thereof.

[5] S. Rep. No. 184, 91st Cong., 1st Sess. 29 (1969).

[6] *See* "Public Policy Implications of Investment Company Growth," Report of the Securities and Exchange Commission, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 191-95 (1966).

[7] *Id.* at 192.

[8] For example, since the purchase price of the shares would reflect the expected dividend distribution, an investor who bought before the record date would (i) lose the portion of sales load attributable to the distribution and (ii) pay taxes on the distribution even though it constituted an immediate partial refund of the money just invested. These facts were often not disclosed to the investor. *Id. See also* NASD Rules of Fair Practice, Art. III, section 26(e).

[9] *See generally* H.R. Rep. No. 2337, *supra* note 6, at 195; Investment Company Act Rel. No. 6735 (October 6, 1971) [36 FR 19516 (October 7, 1971)].

[10] Pub. L. 99-514, section 651, 100 Stat. 2294 (1986).

[11] *See generally* section 4982(c). In determining dividends paid during the calendar year, the RIC may also include dividends declared in December with a December record date, as long as such dividends are paid by the following February 1st. H.R. Rep. No. 841, 99th Cong., 3d Sess., II-244 (1986). *See also I.R.C. section 852(a)(6).*

[12] I.R.C. section 4982. A RIC may also be subject to the Excise Tax if it did not make certain other distributions; *e.g.*, the term "required distribution" under the Code includes 97% of a RIC's ordinary income for the calendar year. I.R.C. section 4982(b). Note also that the Tax Reform. Act of 1986 removes the distinction between short- and long-term capital gains for purposes of determining applicable tax rates. Pub. L. 99-514, section 301, 100 Stat. at 2216. The structure has been retained in order to reinstate a capital gains rate differential in the event of a future tax rate increase. H.R. Rep. No. 841, *supra* note 11, II-105-06.

[13] The Excise Tax is imposed on the excess of the "required distribution for such calendar year" over the "distributed amount for such calendar year." I.R.C. section 4982(a). "Distributed amount" includes, generally, the dividends paid during the calendar year plus amounts upon which corporate income tax is imposed during such calendar year. I.R.C. section 4982(c).

[14] I.R.C. section 4982(a).

[15] I.R.C. section 4982(d).

[16] *See generally* H.R. Rep. No. 841, *supra* note 11, at II-242-44.

[17] Under Subchapter M, there would be no corporate income tax on the ordinary income and short-term capital gains earned by a RIC during its taxable year, if the RIC distributes 90% of such income and gains to its investors by the close of its subsequent taxable Year. I.R.C. sections 852, 855. Such dividend distributions are treated as taxable income to the investor, generally for the year in which they are received. Taxation on long-term capital gains earned during a RIC's taxable year and distributed to investors would be passed through in a similar manner; however, they would be taxable income to the investor for the year in which they were earned. *See generally* I.R.C. sections 561, 852, 855. For undistributed long term capital gains, the RIC would generally deem the gains distributed and pay the applicable tax, with the investor generally receiving a pro rata credit for the amount paid. *See generally* I.R.C. sections 561, 852, 855.

[18] A RIC whose fiscal year ends November 30th or December 31st may also avoid the above dilemma by making a special election to use such year ends, rather than a 12-month period ended October 31st, for purposes of meeting the Required Distribution. I.R.C. § 4982(e)(4).

[19] 19/ Note, however, that some RICs, because of either their particular taxable year-end or individual performance, could possibly make the additional distribution as a Spillover Distribution under paragraph (a) of rule 19b-1. *See supra* note 4. Further, even though a RIC might arguably make a special distribution to satisfy the Required Distribution in 1987 as a result of "unforeseen circumstances" (*see id.*), the problem might still be present in subsequent years.

The Commission proposes to amend rule 19b-1 to allow a RIC to make one additional distribution of long-term capital gains with respect to its taxable year without regard to the timing of any Subchapter M distribution where the additional distribution is necessary to satisfy the Required Distribution. In this way, investors in RICs will not be harmed through payment of a tax which, but for the rule's proscription, need not be assessed. To address the investor confusion concern of section 19(b),[20] the new provision would require that the source of, and reason for, any distribution made pursuant to the Required Distribution be clearly set forth in the notice to shareholders accompanying the distribution.[21] None of the other purposes underlying section 19(b) or rule 19b-1 would be undermined by allowing an additional distribution made to avoid the Excise Tax.

Such a distribution would not affect the investment decisions or sales practices of a RIC. In addition, any expense incurred because of the additional distribution should be minimal, especially when weighed against the 4% Excise Tax.

Additionally, the Commission proposes to change the references in rule 19b-1 from the "Internal Revenue Code of 1954" to the "Internal Revenue Code of 1986." [22]

Cost/Benefit of Proposed Action

The Commission believes that the proposed amendment to rule 19b-1 would not impose additional burdens on the affected RICs and would reduce the costs that they may incur by eliminating the need to file exemptive applications. The Commission also would benefit because its staff would not have to review new applications requesting exemptive relief. Comments are requested, however, on these matters and on the costs or benefits of any other aspect of the proposed action.

[20] *See supra* note 5 and accompanying text.

[21] Such a disclosure is contemplated by rule 19a-1(g) under the Act, which states: "The purpose of (rule 19a-1) * * * is to afford security holders adequate disclosure of the sources from which dividend payments are made. *Nothing in this rule shall * * * prohibit the inclusion in any written statement of additional information in explanation of the information required by this rule.*" 17 CFR 270.19a-1(g). (Emphasis added.) Rule 19a-1 prescribes the form of, and information to be contained in, the written statement required by section 19(a) of the Act (15 U.S.C. 80a-19(a)). Section 19(a) requires any distribution by an investment company to be accompanied by a written statement disclosing its source.

[22] *See* Pub. L. 99-514, section 1(a), 100 Stat. at 2085.

Summary of Initial Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding the proposed amendment to rule 19b-1. The Analysis explains that the proposed amendment would allow certain RICs to make one additional distribution of long-term capital gains with respect to a taxable year where failure to make the distribution may result in a special excise tax. It states that the proposed amendment is intended to continue to protect investors from the abuses that led to the enactment of section 19(b) and the adoption of the rule, and will significantly reduce the number of exemptive applications filed with the Commission requesting relief to distribute long-term capital gains more frequently than once with respect to any taxable year. Further, the Analysis indicates that no additional reporting or recordkeeping requirements would be imposed by the proposal but that, for those RICs desiring to rely on the proposal, specific disclosure to investors would be required. To the extent that the proposed amendment would eliminate the need for RICs to file applications seeking exemption from section 19(b) and the rule, it will reduce the costs incurred by smaller entities in preparing and filing exemptive applications. The Analysis notes that the Commission has considered certain significant alternatives, including permitting small investment companies to make unlimited capital gains distributions or exempting them from the requirement that an explanation of the distribution be provided to shareholders. The Analysis states, however, that the Commission does not believe that these alternatives are consistent with the statute, legislative intent, or the protection of investors. A copy of the Analysis may be obtained by contacting Meryl Dewey, Esq., Mail Stop 5-2, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Paperwork Reduction Act

The notice information required by the proposed amendment to rule 19b-1 has been submitted to the Office of Management and Budget.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments to Rule

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

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

Authority: Secs. 6(c) (15 U.S.C. 80a-6(c)), 19 (a) and (b) (15 U.S.C 80a-19 (a) and (b)), and 38(a) (15 U.S.C. 80a-37(a)).

2. By amending § 270.19b-1 by revising paragraphs (a) and (c)(1)(iii), and adding a new paragraph (f) as follows:

§ 270.19b-1 Frequency of distribution of capital gains.

(a) No registered investment company which is a "regulated investment company" as defined in Section 851 of the Internal Revenue Code of 1986 ("Code") shall distribute more than one capital gain dividend ("distribution"), as defined in section 852(b)(3)(C) of the Code, with respect to any one taxable year of the company, other than a distribution pursuant to section 855 of the Code which is supplemental to the prior distribution with respect to the same taxable year of the company and which does not exceed 10% of the amount of such prior distribution.

* * * * *

(c) * * *

(1) * * *

(iii) The sale of an eligible trust security to maintain qualification of the Trust as a "regulated investment company" under section 851 of the Code,

* * * * *

(f) Notwithstanding paragraph (a) of this section, a registered investment company may make one additional distribution of long-term capital gains, as defined in the Code: *Provided*, That:

(1) Failure to make such distribution would result in the assessment of a special tax under section 4982 of the Code; and

(2) The source of and reason for the distribution is clearly identified in an accompanying notice to shareholders.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

June 5, 1987.

[FR Doc. 87-13380 Filed 6-11-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: The Parole Commission proposes to make a revision to the general notes accompanying its paroling policy guidelines contained in 28 CFR 2.20 by deleting a provision relating to crime sprees. The change is intended to eliminate uneven and inconsistent interpretation of the provision.

DATE: Public comment must be received by July 13, 1987.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: General Note 7 of Subchapter A, Chapter Thirteen of the paroling policy guidelines contained in 28 CFR 2.20 provides guidance for the grading of state offenses that are sufficiently related to the instant federal offense "in time or nature to be considered as part of the same episode, course, or spree of criminal conduct." The note continues that such conduct "shall be considered as an aggravating factor by being graded on the severity scale as if part of the current federal offense behavior." Further, according to the note, any "time spent in custody on the state offense(s) shall be credited" for the purposes of the parole release guidelines.

It has been the experience of the Parole Commission that this provision's wording has led to uneven application and that, rather than attempting to revise the language, it would be preferable to delete the provision in full. It is the determination of the Commission that other rules, notes and provisions in the guidelines are sufficient to provide guidance for determining the appropriate severity level for related state offenses committed as part of a crime spree.

The proposes rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

28 CFR Part 2 is amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. It is proposed to revise the General Notes in Subchapter A, Chapter Thirteen of the paroling policy guidelines of 28 CFR 2.20 by removing General Note 7.

Dated: May 29, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-13459 Filed 6-11-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Permanent State Regulatory Program of Missouri; Consideration of Modifications of Deadline for Blaster Certification

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: At the State's request OSMRE is considering modifying the deadline for Missouri to submit a program amendment addressing blasting certification under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATE: Written comments not received on or before 4:00 p.m., July 13, 1987, will not necessarily be considered.

ADDRESSES: Written comments must be mailed or hand delivered to: Mr. William J. Kovacic, Director, Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue Room 502, Kansas City, MO 64106, Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980 (45 FR 77017). Information pertinent to the general background and revisions, to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980 **Federal Register** (45 FR 77017). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 925.10, 925.15 and 925.16. OSMRE requests comments on this proposed extension.

On March 4, 1983, OSMRE issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSMRE's rule at 30 CFR Part 850, whichever is later. In the case of Missouri's program, the applicable date is 12 months after publication date of OSMRE's rule, or March 4, 1984.

On August 6, 1984, Missouri advised OSMRE that it would be unable to meet the March 4, 1984, deadline and requested a one year extension to develop and adopt a blaster certification program. On October 26, 1984, OSMRE granted Missouri an extension to August 6, 1985 (49 FR 43055).

On August 4, 1985, the Director of the Missouri Land Reclamation Commission advised OSMRE that the State would require another extension of time to submit its blaster training and examination program (Administrative Record MO-282). On November 15, 1985, OSMRE granted Missouri an extension to August 6, 1986 (50 FR 47219).

By a letter dated March 13, 1986, the Missouri Land Reclamation Commission formally submitted a proposed regulatory amendment pursuant to 30 CFR 732.17 addressing blasting and blaster certification. In a letter dated September 18, 1986, Missouri requested the withdrawal from consideration of the program amendment addressing

blasting and blaster certification. OSMRE granted this request.

II. Proposal to Extend Deadline

In a letter dated April 10, 1986, the Director of the Missouri Land Reclamation Commission provided OSMRE with a revised schedule and requested the deadline be extended to June 30, 1988 for the submission of regulations and a program for blaster training, examination and certification (Administrative Record No. MO-309).

In accordance with the State's request, OSMRE is proposing that the deadline for the State to submit a program amendment for these conditions be extended to June 30, 1988 for 30 CFR 925.16(i)(1)(i). OSMRE requests comments on this proposed extension.

III. Additional Determinations

1. *Compliance with the National Environment Policy Act:* The Secretary has determined that, pursuant to section 702 (d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2.*Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and Regulatory review by OMB.

The Department of the Interior has determined that this rule would not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements that require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 29, 1987.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 87-13492 Filed 6-1-87; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 925

Permanent State Regulatory Program of Missouri; Consideration of Modifications of Deadline for Conditions of Amendment Approval

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: At the State's request OSMRE is considering modifying the deadline for Missouri to meet two conditions of approval of an amendment of its State's permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions concern revegetation success standards for trees and shrubs and penalty assessment process.

DATE: Written comments not received on or before 4:00 p.m., July 13, 1987, will not necessarily be considered.

ADDRESSES: Written comments must be mailed or hand delivered to:

Mr. William J. Kovacic, Director, Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Kovacic, Director, Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980 (45 FR 77017). Information pertinent to the general background and revisions, to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Missouri program can be found in th November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 925.10, 925.15 and 925.16.

By a letter dated March 13, 1986, the Missouri Land Reclamation Commission formally submitted proposed regulatory amendments for OSMRE's approval pursuant to 30 CFR 732.17 (Administrative Record MO-308). On January 7, 1987, the Secretary conditionally approved the Missouri program amendment (52 FR 534). The conditions are as follows:

Section 925.16 Required program amendments.

(j) By February 28, 1988, Missouri shall revise its regulations at 10 CSR 40-2.090(6) or otherwise propose to amend its program to be consistent with the Federal provisions at 30 CFR 715.20(f). Missouri's initial program regulations at 10 CSR 40-2.090(6) concerning revegetation requirements must retain the requirement that the revegetation success standard be met for two growing seasons.

(k) By August 30, 1987, Missouri shall submit revisions to its surface coal mining reclamation regulations to require that informal assessment conferences be held within a set time period from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. Missouri shall include at 10 CSR 40-8.040(8)(B) a proviso that failure to hold such conferences within that time period shall not be grounds for dismissal and establishment at 10 CSR 40-8.040(8) a date by which any penalty finally assessed in a settlement arrangement must be paid and the consequences of failure to pay by that date.

II. Proposal to Extend Deadline

By a letter dated April 9, 1987, Missouri proposed an extension of the deadlines outlined in 30 CFR 925.16 (j) and (k). The State is presently conducting extensive regulatory revisions in response to an OSMRE letter sent pursuant to 30 CFR 732.17(d). The State indicated it wishes to revise the appropriate regulations as a result of the program conditions in combination with this regulatory reform effort.

In accordance with the State's request, OSMRE is proposing that the deadline for the State to submit a program amendment for these conditions be extended to October 31, 1988 for 30 CFR 925.16(j) and April 30, 1988 for 30 CFR 925.16(k). OSMRE requests comments on this proposed extension.

III. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and Regulatory review by OMB.

The Department of the Interior has determined that this rule would not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements that require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 29, 1987.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 87-13493 Filed 6-11-87; 8:45 am]

BILING CODE 4310-05-M

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: Extension of Comment Period.

SUMMARY: On May 1, 1987, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) related to sections 2, 3, and 4 of Pub. L. 81-874, the Impact Aid Program, which provided a comment period ending June 15, 1987 (52 FR 16144-16155). A number of commenters asked for an extended comment period so that the proposed regulations could be studied more extensively. Most commenters requested an extension of the comment period until October 1, 1987.

The Secretary believes that the 45-day comment period provided in these proposed rules has afforded ample time within which to study the effects of the provisions related to sections 3 and 4. The preamble to the NPRM describes fully the changes that would affect applicants, which primarily are straightforward definitional changes. In addition, at the time of publication of the NPRM, section 3 applicants already had available all data necessary to calculate the effects of the proposed rules, because they had to have these same data in order to file their applications for FY 1987. The Secretary has therefore decided not to extend the comment period for the provisions of the proposed regulations that relate to sections 3 and 4, which are proposed to be effective for fiscal year (FY) 1987.

However, the Secretary is extending the comment period for Subpart J until July 15, 1987. Subpart J relates to section 2 and was not proposed to be effective until FY 1988. The comment period for Subpart J can thus be extended, in order to allow additional time for public review of the more lengthy and comprehensive section 2 eligibility and entitlement provisions, without delaying its proposed effective date.

DATE: The comment period for proposal Subpart J openly is extended until July 15, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, Department of Education, 400 Maryland Avenue, SE., Washington, DC 20202-6272. Telephone (202) 732-4052.

Dated June 10, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-13596 Filed 6-11-87; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3217-8]

Approval and Promulgation of Air Quality Implementation Plans; States of Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont; Stack Height Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve declarations by Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont that recent revisions to EPA's stack height regulations do not necessitate revisions to State Implementation Plans (SIPs) in those states. Each state was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that these states have satisfied their obligations under Section 406 of the Clean Air Act to review their SIPs with respect to EPA's revised stack height regulations.

DATES: Comments must be received on or before July 13, 1987.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division (AAA-2311), U.S. Environmental Protection Agency, JFK Federal Bldg., Boston, MA 02203. Copies of the submissions and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of each state's submission are available for public inspection at its respective office, as follows: The Connecticut Department of Environmental Protection, Air Compliance Unit, State Office Building, Hartford, CT 06115; the Massachusetts Department of Environmental Quality Engineering, Eighth Floor, One Winter Street, Boston, MA 02108; the New Hampshire Air Resources Division, 64 N. Main St., Concord, NH 03302; the Rhode Island Department of Environmental Management, Division of Air and Hazardous Materials, Room 204, 45 Davis St., Providence, RI 02908; and the Vermont Agency of Environmental Conservation, 103 South Main St., Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Stephen S. Perkins, (617) 565-3225; FTS 835-3225.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S Supreme Court. On July 2, 1984, the Supreme Court denied the petition, 104 S.Ct. 3571 (1984), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2)(B) of the Act, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation of the revised stack height regulations, as required by section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emissions exemption from prohibited dispersion techniques. These sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions to EPA were to contain an evaluation of each stack and source in the inventory.

State Submissions

EPA has received reviews submitted by Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont. The Connecticut review was received on March 25, 1986; the Massachusetts review on April 9, 1986; the New Hampshire review on March 31, 1986; the Rhode Island review on April 1, 1986; and the Vermont review on March 26, 1986. Additional material was received from Connecticut on May 30, and June 2, 1986; from Massachusetts on June 30, 1986; and from New Hampshire on July 31, 1986.

Each state has concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. They also found that no existing emission limitations have been affected by stack height credits greater than GEP or any other prohibited dispersion techniques. A summary of each state's findings is provided below.

Connecticut

Connecticut is in the process of revising its new source review regulations to meet current EPA regulations. EPA has reviewed draft regulations and is satisfied that the relevant definitions are consistent with the EPA stack height regulations. Since the new Connecticut regulations will be submitted soon as a SIP revision, no separate action on the stack height language will be taken at this time. In the interim, Connecticut has assured EPA that it will follow the revised EPA regulations.

Connecticut reviewed 28 stacks for GEP stack height and 10 sources for prohibited dispersion techniques. The state found no emission limitations affected by stack height credits above GEP or any other dispersion technique.

Massachusetts

Massachusetts found its existing stack height language was in accordance with EPA's revised regulations. However, to ensure a clear understanding, Massachusetts has submitted a letter, dated June 24, 1986, committing to interpret its stack height language consistent with EPA's revised regulation. This letter will be incorporated by reference into the Massachusetts SIP.

Massachusetts reviewed 48 stacks for prohibited stack height and 10 sources for prohibited dispersion techniques. The state found no emission limitations affected by stack height credits above GEP or any prohibited dispersion technique.

New Hampshire

New Hampshire also found its existing stack height language was in accordance with EPA's revised regulations. New Hampshire has also submitted a letter committing to interpret its stack height language consistent with EPA's. This letter, dated July 25, 1986, will be incorporated by reference into the New Hampshire SIP.

New Hampshire revised 11 stacks for prohibited stack height credit and three sources for potential dispersion techniques. The state found no emission limitations affected by stack height credits above GEP or any prohibited dispersion technique.

Rhode Island

Rhode Island's new source review program was revised on January 8, 1986 (51 FR 755). The revision contained a commitment letter similar to the ones described above. The letter, dated October 15, 1985, was incorporated by reference into the Rhode Island SIP.

Rhode Island reviewed one stack for prohibited stack height credit and two sources for prohibited dispersion techniques. The state found no emission limitations affected by stack height credits above GEP or any prohibited dispersion technique.

Vermont

Vermont found its existing stack height language is in accordance with EPA's revised regulations. The state has sent a letter, dated March 21, 1986, outlining how it interprets the relevant definitions at least as stringently as EPA does. This letter will be incorporated by reference into the SIP. Vermont reviewed two stacks for prohibited stack height credit and found no emission limitations affected by stack height credits above GEP or any prohibited dispersion technique.

EPA Review

EPA has reviewed each state's submission and concurs with the conclusion that no SIP revisions are necessary as a result of EPA's revised stack height regulations. The stack height rules of Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont apply to all new sources and modifications as required in 40 CFR 51.164, as well as existing sources as required in 40 CFR 51.118. This means that these rules apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA has determined that the commitment letters regarding the interpretation of the stack height rules for Massachusetts, New Hampshire, Rhode Island and Vermont are consistent with EPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. As mentioned above, Connecticut's rules will be formally reviewed as part of a forthcoming revision to its new source review program. Thus Massachusetts, New Hampshire, Rhode Island, and Vermont have met their obligations under Section 406 of the Act. Connecticut has met its obligations with respect to the review of emission limits but has not yet with respect to the new source review portion. Future rulemaking on Connecticut's new source review rules will satisfy this remaining obligation.

EPA's detailed review and approval of the technial support submitted by each state is contained in a Technical Support Document which summarizes

the states' findings for each inventoried source. This document is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this notice.

EPA intends to add the documented reviews and letters regarding interpretation of stack height language to the appropriate SIP as additional material. This will ensure a clear record of the state's actions and intentions in these matters. Since the states did not formally revise their SIPs, some states have not gone through the public notice and hearing process normally associated with a SIP revision. Thus, prior to this action, there has only been opportunity for public comment in Connecticut and Rhode Island. By publishing this proposed approval of the reviews and soliciting public comment, EPA is ensuring the opportunity for public participation in this process.

Proposed Action

EPA is proposing to approve declarations by Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont that recent revisions to EPA's stack height regulations do not necessitate SIP revisions in those states.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7642.

Dated: April 28, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 87-13478 Filed 6-11-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1- FRL-3217-9]

Approval and Promulgation of Plans; New Hampshire; Nashua Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan revisions submitted by the State of New Hampshire. These revisions consist of rules for a vehicle inspection and maintenance program for Nashua, New Hampshire and eleven surrounding towns. This program is a part of the carbon monoxide attainment plan for Nashua. The intended effect of these revisions is to control emissions of carbon monoxide in Nashua in order to attain the primary National Ambient Air Quality Standard by December 31, 1990, and to provide for reasonable further progress in the interim, as required under Part D of the Clean Air Act Amendments of 1977.

DATE: Comments must be received on or before July 13, 1987.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, (ATS-2311), U.S. Environmental Protection Agency, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203, and at the New Hampshire Department of Environmental Services, Air Resources Division, Health & Welfare Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Thomas Wholley, (617) 565–3233, FTS: 835–3233.

SUPPLEMENTARY INFORMATION: On July 25, 1986, and October 7, 1986, the Director of the New Hampshire Air Resources Agency (ARA) submitted revisions to the New Hampshire State Implementation Plan (SIP). These revisions contain the rules for a vehicle inspection and maintenance (I/M) program in Nashua and eleven surrounding towns (Amherst, Derry, Hollis, Hudson, Litchfield, Londonderry, Merrimack, Milford, Pelham, Salem and Windham). The I/M program is a portion of the carbon monoxide (CO) attainment plan for Nashua which was previously submitted by New Hampshire and proposed for approval by EPA on August 4, 1986 (51 FR 27878). The remainder of this notice presents the background for this action, how these revisions satisfy EPA's requirements for I/M programs, and EPA's proposed approval.

Background

At New Hampshire's request, EPA designated the City of Nashua as a nonattainment area for CO on April 11, 1980 (45 FR 24869). Under EPA policy, areas classified nonattainment for CO after July 1, 1979, are required to meet the same time intervals for achieving attainment as described in the Clean Air Act for nonattainment areas classified before this date (i.e., five years after redesignation, with a possible five year extension). Thus, Nashua was given an attainment date of December 31, 1985, with a possible extension to 1990.

New Hampshire formally submitted an attainment plan for Nashua on September 12, 1985. Details of the plan and the history of its development are provided in depth in EPA's August 4, 1986 **Federal Register** notice and will not be repeated here. The cornerstone of the attainment plan is an I/M program in Nashua and eleven surrounding towns which will start no later than September 30, 1987. At the time of EPA's August 4, 1986 notice, New Hampshire had not adopted the I/M program rules. EPA proposed approval of the CO attainment plan with the understanding that New Hampshire would submit the required I/M rules by September 30, 1986. EPA committed to publish a supplementary notice of proposed rulemaking for public comment upon receipt of the rules.

On July 25, 1986, New Hamshire submittd draft I/M rules for EPA's review and comment. After receipt of EPA and public comment, and a public hearing, the New Hampshire Department of Safety (DOS), the agency responsible for implementing the I/M program, finalized the rules. The ARA then submitted them as formal SIP revisions on October 7, 1986.

Policy Requirements—I/M programs

The criteria EPA uses in evaluating the adequacy of I/M programs are discussed in detail in a policy document published in the **Federal Register** on Janaury 22, 1981 (46 FR 7182). This section discusses how the Nashua area I/M program satisfies these criteria. To gain EPA approval of an I/M program, the state submittal must include rules and all other program elements which could affect the ability of the I/M program to achieve the minimum emission reduction requirements. In summary, these criteria are: (1) Inspection test procedures; (2) emission standards; (3) inspection station licensing requirements; (4) emission analyzer specifications and maintenance/calibration requirements; (5) recordkeeping and record submittal requirements; (6) quality control, audit, and surveillance procedures; (7) procedures to assure that noncomplying vehicles are not operated on public roads; (8) any other official program rules, regulations, and procedures; (9) a public awareness plan; and (10) a mechanics training program if additional emission reduction credits are being claimed for mechanics training. Each I/M program element must be consistent with EPA policy.

The Nashua area I/M program submitted by New Hampshire is a decentralized program with annual testing of CO only. Affected motorists will be required to present a test certificate or waiver in order to renew vehicle registration annually. EPA worked closely with the DOS and ARA in the development of the rules to ensure acceptable program design and implementation. EPA finds that they satisfy the criteria listed above with three exceptions The final details of the recordkeeping and record submittal requirements, the surveillance procedures, and the public awareness plan are currently being worked out. EPA and DOS have agreed on emission inspection records and quarterly reporting of data. We have also agreed that criteria for targeting of surveillance inspections will include low failure rates, abnoral frequencies of reported test results, and complaints. For public awareness, New Hampshire will be distributing EPA pamphlets on I/M and emission controls to all motorists in the program area. New Hampshire has agreed to submit these details in the coming months. EPA will not grant final approval of the plan until these items are addressed.

For more details on EPA's review, see the Technical Support Document available at locations listed in the **ADDRESSES** section of this notice.

Additional Requirements

The New Hampshire legislation that authorizes the Nashua area program allows the use of manual emission analyzers as long as these produce reliable and accurate results. In response to this legislative directive, the rules allow the use of manual analyzers that satisfy EPA's minimum acceptable specifcations for analyzer performance. More advanced computerized analyzers are allowed in the program as well.

However, recent evaluations by EPA's Office of Mobile Sources (OMS) have found that almost all decentralized I/M programs in other states utilizing manual emission analyzers have severe operating problems. These programs are plagued by low failure rates which have kept the programs from achieving the minimum emission reduction requirements. Data analysis performed by OMS has provided grounds for concluding that the low reported failure rates are due to frequent failure of inspectors to perform inspections properly.

In response to these findings, EPA has initiated a process for correcting these problems in operating programs. The affected states are being required to submit corrective action plans. EPA expects that most states will find it necessary to switch to computerized emission analyzers which have been shown to alleviate the problem of improper testing.

With EPA's knowledge of the poor track record of manual emission analyzer programs, and with this corrective program underway in other states, EPA did not consider it prudent to propose approval of the Nashua area I/M program without additional requirements above and beyond those described in the 1981 policy. EPA asked New Hampshire to provide a commitment from the Governor to evaluate the performance of the Nashua area I/M program during its first year of operation and, if the program is not meeting the required emission reduction targets, to seek legislative authority to require the use of computerized analyzers and to subsequently convert the program on a predetermined schedule.

New Hampshire has responded positively to EPA's request. In a letter dated March 6, 1987, the Governor has committed to take the necessary measures to convert the program to the use of computerized emission analyzers if the program is found not to be achieving the necessary emission reductions. The Governor would seek legislative authorization for this change in the 1989 session and require conversion to computerized analyzers by all inspection stations by March 31, 1990.

The DOS will conduct a thorough evaluation of the program's effectiveness through a program of undercover inspections of all testing stations to be conducted at least once per quarter in the second through fourth quarters of the first year (January through September, 1988). Additional inspections will be conducted and targeted by analysis of routine surveillance data. As mentioned above, EPA will not grant final approval of the plan until satisfactory surveillance procedures are submitted by New Hampshire. The DOS will also inform inspection stations considering the purchase of emission analyzers of the advantages of computerized analyzers and the possibility of these being required in the future.

EPA has worked closely with New Hampshire in designing this program and is satisfied that it provides the necessary safeguards to ensure a successful I/M program in the Nashua area.

Proposed Action

EPA is proposing to approve the Nashua area I/M program rules that were submitted by the New Hampshire Air Resources Agency on October 7, 1986, and the commitment from the Governor to convert the program to computerized analyzers, if necessary, that was submitted on March 6, 1987, with the understanding that New Hampshire will submit the following prior to final rulemaking: (1) The recordkeeping and record submittal requirements; (2) the surveillance procedures; and (3) the public awareness plan. EPA anticipates that the earlier proposal to approve the other portions of the CO attainment plan for Nashua will be consolidated with today's proposed approval of the I/M rules into a single final rulemaking notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401-7642.

Dated: March 24, 1987.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 87-13479 Filed 6-11-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-154; FCC 87-188]

Broadcast Services; Cross-Interest Policy

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This action initiates a comprehensive review of the Commission's cross-interest policy, which prevents individuals from having "meaningful" cross-interests in two broadcast stations, or a daily newspaper and a broadcast station, or a television station and a cable television system serving substantially the same area. The proceeding is needed to determine whether the policy might appropriately be eliminated in conjunction with incorporation of any residual cross-interest concerns in the multiple

ownership rules, or eliminated altogether.

DATES: Interested parties may file comments on or before July 31, 1987, reply comments on or before August 31, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's *Notice of Inquiry*, MM Docket 87-154, adopted May 14, 1987, and released June 5, 1987.

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

Summary of Notice of Inquiry

1. This proceeding reviews the Commission's cross-interest policy, which essentially prevents individuals from having "meaningful" interests in two broadcast stations, or a daily newspaper and a broadcast station, or a television station and a cable television system serving substantially the same area. Significant changes in the regulatory and competitive environment since the policy's inception over 35 years ago suggest that the policy might appropriately be eliminated in conjunction with incorporation of any residual cross-interest concerns in the multiple ownership rules or eliminated altogether. In this regard, the Commission is seeking comment on several issues.

2. First, an overriding concern in this proceeding is the lack of clarity caused by the cross-interest policy. By its very nature (*i.e.*, case-by-case evaluation of varying relationships to determine "meaningfulness" and analysis of whether two media outlets serve "substantially" the same area), the cross-interest policy is unpredictable in its effects. Past cases construing the policy, while affording some general guidance, cannot remove the inherent uncertainty of an *ad hoc*, policy-based approach to this matter, nor provide the degree of certainty often necessary to successful business undertakings. The cost to licensees and the public of such foregone transactions may well be substantial.

3. A further reason for reexamining the cross-interest policy is that, in the years since the policy was adopted, the Commission has developed new "attribution" provisions and multiple ownership rules that have superseded the cross-interest policy in many respects. The continuing need for the cross-interest policy, in light of these new rules, has never been examined. As a result, the cross-interest policy continued to evolve on a case-by-case basis without reference to these changes. Given that many situations that were formerly encompassed by the cross-interest policy are now proscribed by our attribution and ownership rules, it is appropriate to reevaluate the the continuing need for the cross-interest policy.

4. Next, given the evolution of the broadcast market, the Commission seeks comment on whether the policy is still necessary to achieve its original purpose of preserving competition among media voices in a given market. In this regard, the Commission questions whether other policing mechanisms such as marketplace forces, private remedies, and the antitrust laws can deter the type of anticompetitive misconduct which the cross-interest policy was designed to prevent. Indeed, in 1981, we relied upon the efficacy of these factors in repealing one discrete portion of the cross-interest policy, known as the *Golden West* policy—which had prohibited national or regional sales representatives from owning one station and representing a competing station in the same service in the same market. Our experience over the past six years without the *Golden West* policy in effect suggests that these other policing mechanisms can deter the type of misconduct which the cross-interest policy was designed to prevent.

5. Similarly, we question the extent to which the cross-interest policy is necessary to promote its other goal of diversity of viewpoint. In this regard, we believe that various cross-interests with significant diversity implications, such as cross-directorships and substantial minority stock interests, have since been prohibited by the multiple ownership rules. Other cross-interests that have not been prohibited by these rules originated in response to concerns related to anticompetitive behavior. Several of these interests—such as owning or having an attributable interest at one station and serving as a consultant at a competing station—may no longer require Commission oversight because the station contracting for these services remains ultimately responsible for the programming decisions at its station. However, we do question whether certain key employees of a licensee may exercise sufficient programming control over that licensee such that the employee's position should be recognized as an attributable interest. Specifically, we question whether a general manager, station manager, or programming director may exercise a level of program control which, together with holding cognizable interests in competing media in the same market, presents a negative effect on diversity of viewpoint. Commenters are requested to address the limitations on interests that should be applicable to such station employees and whether other factors such as market size should affect the Commission's decision in this area. Finally, to the extent that residual interests potentially warranting inclusion in the rules are identified, we would expect to issue an appropriate notice of proposed rule making directed to them at the conclusion of this inquiry.

Ex Parte Considerations

This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Paperwork Reduction Act Statement

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified collection requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Comment Information

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 31, 1987, and reply comments on or before August 31, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Authority Citations

Authority for this proceeding is contained in sections 1, 3, 4 (i) and (j), 303, 308, 309, and 403 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-13430 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-174, RM-5465]

Radio Broadcasting Services; Glenwood Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Colorado West Broadcasting, Inc. proposing the substitution of Channel 255C2 for Channel 224A and modification of the license of Station KMTS-FM at Glenwood Springs, Colorado.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553 (Counsel).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87-174, adopted March 13, 1987, and released June 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-13453 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-180, RM-5723]

Radio Broadcasting Services; Loveland, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Aspen Leaf Broadcasting Corp. proposing the substitution of FM Channel 273C2 for Channel 272A at Loveland, CO and modification of the license of Station KLOV-FM accordingly.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Joseph P. Benkert, Esq., Gardner, Carton & Douglas, 370—17th St., Suite 2760, Denver, CO 80202-3520 and Kevin C. Boyle, Esq. Arent, Fox, Kintner, Plotkin & Kahn, 1050 Conn. Ave., NW., Suite 600, Wash., DC 20036 (special counsel).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-180, adopted May 13, 1987, and released June 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-13454 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-176, RM-5534]

Radio Broadcasting Services; Five Points, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Five Points Communications, Inc., proposing to allot Channel 271A to Five Points, Florida as a first FM service. The proposal for Channel 271A requires a site restriction 7.9 kilometers (4.9 miles) southwest of the city.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M. Madden, Cohen and Marks, Suite 600, 1333 New Hampshire Ave., NW., Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87-176, adopted May 5, 1987, and released June 9, 1987. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a *Notice of Proposed Rule Making* is issued, until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-13455 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-201; RM-5697]

Radio Broadcasting Services; Boscawen, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Brian Dodge proposing the allocation of Channel 227A to Boscawen, NH, as the community's first local FM service. Channel 227A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements without the imposition of a site restriction. Canadian concurrence is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian Dodge, Harvest Broadcasting Services, Box 105 FM, Hinsdale, NH 03451.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-201, adopted May 18, 1987, and released June 9, 1987. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-13456 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-175, RM-5579]

Radio Broadcasting Services; Boalsburg, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Mrs. Davies Bahr to allocate Channel 225A to Boalsburg, Pa., as the community's first local FM service. Channel 225A can be allocated in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers south to avoid a short-spacing to unused and unapplied for Channel 226A at Renovo, Pennsylvania. Canadian concurrence is required since Boalsburg is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as allows: B. Jay Baraff, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., #203, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-175, adopted May 6 , 1987, and released June 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, international Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures or comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-13457 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-179, RM-5651]

Television Broadcasting Services; Bryan and College Station, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Central Texas Broadcasting Co., Ltd., proposing the allotment of UHF Television Channel 50 to either Bryan or College Station, Texas. The channel could

provide a third commercial television service to Bryan or a first commercial television service to College Station. We shall also propose the reallotment of Channel *15 from Bryan to reflect its actual use at College Station.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Leo I. George, Esquire, John M. Shoreman, Esquire, McFadden, Evans & Sill, 2000 M Street, NW., Suite 260, Washington, DC 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-179, adopted May 13, 1987, and released June 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13458 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 87-132; FCC 87-156]

Maritime Services; Proposed Amendment Concerning Applications for VHF Public Coast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require licensees of existing public coast stations to make a showing of need for additional frequencies if the coverage areas of existing and proposed service would overlap by 70% or more.

DATES: Comments must be received on or before July 23, 1987 and reply comments must be received on or before August 7, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted April 29, 1987, and released June 1, 1987. The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission proposes to amend the rules to require existing licenses of VHF public coast stations to make a showing of need for additional frequencies if existing and proposed service areas would overlap by 70% or more. The purpose of the proposed rule is to clarify existing requirements and to ensure frequencies are not assigned without adequate justification.

2. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for the rules governing permissible *ex parte* contacts.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule if promulgated will not have a significant economic impact on a substantial number of small entities because the need showing is *de minimis* in the context of the total information required on a coast station application.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 23, 1987, and reply comments August 7, 1987.

6. This Notice of Proposed Rule Making is issued under the authority of 47 U.S.C. 154(i) and 303(g) and (r).

7. A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Coast Stations, Public correspondence, Applications.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Proposed Rules

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.371, paragraph (c) is revised to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) *Working frequencies in the 156-162 MHz band:* The following describes the working carrier frequency pairs in the 156-162 MHz band. No duplication of service areas is permitted on the same public coast station channel. Within the service area of a station, the ratio of desired to undesired co-channel signal strengths on public coast station channels must be at least 12 dB. Initial grants will be limited to one working

frequency. An additional frequency may be assigned when the assigned working frequency is also used by a foreign station near enough to result in harmful radio interference by a simultaneous operation or when the channel occupancy of the assigned frequency or frequencies exceeds 40 percent during its busiest hours of operation. An application for assignment of an additional working frequency based on channel occupancy must be accompanied by a factual showing that for any 4 days within a 10-consecutive-day period of station operation in each of 2 months immediately prior to the filing of the application, the assigned frequency or frequencies was in average daily use for exchanging communications at least 40 percent of the 3 busiest hours of each day, of which not more than half of the use time was waiting or setup time. For purposes of this paragraph, an application for a frequency which overlaps by 70% or more the coverage area of a frequency already authorized for use by a station licensed to the same applicant will be considered an application for an additional frequency.

* * * * *

[FR Doc. 87-12960 Filed 6-11-87; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 52, No. 113

Friday, June 12, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Agreement 146]

Peanut Administrative Committee Expenses, Rate of Assessment, and Indemnification Reserve for the 1987-88 Crop Year

Pursuant to Marketing Agreement 146, regulating the quality of domestically produced peanuts (30 FR 9402), and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement, and other information, it is hereby found and determined that the expenses of said Committee and the rate of assessment applicable to peanuts produced in 1987 and for the crop year beginning July 1, 1987, shall be as follows:

(a) *Administrative expenses.* The budget of expenses for the Committee for the crop year beginning July 1, 1987, shall be in the amount of $782,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee for indemnification payments, pursuant to the terms and conditions of indemnification applicable to 1987 crop peanuts, effective July 1, 1987, are expected to be about $5.1 million, such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the Peanut Administrative Committee, in accordance with section 48 of the marketing agreement, an assessment at the rate of $3.46 per net ton of farmers' stock peanuts received or acquired other than those described in section 31 (c) and (d) ($0.46 for administrative expenses and $3.00 for indemnification expenses).

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to section 48 of the marketing agreement, shall continue. That portion of the total assessment funds accrued from the $3.00 rate and not expended in providing indemnification on the 1987 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

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 agreements issued pursuant to the Agricultural Marketing Agreement Act, and regulations issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 65 handlers of peanuts will be subject to regulation under the Peanut Marketing Agreement 146 during the course of the current season and that the great majority of these handlers may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

The expenses and rate of assessment are, under the agreement, on a crop year basis and will automatically be applicable to all assessable peanuts from the beginning of such crop year. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments; they are represented on the Committee which has submitted the recommendation with respect to such expenses and assessment for approval; and handlers have had knowledge of the foregoing in their recent industry-wide discussions and will be afforded maximum time to plan their operations accordingly.

Dated: June 8, 1987.

Ronald L. Cloffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87-13510 Filed 6-11-87; 8:45 am]

BILLING CODE 3410-02-M

Agriculture Stabilization and Conservation Service

1987-88 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination; 1987-88 Marketing Year penalty rates for all kinds of tobacco subject to quotas.

SUMMARY: This notice sets forth the determination of the 1987-88 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: June 12, 1987.

FOR FURTHER INFORMATION CONTACT: Donald M. Blythe, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013, (202) 382-0200.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that this notice will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete

with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases, Number—10051; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 19115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 314 of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"), provides that marketing quota penalties shall be assessed whenever a kind of tobacco is marketed which is in excess of the marketing quota established for the farm on which such tobacco is produced. Section 314 of the 1938 Act also provides that the rate of penalty per pound for a kind of tobacco shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year. The Agricultural Statistics Board, National Agricultural Statistical Service, U.S. Department of Agriculture determines and announces annually the average market price for all kinds of tobacco.

Since the determination of 1987–88 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined that the 1987–88 marketing year rate of penalty for all kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

[1987–88 marketing year]

Kinds of tobacco	Cents per pound
Burley	117
Flue-cured (types 11, 12, 13, and 14)	115
Fire-cured (type 21)	96
Fire-cured (types 22, 23, and 24)	108
Dark air-cured (types 35 and 36)	90
Virginia sun-cured (type 37)	93
Cigar-filler and binder (types 42, 43, 44, 53, 54, and 55)	71

Signed at Washington, DC, on June 8, 1987.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87-13440 Filed 6-11-87; 8:45am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committee, Availability of Report on Closed Meetings

AGENCY: Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations.

Library of Congress, Newspaper and Curent Periodicals Reading Room, Room LM133, Madison Building, 1st and Independence Avenues, SE., Washington, DC 20540

Department of Commerce, Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover, Building, 14th and Constitution Avenue, NW., Washington, DC 20230, Telephone (202) 377-3271.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1986 of 36 committees and their subcommittees, the names of which are listed below:

Automated Manufacturing Equipment Technical Advisory Committee
Biotechnology Technical Advisory Committee
Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters (TPM)
Computer Systems Technical Advisory Committee
—Hardware Subcommittee
—Software Subcommittee
—Licensing Procedures and Regulations Subcommittee
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee
Electronic Instrumentation Technical Advisory Committee
Importers and Retailers' Textile Advisory Committee
Industry Functional Advisory Committee on Customs Matters for TPM
Industry Functional Advisory Committee on Standards for TPM
Industry Sector Advisory Committee (ISAC) on Aerospace Equipment for TPM
—Customs Procedures and Tariffs Subcommittee
—Military Trade Subcommittee
—Government Supports Subcommittee
—Purchase/Finance Subcommittee
—Space Equipment Subcommittee
ISAC on Capital Goods for TPM
ISAC on Chemicals and Allied Products for TPM
ISAC on Consumer Goods for TPM
—Task Force on Market Access
ISAC on Electronics and Instrumentation for TPM
—Multilateral Trade Negotiations Subcommittee
ISAC on Energy for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Material and Supplies for TPM
ISAC on Lumber and Wood Products for TPM
ISAC on Nonferrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
—U.S. Canadian Free Trade Agreement Subcommittee
ISAC on Small and Minority Business for TPM
ISAC on Textiles and Apparel for TPM
ISAC on Transportation, Construction, and Agriculture Equipment for TPM
ISAC on Wholesale and Retailing for TPM
Management-Labor Textile Advisory Committee
Marine Fisheries Advisory Committee
Militarily Critical Technologies List Technical Advisory Committee
National Medal of Technology Nomination Evaluation Committee
President's Export Council
—Foreign Trade Practices and Negotiations Subcommittee
—International Competitiveness and Productivity Subcommittee
President's Export Council Subcommittee on Export Administration
Sea Grant Review Panel
Semiconductor Technical Advisory Committee
Telecommunications Equipment Technical Advisory Committee
—Switching Subcommittee

Transportation and Related Equipment Technical Advisory Committee

FOR FURTHER INFORMATION CONTACT: Suzette Kern, Management Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377-3743.

Suzette Kern,

Management Control Division, Office of Management and Organization.

June 8, 1987.

[FR Doc. 87-13443 Filed 6-11-87; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Extracorporeal Shock Wave Lithotripters; Mayo Foundation, University of Pennsylvania et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 85-210. Applicant: Mayo Foundation, Rochester, MN 55905.

Intended use: See notice at 50 FR 28000, July 9, 1985.

Docket number: 85-225. Applicant: Hospital of the University of Pennsylvania, Philadelphia, PA 19104. Intended use: See notice at 50 FR 29243, July 18, 1985.

Docket number: 85-292R. Applicant: North Carolina Baptist Hospital, Winston-Salem, NC 27103. Intended use: See notice at 51 12906, April 16, 1986.

Docket number 85-311R. Applicant: Lahey Clinic Hospital, Inc., Burlington, MA 01805. Intended use: See notice at 51 FR 8691, March 13, 1986.

Docket number 86-029R. Applicant: Rush Presbyterian St. Luke's Medical Center, Chicago, IL 60612. Intended use: See notice at 51 FR 25924, July 17, 1986.

Docket number 86-031R. Applicant: The University of Michigan Hospitals, Ann Arbor, MI 48109. Intended use: See notice at 51 FR 23255, June 16, 1986.

Docket number 86-045R. Applicant: University of Minnesota Hospital and Clincs, Minneapolis, MN 55455. Intended use: See notice at 51 FR 25083, July 10, 1986.

Docket number 96-062. Applicant: University of Rochester, Rochester, NY 14620. Intended use: See notice at 51 FR 667, January 7, 1986.

Docket number 86-070. Applicant: Saint Joseph Medical Center, Burbank, CA 91505-4866. Intended use: See notice at 51 FR 5752 February 18, 1986.

Docket number 86-092. Applicant: The Mount Sinai Hospital, New York, NY 10029. Intended use: See notice at 51 FR 6157, February 20, 1986.

Docket number 86-105R. Applicant: The Methodist Hospital, Houston, TX 77030. Intended use: See notice at 51 FR 41379, November 14, 1986.

Docket number 86-106. Applicant: University of Chicago, Chicago, IL 60611. Intended use: See notice at 51 FR 6155, February 20, 1986.

Docket number 86-113. Applicant: Georgetown University, Washington, DC 20007. Intended use: See notice at 51 FR 6576, February 25, 1986.

Docket number 86-123R. Applicant: Geisinger Medical Center, Danville, PA 17822. Intended use: See notice at 51 FR 33282, September 19, 1986.

Docket number 86-154. Applicant: University of Kansas, Kansas City, KS 66103. Intended use: See notice at 51 FR 12905, April 16, 1986.

Docket number 86-157. Applicant: Huntington Memorial Hospital, Pasadena, CA 91105. Intended use: See notice at 51 FR 12905, April 16, 1986.

Docket number 86-160. Applicant: Southern Nevada Memorial Hospital, Las Vegas, NV 89102. Intended use: See notice at 51 FR 12905, April 6, 1986.

Docket number 86-172. Applicant: University of California, Davis, Davis, CA 95616. Intended use: See notice at 51 FR 13275, April 18, 1986.

Docket number: 86-185. Applicant: The Nebraska Methodist Hospital, Omaha, NE 68114. Intended use: See notice at 51 FR 16729, May 6, 1986.

Docket number: 86-192. Applicant: Mercy Catholic Medical Center of Southeastern Pennsylvania, Darby, PA 19023. Intended use: See notice at 51 FR 17383, May 12, 1986.

Docket number: 86-195. Applicant: Calcilex Corporation, Cleveland, OH 44106. Intended use: See notice at 51 FR 18922, May 23, 1986.

Docket number: 86-196. Applicant: Pomona Valley Community Hospital, Ltd., Pomona, CA 91767. Intended use: See notice at 51 FR 18922, May 23, 1986.

Docket number: 86-206. Applicant: Norfolk General Hospital, Norfolk, VA 23507. Intended use: See notice at 51 FR 22843, June 23, 1986.

Docket number: 86-246. Applicant: Southeastern Kidney Institute Cooperative, Inc., Tallahassee, FL 32202. Intended use: See notice at 51 FR 25924, July 17, 1986.

Docket number: 86-292. Applicant: Wuesthoff Memorial Hospital, Rockledge, FL 32955. Intended use: See notice at 51 FR 12220, April 15, 1986.

Docket number: 86-298. Applicant: Iowa Methodist Medical Center, Des Moines, IA 50314. Intended use: See notice at 51 FR 30525, August 27, 1986.

Docket number: 86-307. Applicant: Greenville Hospital System, Greenville, SC 29605. Intended use: See notice at 51 FR 33282, September 19, 1986.

Docket number: 87-030. Applicant: Our Lady of the Lake Regional Medical Center, Baton Rouge, LA 70809. Intended use: See notice at 51 FR 42890, November 26, 1986.

Docket number: 87-049. Applicant: St. Johns Regional Health Center, Springfield, MO 65804. Intended use: See notice at 51 FR 44825, December 12, 1986.

Docket number: 87-085. Applicant: LDS Hospital, Salt Lake City, UT 84143. Intended use: See notice at 52 FR 5325, February 20, 1987.

Docket number: 87-091. Applicant: North Carolina Memorial Hospital, Chapel Hill, NC 27514. Intended use: See notice at 52 FR 5810, February 26, 1987.

Instrument: Extracorporeal Shock Wave Lithotripter (ESWL). Manufacturer: Dornier Medizintechnik GmbH, West Germany. Advice submitted by: National Institutes of Health, various dates.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for such purposes as each is intended to be used, is being manufactured in the United States. Reasons: There is no domestic manufacturer of lithotripters or of comparable devices capable of noninvasively pulverizing kidney stones. We have concluded, moreover, that the use of this medical device principally in the treatment of patients does not disqualify it for duty-free treatment under Item 851.60, Tariff Schedules of the United States.

Discussion: Section 301.5(d)(1)(iii) of the Department's regulations (19 CFR 301.5(d)(1)(iii)) provides that, in order for the Department to make its determination with respect to the scientific equivalency of foreign and domestic instruments, an applicant's intended purposes must "include either scientific research or science-related educational programs."

The applicants have varying programs for use of the ESWL. All intend to use the instrument for patient care and therapy, purposes which do not qualify

as "scientific research or science-related educational programs." In each case, however, the applicant also intends some use in scientific research or science-related education. Thus, we are able to make the scientific equivalency determination required by the statute and regulation for each application.

Prior to this decision, the Department's practice was generally to exclude therapeutic devices from duty-free consideration under the Act, with certain exceptions being made where the applicant could show that a substantial use of the instrument would be in "clinical research." As the result of our review of these dockets, however, we have decided not to follow this practice. The practice announced in this notice is more consonant with a full understanding of the Educational, Scientific and Cultural Materials Importation Act of 1966 and its legislative history.

Our consultants in the National Institutes of Health have advised us with respect to these applications that there are no known domestic instruments now available which are equivalent to the Dornier ESWL.

We know of no equivalent instrument that is being manufactured in the United States which is of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-13533 Filed 6-11-87; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing; Department of Agriculture et al.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-233,242 (4,663,353), Antibacterial Fatty Anilides
SN 6-638,826 (4,557,734), Microemulsions from Vegetable Oil and Lower Alcohol with Octanol Surfactant as Alternative Fuel for Diesel Engines
SN 6-662,378 (4,559,823), Device and Method for Measuring the Energy Content of Hot and Humid Air Systems
SN 6-825,109, Means and Method of Sampling Flow Related Variables from a Waterway in an Accurate Manner Using a Programmable Calculator

Department of Commerce

SN 7-012,700, Data Direct Ingest System
SN 7-031,716, Method of Determining Subsurface Property Value Gradient

Department of Health and Human Services

SN 6-618,949 (4,555,490, Rapid Visualization System for Gel Electrophoresis
SN 6-634,380, Cloning cDNAs For the Human Interleukin-2 Receptor
SN 6-780,932 (4,658,047), Method of Preparing 1,2-Diaminocyclohexane Tetrachloro Platinum (IV) Isomers
SN 7-019,185, Method and Device for Determining Viability of Intact Teeth
SN 7-021,493, Antimicrobial Compounds
SN 7-025,062, Substituted N-Methyl Derivatives of Mitindomide
SN 7-030,073, Phosphorothioate Analogues of Oligodeoxyribonucleotides As Inhibitors For Replication and Cytopathic Effects of HTLV-III Retroviruses and Other Foreign Nucleic Acids

Department of the Interior

SN 6-726,253 (4,661,118), Method For Oxidation of Pyrite In Coal to Magnetite and Low Field Magnetic Separation Thereof

Department of the Air Force

SN 6-520,276 (4,646,094), Method of Discriminating Between Signals
SN 6-596,863 (4,644,193), Analog Circuit for Simulating a Digitally Controlled Rheostat
SN 6-618,287 (4,642,644), Noise Jammer Discrimination By Noise Modulation Bandwidth
SN 6-618,288 (4,642,643), Noise Jammer Discrimination By Noise Spectral Bandwidth
SN 6-619,244 (4,641,250), Inspection Workstation Data Entry Method
SN 6-623,289 (4,641,141), Coherent Dual Automatic Gain Control System
SN 6-623,905 (4,631,547), Reflector Antenna Having Sidelobe Suppression Elements
SN 6-629,862 (4,631,474), High or Low-Side State Relay With Current Limiting and Operational Testing
SN 6-662,476 (4,641,358), Optical Mark Reader
SN 6-666,786 (4,631,635), Vibration Isolated Cold Plate Assembly
SN 6-666,841 (4,644,356), Bistatic Coherent Radar Receiving System
SN 6-721,977 (4,643,533), Differentiating Spatial Light Modulator
SN 6-729,389 (4,640,499), Hermetic Chip Carrier Compliant Soldering Pads
SN 6-731,646 (4,642,645), Reducing Grating Lobes Due To Subarray Amplitude Tapering
SN 6-742,825 (4,644,267), Signal Analysis Receiver With Acousto-Optic Delay Lines
SN 6-746,671 (4,644,811), Termination Load Carrying Device
SN 6-768,664 (4,644,633), Computer Controlled Lead Forming
SN 6-772,581 (4,644,357), Radar Clutter Simulator
SN 6-785,690 (4,640,570), Electrical Cone Connector
SN 6-801,362 (4,630,437), Optical Control Method For Solid Fuel Rocket Burn Rate
SN 6-805,680 (4,631,154), Method Of Constructing A Dome Restraint Assembly For Rocket Motors

Department of the Army

SN 6-031,110 (4,655,858), Burning Rate Enhancement Of Solid Propellants By Means Of Metal/Oxidant Agglomerates
SN 6-153,818 (4,655,859), Azido-Based Propellants
SN 6-364,089 (4,657,903), Transition Metal Complexes Of the Selenium Analogs Of 2-Acetyl-and 2-Propionylpyridine Thiosemicarbazones Useful For Treating Malarial Infections and Leukemi
SN 6-454,944 (4,457,232), Artillery Fuze For Practice and Tactical Munitions
SN 6-484,105 (4,655,860), A Processing Method For Increasing Propellant Burning Rate
SN 6-535,190 (4,591,573), Sensitive Radioimmunoassay Using Antibody To L-Hyoscyamine
SN 6-535,481 (4,476,060), 1, 3, 5, 7-Tetranitroxyadamantane

SN 6–658,945 (4,637,931), Polyactic-Polyglycolic Acid Copolymer Combined With Decalcified Freeze-Dried Bone for Use As A Bone Repair Material
SN 6–664,647 (4,647,555), Esters Of Boron Analogues Of Amino Acids
SN 6–702,114 (4,659,738), Topical Prophylaxis Against Schistosomal Infections
SN 6–730,125 (4,653,760), Photosensitive Cartridge For Weapons Zeroing and Marskmanship Training
SN 7–014,905, Shielded Insulation For Combustion Chamber
SN 7–023,161, Method Of Making a Long Lived High Current Density Cathode From Tungsten and Iridium Powders
SN 7–024,092, Apparatus for Acoustical Quieting Of A Cavity
SN 7–028,169, Method of Making a Cathode For Use In A Rechargeable Lithium Battery, Cathode so Made, and Rechargeable Lithium Battery Including the Cathode
SN 7–029,127, Metallographic Preparation of Pressed and Sintered Powder Metallurgy Material (Tungsten, Columbium, Lead and Copper)
SN 7–023,407, Vehicle Suspension
SN 7–043,270, High-Power, Rapid Fire Railgun
SN 7–043,271, Measurement of Film Thickness of Integrated Circuits

[FR Doc. 87–13444 Filed 6–11–87; 8:45 am]
BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; CIBA-GEIGY Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to CIBA-GEIGY Corporation, having a place of business in Greensboro, North Carolina, an exclusive right in the United States and certain foreign countries to manufacture, use, and sell products embodied in the invention entitled "Preparation of an Entomopathogenic Fungal Insect Control Agent," U.S. Patent No. 4,530,834. The patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87–13466 Filed 6–11–87; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction in Charges of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

June 5, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on June 15, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On April 1, 1987 a notice was published in the **Federal Register** (52 FR 10398) announcing import restraint limits for certain cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987. This notice also announced guaranteed access levels for products in the foregoing categories which are properly certified textile products assembled in Jamaica from fabric formed and cut in the United States.

During recent consultations between the Governments of the United States and Jamaica, the United States agreed to deduct charges for shipments qualifying for guaranteed access levels which were made to designated consultation levels. It was further agreed that these goods would be charged to corresponding guaranteed access levels.

The Government of Jamaica has provided documentation to the U.S. Government establishing that the products in Categories 338/339/638/639 and 347/348/647/648 were assembled exclusively from U.S. formed and cut fabric and qualified for entry under the guaranteed access levels. These goods were charged to the designated consultation levels because of the unavailability of proper documentation (CBI Export Declaration (Form ITA-370P)) required for entry under TSUSA 807.0010.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct 9,563 dozen and 35,446 dozen from the charges made to the restraint limits established for Categories 338/339/638/639 and 347/348/647/648, respectively, for the period which began on September 1, 1986 and extends through December 31, 1987. Subsequently, these same amounts will be charged to the guaranteed access levels established for properly certified textile products in Categories 338/339/638/639 and 347/348/647/648 which are assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during this same sixteen-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), Ju.y 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 5, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textitle Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica, I request that, effective on June 15, 1987, you deduct the following amounts from the charges made to the import restraint limits established in the directive of March 27, 1987 for cotton and man-made fiber textile products, produced or manufactured in

Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987.

Category and Amount To Be Deducted

338/339/638/639—9,563 dozen
347/348/677/648—35,446 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register**.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-13486 Filed 6-11-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Arrangement for Certain Cotton Textile Products Produced or Manufactured in Nepal

June 5, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1987. For further information contact Kim Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

Background

A CITA directive dated April 3, 1987 (52 FR 11724) established export visa requirements for certain cotton textile products in Categories 300-369, produced or manufactured in Nepal and exported to the United States on an after April 15, 1987. A subsequent directive dated May 4, 1987 (52 FR 17440) waived the export visa requirements for cotton textile products in Categories 300-369 regardless of the date of export.

As a result of further discussions between the Governments of the United States and Nepal, the Chairman of the Committee for the Implementation of Textile Agreements has directed the Commissioner of Customs to deny entry into the United States, effective on July 1, 1987, of cotton textile products in Categories 300-369, including, if any, part categories or merged categories, and including Categories 353 and 354, but not including Categories 355 and 356, exported from Nepal on and after July 1, 1987, which are not accompanied by a valid and correct visa as described in the April 3, 1987 directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 5, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on May 4, 1987 which directed you to waive the visa requirements for certain cotton textiles and textile products, produced or manufactured in Nepal.

This directive amends, but does not cancel, the directive issued to you on April 3, 1987 which established and export visa arrangement for cotton textile products in Categories 300-369, including, if any, part categories or merged categories, except Categories 353 and 354, produced or manufactured in Nepal.

Effective on July 1, 1987, the directive of April 3, 1987 is hereby amended to direct you to prohibit entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton textiles and textile products in Categories 300-369, including, if any, part categories or merged categories, and including Categories 353 and 354, but not including Categories 355 and 356, produced or manufactured in Nepal and exported on and after July 1, 1987 from Nepal for which the Government of Nepal has not issued an appropriate visa as described in the directive of April 3, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-13489 Filed 6-11-87; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Textile Products Produced or Manufactured in Taiwan

June 5, 1987.

Correction

In footnote 11 of the letter to the Commissioner of Customs published in the **Federal Register** on January 6, 1987 (52 FR 445), TSUSA number 352.4000 should be added to the TSUSA numbers for Category 669-F.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-13487 Filed 6-11-87; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blends and Other Vegetable Fiber Textile Products From Taiwan Effective on January 1, 1987

June 5, 1987.

Correction

In footnote 4 of the letter to the Commissioner of Customs published in the **Federal Register** on January 6, 1987 (52 FR 447), TSUSA number 352.4000 should be added to the TSUSA numbers for Category 669-F.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-13488 Filed 6-11-87; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Thailand To Review Trade in Category 342/642

June 5, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 15, 1987. For further information contact Ross Arnold, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 682-3076. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On May 22, 1987, the Government of the United States requested consultations with the Government of

Thailand with respect to Category 342/642 (cotton and man-made fiber skirts). This request was made under the agreement between the Governments of the United States and Thailand of July 27 and August 8, 1983, relating to trade in cotton, wool and man-made fiber textile products which provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish a prorated specific limit for the period which began on May 22, 1987 and extends through December 31, 1987 at a level of 125,466 dozen.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Category 342/642 exported during the ninety-day consultation period which began on May 22, 1987 and extends through August 19, 1987 at the prescribed limit of 59,629 dozen.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the prorated specific limit specified above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 342/642 under the agreement with Thailand, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Category 342/642: Cotton and Man-Made Fiber Skirts; Thailand, May 1987

Summary and Conclusions

U.S. imports of Category 342/642 from Thailand were 170,369 dozen during the year ending February 1987, a 40 percent increase over the 121,695 dozen imported a year earlier. During 1986, imports of Category 342/642 from Thailand reached 140,322 dozen compared to 105,060 dozen imported during 1985, a 34 percent increase.

The market for Category 342/642 has been disrupted by imports. The sharp and substantial increase in imports from Thailand has contributed to this disruption.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts declined five percent from 8,233 thousand dozen in 1983 to 7,805 thousand dozen in 1985. Comparison of government cuttings [1] data for 1986 and 1985 indicate that 1986 production will be down four percent. The domestic manufacturers' share of this market fell from 75 percent in 1983 to 67 percent in 1985. The U.S. market share is expected to decrease further in 1986, to around 57 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 342/642 grew from 2,798 thousand dozen in 1983 to 3,794 thousand dozen in 1985, a 36 percent increase. During 1986, imports of Category 342/642 reached 5,995 thousand dozen, 58 percent above the level imported during 1985. The ratio of imports to domestic production increased from 34 percent in 1983 to 49 percent in 1985. The ratio is expected to reach 77 percent in 1986.

[1] U.S. cuttings data are for women's cotton, wool and man-made fiber skirts and include both woven and knit skirts.

June 5, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983 between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 15, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 342/642, produced or manufactured in Thailand and exported during the ninety-day period which began on May 22, 1987 and extends through August 19, 1987, in excess of 59,629 dozen.[1]

Imports charged to this ninety-day limit are also subject to the Group II limit established in the directive of December 23, 1986.

Textile products in Category 342/642 which have been exported to the United States prior to May 22, 1987 shall not be subject to the limit established in this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–13490 Filed 6–11–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after May 21, 1987.

Request for Public Comment on Bilateral Textile Consultations With the Government of Turkey on Category 342/642

June 5, 1987.

On May 27, 1987, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with section 204 of the Agricultural Act of 1956, requested the Government of Turkey to enter into consultations concerning exports to the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Turkey, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber skirts in Category 342/642, produced or manufactured in Turkey and exported to the United States during the twelve-month period which began on May 27, 1987 and extends through May 26, 1988 at a level of 119,550 dozen.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

For information contact: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202) 377-4212). For information on categories on which consultations have been requested call (202) 377-3740.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1983 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Category 342/642; Cotton and Man-Made Fiber Skirts; Turkey, May 1987

Summary and Conclusions

U.S. imports of Category 342/642 from Turkey were 119,550 dozen during the year ending February 1987, more than three times the 38,030 dozen imported a year earlier. During 1986, imports of Category 342/642 from Turkey reached 60,187 dozen compared to 31,350 dozen imported during 1985, a 92 percent increase.

The market for Category 342/642 has been disrupted by imports. The sharp and substantial increase in imports from Turkey has contributed to this disruption.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts declined five percent from 8,233 thousand dozen in 1983 to 7,805 thousand dozen in 1985. Comparison of government cuttings [1] data for 1986 and 1985 indicate that 1986 production will be down four percent. The domestic manufacturers' share of this market fell from 75 percent in 1983 to 67 percent in 1985. The U.S. market share is expected to decrease further in 1986, to around 57 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 342/642 grew from 2,798 thousand dozen in 1983 to 3,794 thousand dozen in 1985, a 36 percent increase. During 1986, imports of Category 342/642 reached 5,995 thousand dozen, 58 percent above the level imported during 1985.

[1] U.S. cuttings date are for women's cotton, wool and man-made fiber skirts and include both woven and knit skirts.

The ratio of imports to domestic production increased from 34 percent in 1983 to 49 percent in 1985. The ratio is expected to reach 77 percent in 1986.

Duty Paid Value and U.S. Producer's Price

Approximately 79 percent of Category 342/642 imports from Turkey during the year ending February 1987 entered under TSUSA numbers 384.5251—women's cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; 384.5146—girls' cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; and 384.3444 (formerly a part of 384.3440)—women's and girls' cotton knit skirts, not ornamented. TSUSA number 384.5251 alone represents 43 percent of Category 342/642 imports from Turkey.

These skirts entered the U.S. at landed duty-paid values below the U.S. producers' prices for comparable skirts.

[FR Doc. 87-13491 Filed 6-11-87; 8:45 am]

BILLING CODE 3510-DR-M

COUNCIL ON ENVIRONMENTAL QUALITY

Implementation of National Environmental Policy Act; Council Recommendations

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only. Recommendations of the Council on Environmental Quality regarding the proposed amendments to the Army Corps of Engineers' Procedures Implementing the National Environmental Policy Act.

SUMMARY: The Council on Environmental Quality's (CEQ) regulations for the implementation of the National Environmental Policy Act (NEPA) includes procedures for referring to CEQ federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects (40 CFR Part 1504).

On January 11, 1984, the U.S. Army Corps of Engineers published proposed amendments to the Army NEPA procedures. On February 25, 1985, the Environmental Protection Agency referred the proposed amended regulations to CEQ. Following interagency negotiations, the matter was re-referred to CEQ by Administrator Thomas on December 11, 1986.

After extensive study of the proposed amendments to the Army regulations, including participation from all

interested agencies and members of the public, CEQ has concluded its examination of the proposed amendments and has reached a consensus on findings and recommendations about the issues raised in the referral. To summarize those findings and recommendations:

The Army's current regulation addressing the scope of analysis can "federalize" private or state or local projects over which, absent one Army permit, the federal government has neither control or responsibility. CEQ finds that Army's proposal to amend this regulation is generally within reasonable, implementing agency discretion and that policy and management considerations favor amending the regulation to provide formal and consistent guidance to Army field personnel.

However, CEQ offers comments and recommendations to improve the usefulness of the Appendix B guidance to District Commanders charged with determining the scope of analysis.

With respect to the amended regulation on purpose and need, CEQ finds that the proposed regulation is generally adequate, but recommends that additional language be inserted in the amendment to the effect that the agency must, in all cases, exercise independent judgment regarding the public purpose and need of the proposal.

When preparing an environmental assessment, there is no legal requirement to include a specific reference to "water dependent activities" under the section 404(b)(1) guidelines in the Army's NEPA procedures. However, CEQ recommends that in the spirit of consistency with the CEQ regulations and as sound managemnt policy, specifically to reduce duplication and paperwork and to increase efficient compliance with both NEPA and the Clean Water Act, the Army's procedures retain the requirement to integrate into the environmental impact analysis the alternatives to non-water dependent activities under section 404(b)(1).

CEQ finds that the Army's proposed regulation concerning page limits to be premature in that the Army has not presented any evidence demonstrating that there has been a conscious effort to abide by the CEQ page limit recommendations. CEQ recommends that the Army attempt concerted compliance with the CEQ regulation before proposing a reduced page limit length.

Dated: June 8, 1987.

A. Alan Hill,

Chairman.

COUNCIL ON ENVIRONMENTAL QUALITY

Findings and Recommendations on Referral From U.S. Environmental Protection Agency Concerning Proposed Amendments to U.S. Army Corps of Engineers Procedures for Implementing the National Environmental Policy Act

Introduction

Section 309 of the Clean Air Act and the Council on Environmental Quality's (CEQ) regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) direct the Administrator of the Environmental Protection Agency (EPA) to review and comment publicly on the environmental impacts of federal activities, including proposed regulations published by a department or agency. If, upon review, the "Administrator determines that the matter is 'unsatisfactory from the standpoint of public health or welfare or environmental quality,' section 309 directs that the matter be referred to the Council." (40 CFR 1504.1(b))

On January 11, 1984, the U.S. Army Corps of Engineers (Army) published proposed amendments to the Army NEPA procedures. On March 12, 1984, EPA submitted written comments to the Army pursuant to section 309 of the Clean Air Act. After several months of discussion between EPA and the Army, the Army transmitted draft final regulations to CEQ on January 28, 1985. The EPA determined that the proposed regulations were "unsatisfactory" and on February 25, 1985, referred the proposed amended regulations to the Council of Environmental Quality.

In his original letter referring the matter to CEQ, Administrator Lee Thomas stated that Army's proposal would have an adverse effect on EPA's program to review significant environmental impacts of proposed federal actions, and its ability to prevent unacceptable adverse effects of dredge and fill discharges under section 404 of the Clean Water Act. On April 18, 1986, after several extensions of time at the request of the Army,[1] the Army responded to EPA's referral, stating that its latest proposal indicated a good faith effort to reach a compromise with EPA and was well within the range of reasonable agency discretion.

At the request of Army, CEQ returned the referral on May 1, 1986, to EPA for further negotiation by the referring and lead agencies. (40 CFR 1504.3(f)(5)).[2] However, further negotiations between Army and EPA were unsuccessful, and the disagreement was resubmitted to CEQ by EPA on December 11, 1986. In that letter, Administrator Thomas stated that:

> "... EPA and [Army] continued working to resolve issues in the referral. We appreciated the opportunity to negotiate on the proposed regulatory language, but regret there are remaining unresolved substantive concerns which must be addressed.
>
> "We are at a stage in this effort where the opportunity to initiate the Council's Sunshine Act authority ... would help to expedite a mutually satisfactory resolution to the outstanding issues. The potential environmental consequences of these issues are so significant as to warrant comment from interested parties from outside of the lead and referring agencies." *Letter from the Honorable Lee M. Thomas, Administrator of Environmental Protection Agency to the Honorable A. Alan Hill, Chairman, Council on Environmental Quality, December 11, 1986.*

CEQ commenced its consideration of this referral by announcing a series of Sunshine Act meetings to facilitate the participation of outside parties. On January 8, 1987, CEQ held a meeting, open to the public, for the purpose of being briefed by the CEQ General Counsel on the issues raised in the referral. On January 12, 1987, CEQ held a second meeting, open to the public, to hear from the representatives of the Army, EPA, and other federal agencies regarding the issues raised in the referral. At a third meeting, held on February 5, 1987, members of the public had an opportunity to present views on the issues raised in the referral to the CEQ. Finally, written comments were received by CEQ from December 23, 1986 to February 11, 1987.[3] The Council sincerely appreciates receiving the diverse views of all interested parties. The Council has made copies of information presented to it available to all interested parties.

Major Issues and Standard of Review

To facilitate its review, CEQ has identified four major issues in dispute: (1) Scope of analysis, or "small federal handle" issue; (2) purpose and need; (3) analysis of alternatives in environmental assessments; and (4) page limits on environmental impact statements. These findings and recommendations will address each of these issues.

The issues raised in this referral contain elements of both law and policy. CEQ has arrived at its findings of law by considering the requirements of NEPA, the directives of Executive Order 11514,

[1] Footnotes at end of article.

as amended by Executive Order 11991 (Protection and Enhancement of Environmental Quality), and the CEQ regulations implementing the procedural provisions of NEPA. Further, CEQ has evaluated the issues in light of relevant case law and in light of the "rule of reason" as expressed in those cases.

CEQ's recommendations regarding the referral issues reflect both NEPA policy considerations and this Administration's policies towards regulatory reform, as well as CEQ's concern for efficient management of the NEPA process. CEQ is also cognizant of the directive to the Army from the Presidential Task Force on Regulatory Relief, which states that:

"The Army will also revise its own regulations to reduce substantially the time it currently takes to prepare Environmental Impact Statements and other documents required by the National Environmental Policy Act." *Administrative Reforms to the Regulatory Program Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act*, p. 3., transmitted by letter from Christopher DeMuth, Executive Director, Presidential Task Force on Regulatory Relief, to the Honorable William R. Gianelli, Assistant Secretary of the Army (Civil Works), May 7, 1982.

There should be no confusion on the part of a federal agency as to what the goals of regulatory relief really are. It is *not* an exercise in relieving the Army or any other federal agency from fulfilling its procedural responsibilities under NEPA. The goal of regulatory relief is to relieve the private sector of government-induced and imposed regulatory burdens, delays, and expense that exceed what is clearly required by law.

CEQ also notes that, at this time, it is not reviewing the proposed regulations for more minor, technical changes. Such review will take place after the proposed revisions to Army's regulations are submitted to CEQ under 40 CFR 1507.3(a) of the CEQ NEPA regulations for review for conformity with NEPA and the CEQ regulations.

Findings and Recommendations

1. Scope of Analysis.

Abstract

The Army's current regulation addressing the scope of analysis can "federalize" private or state or local projects over which, absent one Army permit, the federal government has neither control or responsibility. CEQ finds that Army's proposal to amend this regulation is generally within reasonable, implementing agency discretion and that policy and management considerations favor amending the regulation to provide formal and consistent guidance to Corps field personnel.

However, CEQ offers comments and recommendations to improve the usefulness of the Appendix B guidance to District Engineers charged with determining the scope of analysis.

The issue before us is the Army's guidance to its District Commanders for determining the scope of analysis of impacts and alternatives for purposes of NEPA compliance when the proposed federal action is an Army Corps of Engineers permit. Generally speaking, the permit actions subject to this guidance are dredge and fill permits under section 404 of the Clean Water Act and section 10 permits under the Rivers and Harbors Act of 1899.

The current Army regulation reads, in relevant part:

"The EA [Environmental Assessment] shall be a brief document (should normally not exceed 15 pages) primarily focusing on whether or not the entire project subject to the permit requirement could have significant effects on the environment. . . . (For example, where a utility company is applying for a permit to construct an outfall pipe from a proposed power plant, the EA must assess the direct and indirect environmental effects and alternatives of the entire plant.)" 33 CFR Part 230, Appendix B, Section 8(a).

The proposed Army regulation reads:

"Scope and Analysis

"(1) In some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project (e.g., construction of an oil refinery on an upland area). The district commander should establish the scope of the NEPA document (e.g., the EA or EIS [Environmental Impact Statement]) to address the impacts of the specific activity requiring a Department of the Army permit and those portions of the entire project over which the district commander has sufficient control and responsibility to warrant Federal review.

"(2) The district commander is considered to have control and responsibility for portions of the project beyond the limits of [Army] Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action. . .

"(3) For those regulated activities that comprise merely a link in a transportation or utility transmission project, the scope of analysis should address the specific activity requiring a Department of the Army permit and any other portion of the project that is within the control or responsibility of the [Army] Corps of Engineers. . . ." 33 C.F.R. Part 230, Appendix B, Section 7(b).

The Army's current regulation addressing the scope of analysis can "federalize" private or state or local projects over which, absent one Army permit, the federal government has neither control or responsibility. The Army has regarded the current regulation as overly expansive, and, indeed, has implemented it by employing a rule of reason and common sense. The federal courts have also evaluated the proper scope of analysis by examining the facts of a particular case. Thus, in *Winnebago Tribe of Nebraska* v. *Ray*, 621 F.2d 269 (8th Cir.), *cert. denied*, 499 U.S. 836 (1980), the United States Court of Appeals for the Eighth Circuit determined that an EA prepared by the Army for a Section 10 permit under the Rivers and Harbors Act for a river-crossing portion of a proposed transmission line need not examine the impacts of and alternatives to the entire transmission line. In that case, the river-crossing portion of the line was approximately 1.25 miles out of 67 miles. Given the facts surrounding the construction of that particular transmission line (for example, no direct or indirect federal funding for the project), the court found that the Army did not have such sufficient control and responsibility over the entire project such that nonfederal segments had to be included in the environmental assessment.

In *Save the Bay, Inc.* v. *Corps of Engineers*, 610 F.2d 322 (5th Cir.), *cert. denied*, 449 U.S. 900 (1980), the United States Court of Appeals for the Fifth Circuit upheld the Army's determination that the issuance of permits for installation of an effluent pipeline in navigable waters to serve a chemical manufacturing plant was not a major federal action significantly affecting the quality of the human environment, and thus did not require an EIS, even though the factory that the pipeline was to serve would have major impacts on the surrounding counties. This case has been frequently cited as support for the Army's current proposal. However, the court noted that it was not expressing an opinion as to the proper scope of an EIS should one have been necessary; rather, its holding rested on its conclusion that the granting of the pipeline construction permit, after issuance by EPA of a National Pollutant Discharge Elimination System permit was not a "major federal action" requiring an EIS. Is so deciding, the court noted that the Clean Water Act specifically exempts the issuance of such permits from NEPA review, and prohibits any other federal agency from reviewing any effluent limitations established by such a permit.

The holdings in both of these cases have been adopted by the Army in guidance to field offices, issued in August of 1980. Since that date, the Army has reduced the number of EISs

considerably[4] and no appellate court has overturned the Army guidance based on the above two cases.[5] Further, the type of action which was the subject of the *Save the Bay* case is now included within the Corps' system of nationwide permits and is categorically excluded from NEPA review. It is also important to note that no decision in any court has held that implementation of the current Army regulation is improper, inappropriate, or illegal.

Given this history of the implementation of the current Army regulation, the question has been asked—why change this regulation at all? An argument can be made that the implementation—as opposed to the letter—of Army's current implementing procedures has been fair and reasonable and has not been unduly burdensome. While such an argument has some appeal, CEQ finds that the Army's proposal is generally within reasonable implementing agency discretion and that policy and management considerations favor amending the regulation to provide formal and consistent guidance to the Army's field personnel.

However, CEQ offers the following comments and recommendations to improve the usefulness of the Appendix B guidance to District Commanders charged with determining whether the scope of analysis would be confined to the direct, indirect and cumulative effects of (1) the Army's permit action only, or (2) the Army's action *and* additional portions of the overall project having federal involvement or, (3) the entire project. In general, this will be determined by the degree of federal control and responsibility based on the facts and circumstances of each individual case. The proposed amendment enumerates four factors to be considered in making this determination. While these factors appear to be helpful in determining the extent of those actions within the Army's control and responsibility, they do not seem to us to be as useful in determining the extent of cumulative federal involvement. Also, they appear to envision only two opposite poles of federal involvement: those portions requiring the Army's permit, and the entire project. Surely there will be cases that fall somewhere in between. It strikes us that the District Commander's determinations would be made more accurately and more consistently if a process were followed to explicitly take into account the extent of cumulative federal control and responsibility which may (depending on the facts in each case) extend beyond the Army's own control and responsibility to that of other federal agencies involved in the project. Once that "scope of action" is determined (which could include the entire project if the cumulative federal control and responsibility is determined by the Army to be sufficiently great), then the direct, indirect, and cumulative effects of such federal action would be subject to analysis for purposes of NEPA compliance.

Specifically, CEQ offers the following comments on the specific factors proposed in the Army's Appendix B guidance:

(i) Whether the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project). CEQ finds that this factor is consistent with NEPA case law[6] and recommends retention of this factor.

(ii) Whether there are alternatives available to the applicant that would not require an Army permit. CEQ observes that this factor is inappropriately narrow. There is no compelling reason why the existence of an alternative method of achieving a proposal without an Army permit (an alternative which the applicant, by definition, has not pursued) should weigh in favor of less comprehensive environmental review.[7] CEQ recommends that the Army reconsider this factor, and if it believes it is useful, better articulate the logical relationship between alternatives available to the applicant and the District Commander's determination of the appropriate scope of analysis.

(iii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity. CEQ finds that this factor is consistent with NEPA and NEPA case law. For purposes of clarification, CEQ recommends adding specific examples to illustrate the application of this factor.

(iv) The extent to which the entire project will be within the Army's jurisdiction. This factor is consistent with the requirement to determine the Army's control and responsibility for a proposed action. However, it does not adequately address the extent of the cumulative federal control and responsibility for the proposed action. CEQ is particularly concerned that the process of determining the scope of analysis help insure that the NEPA analysis is not inappropriately segmented. See *Sierra Club* v. *Marsh*, 769 F.2d 868 (1st Cir. 1985). Therefore, CEQ recommends development of an additional factor. The following language is offered as a suggestion. In its proposed revision ultimately reviewed by CEQ, the Army is free to adopt this language, to amend it, or to propose a substitute that addresses the determination of cumulative federal control and responsibility.

Suggested Language

(v) The extent of cumulative federal control and responsibility.

a. The district commander is further considered to have control and responsibility for portions of the project beyond the limits of Army Corps jurisdiction where the cumulative federal involvement of the Army Corps and other federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of federal financing, assistance, direction, regulation, or approval (not including funding assistance solely in the form of general revenue sharing funds, with no federal agency control over the subsequent use of such funds, and not including judicial or administrative civil or criminal enforcement actions).[8]

b. In determining whether sufficient cumulative federal involvement exists to expand the scope of federal review, the district commander should consider whether other federal agencies are required to take federal action under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.* the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.* the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Executive Order 11990, Protection of Wetlands, 42 U.S.C. 4321 (1977), and other environmental review laws and executive orders.

In recommending such a process, CEQ is not suggesting that the Army Corps of Engineers should be the lead agency in each of these cases. That would be determined as it is under current procedures implementing CEQ's lead agency regulations. Rather, CEQ is reiterating that the environmental review that is required for a proposed federal action which involves several federal actions should be conducted in a cohesive manner within the procedural framework of the NEPA process.

Additionally, CEQ recommends that the Army's procedures insure that the scope of analysis for analyzing impacts and alternatives in the NEPA process is the same as the scope of analysis for purposes of analyzing the benefits of a proposal. *See* 40 CFR 1502.23; *Sierra Club v. Sigler*, 695 F.2d 957 (5th Cir. 1983).

2. Purpose and Need

Abstract

CEQ finds that the proposed regulation is generally adequate, but recommends that additional language be inserted in the amendment to the effect that the agency must, in all cases, exercise independent judgment regarding the public purpose and need of the proposal.

The issue before us is how the purpose and need for a project is defined by the Army when preparing an EA or EIS for a federally permitted action.

The current Army procedures state that this section of the EIS:

"shall briefly recognize that every application has both an applicant's purpose and need and a public purpose and need. These may be the same when the applicant is a governmental body or agency. In most instances when an EIS is required and the applicant is not a governmental body or agency, the applicant is a manner of the private sector engaged in providing a good or service for profit. At the same time, the applicant is requesting a permit to perform work which, if approved, is considered in the public interest (i.e., provides a public benefit). This public benefit shall be stated in as broad, generic terms as possible. For instance, the need for a water intake structure requring [an Army] Corps permit as part of a fossil fuel power plant shall be stated as the need for energy and not be limited to the need for cooling water. In a similar way, the need for housing near canals or near marinas, etc., shall be expressed as the need for shelter and not as the need for recreation near water." 33 CFR Part 230, Appendix B. Section 11(b)(4).

The proposed Army regulation reads, in relevant part:

"If the scope of analysis for the NEPA document . . . covers only the proposed specific activity requiring a Department of the Army permit, then the underlying purpose and need for that specific activity should be stated. (For example, 'The purpose and need for the pipe is to obtain cooling water from the river for the electric generating plant.') If the scope of the analysis covers a more extensive project, only part of which may require an Army permit, then the underlying purpose and need for the entire project should be stated. (For example, 'The purpose and need for the electric generating plant is to provide increased supplies of electricity to the (named) geographic area.') Normally, the applicant should be encouraged to provide a statement of his proposed activity's purpose and need from his perspective (for example, 'to construct an electric generating plant'). However, wherever the NEPA document's scope of analysis renders it appropriate, the [Army] Corps also should consider and express that activity's underlying purpose and need from a public interest perspective (to use that same example, 'to meet the public's need for electric energy')." 33 CFR Part 230, Appendix B, section 9b(4).

The CEQ regulation reads:

"§ 1502.13 Purpose and need.

"The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

CEQ's regulation thus makes no distinction between a private and public "purpose and need". On the one hand, the very fact that a particular project requires the issuance of a federal permit necessarily implies a degree of federal review and responsibility from the public interest perspective. On the other hand, a reasonable evaluation of the proposed action and alternatives must include a thorough understanding of the applicant's purpose and need.

NEPA case law has interpreted this requirement to consider both public and private purpose and need. Courts have stressed the need to consider the objectives of the permit applicant, *Roosevelt Campobello International Park Comm'n. v. EPA*, 684 F.2d 1041 (1st Cir. 1982), but have also emphasized the requirement for the agency to exercise independent judgment as to the appropriate articulation of objective purpose and need. *City of Angoon v. Hodel*, 803 F.2d 1016 (9th Cir. 1986), *Petition for cert. filed*, 55 U.S.L.W. 3783 (U.S. April 10, 1987) (No. 86-1627). Courts have cautioned against blindly accepting only the applicant's statement of purpose and need, both for purposes of public interest review and for formulation of alternatives in the NEPA process. *Abeema v. Fornell*, 807 F.2d 633 (7th Cir. 1986).

The proposed regulation is an effort to achieve consideration of both the applicant's and the public's purpose and need by instructing the District Commander to normally focus on the applicant's purpose and need, as articulated by the applicant, but to consider and express the activity's purpose and need from a public interest perspective "whenever the NEPA document's scope of analysis renders it appropriate." CEQ finds that the proposed regulation is generally adequate and consistent with the proposed approach to the scope of analysis. CEQ recommends that additional language be added to the proposed regulation to the effect that the agency must, in all cases, exercise independentt judgment regarding the objective purpose and need of the proposal.

3. Analysis of Alternatives in Environmental Assessments.

Abstract

There is no legal requirement to include a specific reference to "water dependent activities" under the Section 404(b)(1) guidelines in the Army's NEPA procedures. However, CEQ recommends that in the spirit of consistency with the CEQ regulations and as sound management policy, specifically to reduce duplication and paperwork and to increase efficient compliance with both NEPA and the Clean Water Act, the Army's procedures retain the requirement to integrate into the environmental impact analysis the alternatives to nonwater dependent activities under Section 404(b)(1).

The issue before us is the determination of when the Army must examine alternatives in an EA.

The current Army regulation reads:

"a. Environmental Assessment (EA). The district engineer shall prepare an EA as soon as practicable after all relevant information has been made available to the district engineer (i.e., after the comment period for the public notice announcing receipt of the permit application has expired) and prior to preparation of the Findings of Fact (FOF). The EA shall include a discussion of reasonable alternatives. However, when the EA confirms that the impact of the applicant's proposal is not significant, there are no 'unresolved conflicts concerning alternative uses of available resources. . .' (Section 102(2)(E) of NEPA), and the proposed action is a water dependent activity, the EA need not include a discussion on alternatives to the proposal. In all other cases the EA must address all the alternatives that go before the ultimate decision maker. This discussion will include suggested means by which the environment might be protected and by which adverse impacts could be reduced by conditioning of the permit. The EA shall be a brief document (shoud not normally exceed 15 pages) primarily focusing on whether or not the entire project subject to the permit requirement could have significant effects on the environment but shall not be used to justify a decision. (For example, where a utility company is applying for a permit to construct an outfall pipe from a proposed power plant, the EA must assess the direct and indirect environmental effects and alternatives of the entire plant.) The EA shall conclude with a FONSI (See 40 C.F.R. 1508.13) or a determination that an EIS is required." 33 C.F.R. Part 230, Appendix B, Section 8(a).

The proposed Army regulation reads:

"*EA/FONSI Document.* (See 40 C.F.R. 1508.9 and 1508.13 for definitions).

"a. *Environmental Assesment (EA) and Findings of No Significant Impact (FONSI).* The district commander should complete an EA as soon as practicable after all relevant information is available (i.e., after the comment period for the public notice of the permit application has expired) and prior to completion of the statement of finding (SOF). The EA should normally be combined with other required documents (EA/404(b)(1)/SOF/FONSI). When the EA confirms that the impact of the applicant's proposal is not significant and there are no 'unresolved conflicts concerning alternative uses of available resources . . .' (section 102(2)(E) of NEPA), the EA need not include a discussion of alternatives. *Note:* The above rule would not preclude the district commander from considering alternatives not discussed in the EA during the course of the public interest review for the permit application if that would be appropriate. In all other cases where the district commander determines that there are unresolved conflicts concerning alternative uses of available resources, the EA shall include a discussion of the

reasonable alternatives which are to be considered by the ultimate decision-maker. The decision options available to the [Army] Corps, which embrace all of the applicant's alternatives, are issue the permit, issue with conditions, or deny the permit. 'Appropriate conditions' may include project modifications within the scope of established permit conditioning policy (See 33 CFR 325.4). The decision option to deny the permit results in the 'no action' alternative (i.e. no construction requiring an Army Corps permit). The combined document normally should not exceed 15 pages and shall conclude with FONSI (See 40 CFR 1508.13) or a determination that an EIS is required. The district commander may delegate the signing of a combined document. Should the EA demonstrate that an EIS is necessary, the district commander shall follow the procedures outlined in paragraph 8 of this appendix. In those cases where it is obvious an EIS is required, an EA is not required."

EPA objects to the deletion, in the proposed Army regulation, of the requirement that alternatives be evaluated in an EA if the proposal is not "water dependent" within the meaning of EPA's guidelines for section 404 permits under the Clean Water Act. The Army's argument for deleting this reference in the alternatives section is that neither NEPA nor the CEQ implementing regulations include any reference to "water dependency", and therefore, the Army NEPA regulations need not include such a reference. While this is literally a true statement, it does not reach the entire issue. The requirement to analyze alternatives which are not water dependent actions remains a requirement of the section 404 permit progam. Under Army's current procedural regulations, the section 404(b)(1) alternatives analysis is intertwined with the alternatives analysis in the NEPA process; in fact, the section 404(b)(1) guidelines themselves state that in most cases, NEPA documents will provide the information for the evaluation of alternatives under those guidelines. 40 CFR 230.10(4). Under those guidelines:

"(3) Where the activity associated with a discharge which is proposed for a special aquatic site . . . does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not 'water dependent'), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.

"(4) For actions subject to NEPA, where the [Army] Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents, including supplemental [Army] Corps NEPA documents, will in most cases provide the information for the evaluation of alternatives under these Guidelines . . . ." 40 CFR 230.10(a) (3) and (4).

CEQ's NEPA regulation, "Environmental review and consulation requirements," states:

"(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders." 40 CFR 1502.25(a).

Still another CEQ NEPA regulation entitled "Combining documents" states:

"Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork." 40 CFR 1506.4.

CEQ finds that there is no legal requirement to include a specific reference to "water dependent activities" under the section 404(b)(1) guidelines in the Army's NEPA procedures. However, CEQ recommends that in the spirit of consistency with the CEQ regulations and as sound management policy, specifically to reduce duplication and paperwork and to increase efficient compliance with both NEPA and the Clean Water Act, that the Army's procedures retain the requirement to integrate ito the environmental impact analysis the alternatives to non-water dependent activities under section 404(b)(1).

With respect to alternatives analysis in general, CEQ reiterates its earlier guidance that the alternatives to be analyzed must always be reasonable alternatives, " 'bounded by some notion of feasibility' to avoid NEPA from becoming 'an exercise in frivolous boilerplate.' " *Guidance Regarding NEPA Regulations*, Memorandum from Chairman A. Alan Hill to Heads of Federal Agencies, 48 FR 32463 (1983), quoting *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 551 (1978).

4. Page Limits on Environmental Impact Statements

Abstract

CEQ finds that the Army's proposed regulation to be premature in that the Army has not presented any evidence demonstrating that there has been a conscious effort to abide by the CEQ page limit recommendations. CEQ recommends that the Army attempt concerted compliance with the CEQ regulation before proposing a reduced page limit length.

The issue before us is the length of an EIS to insure adequate analysis of impacts and alternatives. The current Army regulations do not specify page limits for EIS(s).

The proposed Army regulations state that:

". . . a 50-page text would, in most cases, be adequate to discuss succinctly the relevant NEPA issues and to meet legal and technical requirements. To the extent practicable, and consistent with producing a legally and technically adequate EIS, district commanders will make all reasonable efforts to limit the text to a concise, readable length of 50 pages." 33 CFR 230.13.

The CEQ regulations state that the text of final EISs should normally be less than 150 pages and for proposals of unusual scope or complexity, should normally be less than 300 pages. 40 CFR 1502.7.

CEQ finds the Army's proposed regulation to be premature in that the Army has not presented any evidence demonstrating that there has been a conscious effort to abide by the CEQ page limit recommendations. CEQ recommends that the Army attempt concerted compliance with the CEQ regulation before proposing a reduced page limit length.

Dated: June 8, 1987.

A. Alan Hill,
Chairman.

William L. Mills,
Member.

Jacqueline E. Schafer,
Member.

Footnotes

1. Under the CEQ referral regulations, if the lead agency requests more time and gives assurances that the matter will not go forward in the interim, the Council may grant an extension. 40 CFR 1504.3(d). Under this provision CEQ granted the Army nine extensions of time, in the period from February 25, 1985, to April 18, 1986.

2. The CEQ referral regulations provide that the Council may, (among other options), "[d]etermine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies reports to the Council that the agencies' disagreements are irreconcilable." 40 CFR 1504.3(f)(5). The referral was returned to EPA and the Army under this provision.

3. CEQ received 57 written comments during this period.

4. In 1980, the Army Corps of Engineers filed a total of 35 EISs on regulatory actions. In 1981, that number dropped to 19. Subsequent filings for regulatory EISs are 1982—27; 1983—13; 1984—20; 1985—15; 1986—20.

5. In *Colorado River Indian Tribes v. Marsh*, 605 F. Supp. 1425 (C.D. Cal. 1985), the district court did discuss, and express disagreement with, the decision in *Save the Bay, Inc. v. Corps of Engineers* and *Winnebago Tribe of Nebraska v. Ray*, to the extent that it perceived that those decisions distinguished between "major federal action" and "significantly" as separate triggers under NEPA. The CEQ regulations, however, state that "[m]ajor reinforces but does not have a meaning independent of significantly". 40 CFR 1508.18. Neither *Save the Bay* nor *Winnebago* discussed this rule, and the Army does not challenge this rule.

In any event, the court in *Colorado River Indian Tribes* did find that an EIS was required prior to issuance of an Army permit for placement of riprap for stabilization of shore banks on the site of a proposed residential and commercial development. The court rested its holding on an agency's responsibility under NEPA to assess the direct, indirect and cummulative effects of a proposed action. In that case, the court determined that the Army had improperly limited its analysis to the direct effects of the Army permit.

The scope of analysis issue addresses the extent to which the proposed action is identified as a federal action for purposes of compliance with NEPA. Modification of the regulation addressing scope of analysis does not affect the requirement to evaluate impacts. Once the scope of analysis is determined, the agency must then assess the direct, indirect and cumulative effects of the proposed federal action. *See* 40 CFR 1502.16, 1508.7, and 1508.8.

6. *Winnebago Tribe of Nebraska v. Ray*, 621 F.2d 269 (8th Cir.), *cert. denied*, 449 U.S. 836 (1980).

7. To the extent that this factor rests on the holding in *Save the Bay v. Corps of Engineers*, it should be noted that the Court of Appeals did *not* hold that the subject federal action must be a condition precedent to private action in order for preparation of an EIS to be required. Rather, the court found that the overall *federal* involvement in the proposed action was insufficient to "federalize" the entire project.

8. *See* 40 CFR 1508.18 (definition of "major federal action").

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DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Defense Initiative Advisory Committee; Meeting

ACTION: Notice of advisory Committee meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Subcommittee (Ground Based Free Electron Laser Technology Integration Experiment Technical Advisory Group) will meet in closed session in Washington, DC, on June 22-24, 1987.

The mission of the Subcommittee is to provide the SDI Advisory Committee an independent analysis and assessment of the plans and approaches for the ground based free electron laser technology integration experiment. At the meeting on June 22-24, 1987 the subcommittee will discuss status of laser research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Subcommittee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 8, 1987.

[FR Doc. 87-13437 Filed 6-11-87; 8:45 am]

BILLING CODE 3810-01-M

Membership of the DoD Inspector General (IG) Performance Review Board

AGENCY: Department of Defense Inspector General (IG).

ACTION: Notice of membership of the Dod IG Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Inspector General. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommedations regarding performance and performance awards to the Inspector General.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald R. Sandaker, Chief, Employee Management Relations and Development Branch, Personnel & Security Division, Inspector General, 400 Army Navy Drive, Arlington, VA, (202) 693-0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the enclosed are names of executives who have been appointed to serve as members of the Performance Review Board. They will serve a one year renewable term effective on July 1, 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 8, 1987.

Terry L. Brendlinger
Charles L. Cipolla
James H. Curry
Michael C. Eberhardt
John W. Fawsett
Daniel R. Foley
William K. Keesee
Richard D. Lieberman
Robert J. Lieberman
Jack L. Montgomery
Donald E. Reed
Richard T. Russ
William F. Thomas
Richard W. Townley
Stephen A. Trodden
Bertrand G. Truxell

[FR Doc. 87-13438 Filed 6-11-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet June 30-1 July 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: June 8, 1987.

Jane M. Virga,

Lt. Jagc, USNR, Federal Register Liaison Officer.

[FR Doc. 87-13434 Filed 6-11-87; 8:45 am]

BILLING CODE 3810-AE-M

Secretary of the Navy's Advisory Board on Education and Training; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app), notice is hereby given that the Secretary of the Navy's Advisory Board on Education and Training (SABET) will meet in Millington, Tennessee, July 21-23, 1987. The meeting will be held in Building East I, Management Analysis Center (MAC Room), first floor, Chief of Naval Technical Training Headquarters at Navel Air Station, Memphis.

The purpose of SABET is to advise the Secretary of the Navy on policy concerning all facets of education and training for Navy and Marine Corps personnel. During its summer session the Board will complete its study of voluntary education in the Department of the Navy, as well as initiating a review of training programs for instructors, curriculum developers, and training managers.

The meeting will commence at 1400 on 21 July to review the agenda. Regular sessions will run 22 July from 8:30 a.m. to 5:00 p.m. The 23 July executive session will commence at 8:30 a.m. and terminate at 11:00 a.m. All sessions are open to the public.

For further information concerning this meeting, contact Mrs. Carol Osborn (Code N-51), Professional Assistant to the Director of Education and Training Development Division, Chief of Naval Education and Training, Naval Air Station, Pensacola, Florida 32508-5100, telephone (904) 452-4988.

Agenda

Tuesday, 21 July 1987

1400-1630 Executive Session
1800-1900 Reception by Invitation/ NAS Officer's Club
1914- Dinner

Wednesday, 22 July 1987

0830- Welcoming remarks, Rear Admiral David L. Harlow
Administrative notes, Vice Admiral N.R. Thunman, Dr. W.L. Maloy,
0900-1000 Present Program Overview, Mrs. Val Reed
1000-1100 Training Needs Assessment, Training Development Unit Staff
1100-1200 Trainer/Training Concept, CNTECHTRA/CNET Staff
1200-1300 Lunch 1300-1400 Trainer/ Training Program Issues, CNTECHTRA Staff
1400-1630 Guided Tour of NATTC Mephis Instruction Training Center

Thursday, 23 July 1987

0830-1015 A review of 1987 Report of Voluntary Education Follow-on actions by the Board (e.g. establish Saturday committee for in-depth review).
1045-1100 Planning for Winter 1988 meeting.
1130- Adjourn

Dated: June 8, 1987.

Jane M. Virga,

Lt. JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-13435 Filed 6-11-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Notice was published May 21, 1987, at 52 FR 19194 that the Naval Research Advisory Committee Panel on Outer ASW Battle will meet on June 18 and 19, 1987. The meeting location has been changed. All sessions of the meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. All other information in the previous notice remains effective.

Dated: June 8, 1987.

Jane M. Virga,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-13433 Filed 6-11-87; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3217-2]

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 June 01, 1987 Through June 05, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870195, Draft, FAA, TN, Nashville Metropolitan Airport Runway Improvments, Site Grading and Construction, Davidson County, Due: July 27, 1987, Contact: Otis Welch (901) 521-3495.

EIS No. 870196, Final, NDA, WA, Grays Harbor Estuary Management Plan, Washington State Coastal Zone Management Program Amendment No. 3, Approval, Grays Harbor County, Due: July 13, 1987, Contact; James Burgess (202) 673-5158.

EIS No. 870197, Final, FWS, AK, Kanuti National Wildlife Refuge Comprehensive Conservation Management Plan, Designation, Due: July 13, 1987, Contact: William Knauer (907) 786-3399.

EIS No. 870198, Draft, FWS, AK, Innoko National Wildlife Refuge Comprehensive Conservation Management Plan, Wilderness Review, Due: August 10, 1987, Contact: William Knauer (907) 786-3399.

EIS No. 870199, Draft, USA, WA, Yakima Firing Center, Military Training Center Expansion, Land Acquisition, Fort Lewis Military Installation, 9th Infantry Division, Yakima and Kittitas Counties, Due: July 27, 1987, Contact: Michael Scuderi (206) 764-3624.

EIS No. 870200, Final, AFS, ID, Challis National Forest Land and Resource Management Plan, Due: July 13, 1987, Contact: Gordan Reid (208) 879-2285.

EIS No. 870201, Draft, EPA, VI, Cruz Bay Wastewater Facilities Management Plan, Development and Evaluation, Construction Grant, Due: July 29, 1987, Contact: William Lawler (212) 264-5391.

EIS No. 870202, Final, USN, CA, Navy Geothermal Development Program, Power Plant Construction and Operation, Coso Known Geothermal Resource Area, Inyo County, Due: July 13, 1987, Contact: Carolyn Shepherd (619) 939-3411.

EIS No. 870203, Draft, UAF, CA, PRO, Vandenberg Air Force Base, Mineral Resource Management Plan, Exploration, Development, and Production of Oil and Gas Resources, Santa Barbara County, Due: July 27, 1987, Contact: William Newell (805) 866-5725.

EIS No. 870204, Draft, FHW, GA, Mansell Road/GA-400 Interchange Extension, Mansell Road/Old Roswell Road Intersection to Old Alabama Road/Turner Road Intersection, Fulton County, Due: July 27, 1987, Contact: Louis Papet (404) 347-4751.

EIS No. 870205, Draft, AFS, OR, Bull Run Blowdown, Wind Damaged Trees Management Plan, Mt. Hood National Forest, Clackamas and Multnomah Counties, Due: September 2, 1987, Contact: E.R. Hardman (503) 695-2276.

Amended Notices

EIS No. 870166, Draft, FHW, WI, WI-TH-83 Improvement, I-94 to Cardinal Lane/WI-TH-16, Waukesha County,

Due: July 27, 1987, Published FR 5-22-87—Review period reestablished.
EIS No. 870133, Revised, AFS, AK, Quartz Hill Molybdenum Project Mine Development, Construction Operation and Post-Mining Abandonment, Special Use Permits and Leases, Due: June 30, 1987, Published FR May 1, 1987—Review period extended.
EIS No. 870127, Draft, UAF, SEV, PRO, Ground Wave Emergency Network (GWEN) Deployment and Land Acquisition, Final Operational Capability, Due: June 23, 1987, Published FR 4-17-87—Review period extended.

Dated: June 9, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-13508 Filed 6-11-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3217-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 26, 1987 through May 29, 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).

Final EISs

ERP No. F-AFS-E65029-NC, 1986—2000 Nantahala and Pisgah Nat'l Forests, Land and Resource Mgmt. Plan, NC. SUMMARY: Based on our review, EPA supports implementation of the preferred alternative as modified from the draft EIS and encourages the implementation of on-site monitoring to assess the effectiveness of the protection measures.

ERP No. F-FHW-L40145-OR, Lester Ave./I-205 Interchange Construction and Improvements, Between Sunnyside Rd. and Foster Rd. Interchanges, OR. SUMMARY: EPA made no formal comments. EPA reviewed the EIS and found the project to be satisfactory.

Amended Notice

The following review should have appeared in the FR Notice published on May 29, 1987.

ERP No. D-MMS-L02016-AK, Rating EC2, 1988 Chukchi Sea Outer Continental Shelf (OCS) Oil and Gas Sale No. 109, Leasing, AK. SUMMARY: EPA recommends that the Eastern and Southern deferral areas be deferred from the sale, since they contain no estimated hydrocarbon resources. EPA believes that several aspects of this draft EIS could be revised and expanded, thus providing a clearer picture of the environmental consequences of oil and gas operations.

Dated: June 9, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-13509 Filed 6-11-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3217-6]

Automated Data Processing Expert Systems Vendors Sought

AGENCY: Environmental Protection Agency.

ACTION: Announcement of Workshop.

Expert systems software vendors are invited to demonstrate their expert systems hardware and software at a workshop on "Automated and Expert Systems in Hazardous Waste Management."

The workshop is sponsored by the U.S. Environmental Protection Agency and will bring together developers and users of expert systems technology. Many of these people will be involved in the selection and acquisition of expert systems products for use in their government, university or commercial organizations.

The workshop will be held June 16-18, 1987, at the Andrew W. Breidenbach Environmental Research Center in Cincinnati, Ohio. A classroom will be available on a first come basis for distribution of literature or demonstration of expert systems products. If you are interested in providing literature, demonstrating an expert systems product or participating in a panel discussion, please contact the workshop coordinator.

FOR FURTHER INFORMATION CONTACT: Dr. Diane R. Murphy, CRC Systems, Inc., 11242 Waples Mill Road, Fairfax, VA 22030, 705-359-9400.

Dated: June 8, 1987

John H. Skinner,

Director, Office of Environmental Engineering and Technology Demonstrations.

[FR Doc. 87-13475 Filed 6-11-87; 8:45 am]

BILLING CODE 6560-50-M

[ORD FRL-3217-7]

Financial Assistance Program; Availability for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability for review.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Research and Development (ORD), joining with the Office of Solid Waste and Emergency Response (OSWER), is announcing its intention to enter into cooperative agreements under the new Superfund Innovative Technology Evaluation (SITE) Program, (Catalog of Federal Domestic Assistance number 66.806). The cooperative agreements will be approved by EPA and agreed to by developers of hazardous waste treatment technologies selected to be demonstrated under the SITE program. The overall goal of this program is to conduct demonstrations and evaluate innovative/alternative treatment technologies to assist in the commercialization of technologies for the permanent cleanup of Superfund sites. Through evaluation of selected treatment technologies, the Agency seeks to eliminate, wherever it is cost effective, land disposal options.

FOR FURTHER INFORMATION CONTACT: Corinne Allison, Grants Policy and Procedures Branch (PM-216F), Grants Administration Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 382-5294.

SUPPLEMENTARY INFORMATION: The SITE program is eligible for intergovernmental review under Executive Order 12372 and subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States must notify the following office in writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in the SITE program: Grants Policy and Procedures Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The intergovernmental review process usually involves review of a developer's cooperative agreement application. In the SITE program, a cooperative agreement will not be developed until the end of the planning phase and after a public notice and comment period is held by EPA's regional offices on the proposed demonstration site and

technology. Therefore, in the SITE program, the intergovernmental review will take place at the time a Superfund site has been tentatively selected for a technology demonstration and concurrent with EPA's public notice and comment period. EPA's regional offices will contact the State's Single Point of Contact (SPOC) for intergovernmental review with information on the proposed technology demonstration. For sites where the State has responsibility for cleanup, EPA's counterpart in the State will be responsible for initiating the review. In addition, information for projects within a metropolitan area must be sent to the areawide/regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. The information available for review will include, but not be limited to, information on the technology, the site, the propoed demonstration, an environmental assessment checklist, and a generic cooperative agreement which includes a description of the demonstration plan.

SPOCs and other reviewers should send their comments on the proposed SITE demonstration to the Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC, 20460, no later than sixty days after receipt of the informational material for review.

Under the authority of CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1987, Pub. L. 99-499, section 311(b)(3), EPA may award contracts, cooperative agreements or grants to carry out the SITE demonstration to persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of the Interal Revenue Code of 1954. In general, the technology developers will pay for the operational part of the demonstration, including setting up, running and dismantling the equipment, and providing trained personnel. EPA will pay the cost of testing, monitoring, quality control and other measurements required to determine and evaluate the results of the demonstration. EPA may provide Federal assistance to a developer but only if such developer demonstrates it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out the demonstration project without such Federal assistance.

The oveall goal of the SITE Program is to increase the use of alternatives to land disposal at Superfund sites. Reliable cost and performance information on innovative/alternative treatment technologies will be generated by conducting full scale demonstrations of selected technologies at actual Superfund sites.

The technologies will be chosen through a solicitation and evaluation process. EPA will then match the selected technologies to Superfund sites that best meet certain waste and other criteria. After EPA has solicited comments from the public on the tentative site selection and decided to proceed with the project, EPA and the technology developer will prepare a demonstration plan. This plan will address all aspects of the demonstration project, including evaluation procedures, responsibilities of the parties involved, schedules, test program, quality assurance/quality control plan, a health and safety plan, and mobilization and closure of the demonstration project. The demonstration plan will then be incorporated into the cooperative agreement signed by EPA and the technology developer.

The product of each demonstration project will be a series of EPA reports on the results of the technology evaluation. The reports will provide EPA the States, and the public with needed cost and performance data on new commercial technologies for comparing and selecting cleanup remedies for Superfund sites.

Dated: June 8, 1987.

John Skinner,

Director, Office of Environmental Engineering and Technology Demonstration, Office of Research and Development.

Thomas W. Devine,

Director, Office of Program Management and Technology, Office of Solid Waste and Emergency Response.

[FR Doc. 87-13476 Filed 6-11-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 4, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0212

Title: Section 73.2080, Equal Employment Opportunity Program

Action: Extension

Respondents: Licensees of broadcast stations

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 11,703 Recordkeepers; 1,217,112 Hours

Needs and Uses: Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex. The data is used by broadcast licensees in the preparation of the station's EEO Program (FCC Form 396) submitted with the license renewal application. If this program was not maintained there could be no assurance that efforts are being made to afford equal opportunity in employment.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-13431 Filed 6-11-87; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

June 4, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Doris Benz, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0113
Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines
Form Number: FCC 396
Action: Extension
Respondents: Licensees of broadcast stations
Frequency of Response: Every 5 years for TV, 7 years for radio
Estimated Annual Burden: 345 Responses, 1,208 Hours
Needs and Uses: The Equal Employment Opportunity Program (FCC Form 396) is a device that will be used to evaluate whether a broadcaster is making satisfactory efforts to comply with FCC's EEO requirements. Filing FCC Form 396 is necessary at renewal time by all AM, FM, TV, Low Power TV and International stations with five or more full-time employees. This report will be reviewed by FCC analysts to determine if broadcast stations are providing equal employment opportunity to all qualified persons without regard to race, color, religion, sex or national origin.
OMB Number: 3060-0120
Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines
Form Number: FCC 396-A
Action: Extension
Respondents: Licensees of broadcast stations
Frequency of Response: On occasion
Estimated Annual Burden: 2,753 Responses; 2,753 Hours
Needs and Uses: FCC Form 396-A is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station. The data is reviewed by FCC analysts to determine if stations will provide equal employment opportunity to all qualified persons without regard to race, color, religion, sex or national origin.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-13432 Filed 6-11-87; 8:45 am]
BILLING CODE 6712-01-M

Window Notice for the Filing of FM Broadcast Applications

[Report No. W-16]

Released: June 4, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submittted for filing during the period beginning June 4, 1987 and ending July 10, 1987 inclusive.

Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel 273 A
Dothan, AL
Cabot, AR
Mableton, GA
Galva, IL
Mitchell, IN
Lexington, MS
Louisburg, NC
Edgewood, OH
Canton, SD
Channel 273 C2
North Fort Riley, KS
Beaumont, TX
Channel 272 A
Mendota, CA
Cresco, IA

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-13429 Filed 6-11-87; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011075-002
Title: Central America Discussion Agreement
Parties: United States/Central America Liner Association, Nordana Line, Inc., Concorde Shipping, Inc., Nexos Line
Synopsis: The proposed amendment would delete Ecuadorian Line, Inc. and Flagship Container Line, Inc. as parties to the agreement and would add as a party Marine Bulk Carriers, Inc. It would also restate the agreement. The parties have requested a shortened review period.

Dated: June 8, 1987.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 87-13402 Filed 6-11-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Andover Bancorp, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 3, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Andover Bancorp, Inc.*, Andover, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Andover Savings Bank, Andover, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance activities.

2. *The Waltham Corporation*, Waltham, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Waltham Savings Bank, Waltham, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance activities.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Taiyo Kobe Bank, Ltd.*, Kobe, Japan; to become a bank holding company by acquiring 100 percent of the voting shares of Taiyo Kobe Bank and Trust Company, New York, New York, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peotone Bancorp, Inc.*, Peotone, Illinois; to acquire 28 percent of the voting shares of Rock River Bancorporation, Inc., Oregon, Illinois, and thereby indirectly acquire United Bank of Ogle County, National Association, Oregon, Illinois.

2. *Rock River Bancorporation, Inc.*, Oregon, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank of Ogle County, National Association, Oregon, Illinois.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Southern Bancshares, Ltd.*, Carbondale, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank and Trust Company, Carbondale, Illinois.

2. *Weakley County Bancshares, Inc.*, Dresden, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Weakley County Bank, Dresden, Tennessee.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northern Plains Investment, Inc.*, Jamestown, North Dakota; to become a bank holding company by acquiring 40.05 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire Stutsman County State Bank, Jamestown, North Dakota.

2. *North Star Holding Company, Inc.*, Jamestown, North Dakota; to become a bank holding company by acquiring 79.86 percent of the voting shares of Stutsman County State Bank, Jamestown, North Dakota.

F. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, dallas, Texas 75222:

1. *Brazos Bancshares, Inc.*, Joshua, Texas; to become a bank holding company by acquiring 81.32 percent of the voting shares of The First National Bank in Joshua, Joshua, Texas.

Board of Governors of the Federal Reserve System, June 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-13481 Filed 6-11-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; Bank of Boston Corp. et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulatory Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflict of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approaval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, BancBoston Leasing Services, Inc., Boston, Massachusetts, in the leasing of personal property and serving as a broker, agent or advisor in the leasing of such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfold, Virginia; to engage *de novo* through its subsidiary, Sovran Investment Corporation, Richmond, Virginia, in providing brokerage services for corporate and institutional customers pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by June 26, 1987.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *Associated Banc-Corp*, Green Bay, Wisconsin; to engage *de novo* through its subsidiary, Associated Mortgage, Inc., Green Bay Wisconsin, in arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y. This activity will be conducted in the states of Wisconsin and Illinois.

2. *NRD Bancorp, Inc.*, Detroit, Michigan; to engage *de novo* through its subsidiary, NBD Trust Company of Florida, N.A., West Palm Beach, Florida, in deposit-taking and the origination of consumer loans pursuant to § 225.25 (b)(1) and (b)(2) of the Board's Regulation Y.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First State Banking Corporation*, Alcester, South Dakota; to engage *de novo* in providing data processing services to three affiliated, but nonsubsidiary, insurance agencies pursuant to § 225.(b)(7) of the Board's Regulation Y. This activity will be conducted in Alcester, Brandon, and Valley Springs, South Dakota. Comments on this application must be received by July 1, 1987.

Board of Governors of the Federal Reserve System, June 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-13482 Filed 6-11-87; 8:45 am]

BILLING CODE 6210-10-M

Acquisitions of Shares of Banks or Bank Holding Companies; Robert R. Garneau et al.

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Robert R. Garneau, M.D.*, Ludington, Michigan; to acquire 12.3 percent of the voting shares of Manistee Bank and Trust, Manistee, Michigan.

2. *Howard E. Zimmerman*, and Sara Trilling, both of Skokie, Illinois; W. Scott Blake and Wm. J. Blake, both of Milwaukee, Wisconsin; Robert Wurman, Lincolnwood, Illinois; Delfo Roccati, Monaco; Pedro R. Arrechea, Mexico; J. Michael Straka, and Jerry D. Maahs, both of Brookfield, Wisconsin; Raul Araujo Carillo, Clare W. Bradley, and Jose Araujo Carillo, all of Venezuela; and Donald Trilling, Northbrook, Illinois; to acquire 100 percent of the voting shares of Sidney Bancorporation, Inc., Sidney, Illinois.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Donn W. West*, Rice Lake, Wisconsin; to retain 15.1 percent of the voting shares of Rice Lake Bancorp, Inc., Rice Lake, Wisconsin, and thereby indirectly retain Dairy State Bank, Rice Lake, Wisconsin, and Citizens State Bank of Birchwood, Wisconsin, Birchwood, Wisconsin.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Eugene Auten*, Scottsdale, Arizona; Frank Kamm, Gerald Koepke, Neil Kort, and Donald Seeman, Blue Hill, Nebraska; to acquire 7.5 percent of the voting shares of Blue Hill Agency, Inc., Blue Hill, Nebraska, and thereby indirectly acquire Commercial Bank, Blue Hill, Nebraska.

2. *Huff Kelly*, J. Cooper West, Graydon R. Lantz, and Robert L. Newcomb, all of Elk City, Oklahoma; Jimmy Harrel and Donald L. Harrel, both of Leedey, Oklahoma; to acquire 90 percent of the voting shares of Western Oklahoma Bancshares, Inc., Elk City, Oklahoma, and thereby indirectly acquire Bank of Western Oklahoma, Elk City, Oklahoma.

Board of Governors of the Federal Reserve System, June 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-13483 Filed 6-11-87; 8:45 am]

BILLING CODE 6210-01-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 May 8, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for Copies of Package)

1. Statement of Employer—0960-0030—The information collected by this form is needed to substantiate allegations of wages paid to workers when those wages do not appear in SSA's records of earnings and the worker does not have proof that they were paid. This information is used to process claims for Social Security benefits and to resolve discrepancies in earnings records. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 850,000; Frequency of Response: Occasionally; Estimated Annual Burden: 283,333 hours.

2. Missing and Discrepant Wage Reports Letter and Questionnaires—0960-0432—The information collected will be obtained from employers and will be used to correctly post wages to an employees Social Security earnings record. The affected public is comprised of employers with missing or discrepant wage reports. Respondents: Businesses or other for-profit. Number of Respondents: 392,045; Frequency of Response: Occasionally; Estimated Annual Burden: 114,028 hours.

3. Disability Report, Vocational Report—0960-0141—These forms are used to collect information which is needed to make a determination for a disability claim. Form SSA-3369 supplements the SSA-3368 by collecting information about the claimant's past work experience. Respondents: Individuals or households. Number of Respondents: 1,500,000; Frequency of Response: Occasionally; Estimated Annual Burden: 705,000 hours.

OMB Desk Officer: Judy Egan

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for Copies of Package)

1. Conditions of Participation for Laboratories—0938-0368—Laboratories participating in Medicare are required to maintain this information in order to show compliance with published health safety requirements. Respondents: Individuals or households, State or local governments. Number of Respondents: 3,766; Frequency of Response: Occasionally; Estimated Annual Burden: 38,119 hours.

2. Request for Hearing—Part B Medicare Claim—0938-0034—The HCFA-1965 is used by either the beneficiary or a Part B supplier-physician to request a hearing with the Medicare carriers' hearing officer, once Supplementary Medical Insurance benefits have been denied at the information review stage. Respondents: Individuals or households, Small businesses or organizations. Number of Respondents: 55,000; Frequency of Response: Occasionally; Estimated Annual Burden: 9,166 hours.

3. Clinical Laboratory Survey Report Form—0938-0032—This survey form is an instrument used by the State agency surveyor to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal government. Respondents: State or local governments. Number of Respondents: 55; Frequency of Response: Annually; Estimated Annual Burden: 11,000 hours.

4. Request for Accelerated Payments—0938-0269—These forms are used by intermediaries to assess a provider's eligibility for an accelerated payment. Such a payment is granted if there is an unusual delay in processing bills. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 365; Frequency of

Response: Occasionally; Estimated Annual Burden: 183 hours.

5. Information Collection requirements contained in BERC-371-FC, Appeals procedures for Determinations That Affect Participation In Medicare—NEW—The Social Security Act provides for hearings for institutions or agencies dissatisfied with a Medicare program determination. This rule sets forth the procedures for appeals on determination that affect the participation of providers, suppliers, etc. in the program. Respondents: Individuals or households. Number of Respondents: 50; Frequency of Response: Occasionally; Estimated Annual Burden: 250 hours.

OMB Desk Officer: Allison Herron

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for Copies of Package)

A. Office of the Assistant Secretary for Health

1. Third National Health and Nutrition Examination Survey (NHANES III) Pilot Tests—NEW—NHANES III will measure and monitor the health and nutritional status of the U.S. population as a six-year survey involving 60,000 participants ages 2 months and older. Pilot testing is necessary to evaluate and refine questionnaire design, sampling, training and exam procedures, etc. Respondents: Individuals or households. Number of Respondents: 1,750; Frequency of Response: Occasionally; Estimated Annual Burden: 5,696 hours.

2. Annual Marriage and Divorce Statistical Report Forms—0937-0001—This form is used to request from States annual final counts of marriages and divorces which are essential to NCHS and the Bureau of the Census in evaluating validity of input to other activities, to the Social Security Administration in projecting program plans, and to a wide community of other known users. Respondents: State or local governments. Number of Respondents: 60; Frequency of Response: Annually; Estimated Annual Burden: 60 hours.

3. Monthly Vital Statistics Report Forms—0937-0007—Monthly vital statistics at the State and national level are required by the Bureau of the Census in the preparation of population estimates and projections. They are widely used by the health community in tracking trends, and by the public sector for marketing and research purposes. Respondents: State or local governments; Number of Respondents: 164; Frequency of Response: Monthly; Estimated Annual Burden: 197 hours.

4. National Survey of Family Growth, Cycle IV—0937-0104—This survey will provide data on childbearing, family formation (including adoption), family planning, and reproductive health. The data are used by the Office of Population Affairs, the NICHHD, the CDC and other Federal agencies and are disseminated through written reports and public use computer tapes. Respondents: Individuals or households. Number of Respondents: 11,423; Frequency of Response: Occasionally; Estimated Annual Burden: 6,475 hours.

B. National Institutes of Health

1. Health Professionals Use of Documents—NEW—Previous studies have not assessed how various factors affect the ways in which health professionals use the information contained in documents obtained through the interlibrary loan network. Data gathered from this study will be used to plan future changes in network operations. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 2600; Frequency of Response: One Time; Estimated Annual Burden: 2,390 hours.

OMB Desk Officer: Shanna Koss

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: 202-245-2100

SSA: 301-594-5706

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: June 5, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87-13363 Filed 6-11-87; 8:45 am]

BILLING CODE 4150-04-M

Chapter 6-150, HHS Grants Administration Manual Reimbursement of Indirect Costs

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of change in departmental policy.

SUMMARY: The Department of Health and Human Services provides notice to interested parties of the following actions:

—Revision of its departmental policy concerning the reimbursement of indirect costs under those project grants and cooperative agreements (hereinafter referred to collectively as "grants") where the Department currently reimburses full indirect costs. This policy is contained in Chapter 6-150 of the HHS Grants Administration Manual.

—Withdrawal of our proposal to amend 45 CFR 74.105(a)(1). We published that proposal at 51 FR 28960-1, on August 13, 1986. It would have required prior approval for the rebudgeting of amounts awarded for direct costs to absorb increases in indirect costs.

—General waiver of the longstanding prior approval requirement in 45 CFR 74.105(a)(1) for rebudgeting from indirect to direct costs.

We are taking these actions in response to a recommendation by the Office of Science and Technology Policy (OSTP) that HHS adopt the indirect cost reimbursement practices of the National Science Foundation (NSF).

EFFECTIVE DATE: Each of the major component parts of HHS (e.g. PHS, OHDS, HCFA, SSA, FSA) is being directed to implement the changes on a single date, organization-wide, as soon as possible after July 31, 1987 but no later than October 1, 1987. The revised policy will apply to all grants awarded on or after those implementation dates, specific notice of which will be provided to grantees by the awarding agencies.

Availability of Chapter 6-150: Revised Chapter 6-150 will be sent directly by the Government Printing Office to subscribers to the HHS Grants Administration Manual. The public may obtain a single copy of the Chapter by contacting the Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513D, HHH Bldg. 200 Independence Avenue, SW., Washington, DC 20201, (202) 245-7565.

FOR FURTHER INFORMATION CONTACT: John Strauch, (202) 245-7565.

SUPPLEMENTARY INFORMATION:

Background

Rising indirect costs rates have been the focus of increasing concern by a wide spectrum of parties including Congress and Federal officials. Studies by the Congress, OSTP, GAO and the

HHS Inspector General have all addressed the subject in recent years. OSTP reported that, starting in recent years. OSTP reported that, starting from the old statutory ceiling of 20% (which was abolished in 1966), university indirect cost rates had grown by 1981 to a national composite of 30% at NIH and 25% at NSF, and by 1984 to 31.2% of total research costs at NIH. OSTP recommended that the Department adopt NSF's practice of including the indirect cost portion of a research project budget in the application. This would mean that peer review groups would see the total funds being requested, and not merely the direct costs. OSTP stated that under such a system the total amount of an award, both direct and indirect, should be fixed over the grant period.

On August 13, 1986, we published: (1) A request for public comments on a proposal to implement OSTP's recommendation by revising Grants Administration Manual Chapter 6-150 (51 FR 28983) and (2) a Notice of Proposed Rulemaking to amend 45 CFR 74.105(a)(1). We provided a 60 day comment period. Seventy-seven organizations or individuals submitted comments, 54 from research-oriented organizations and 23 from the non-research community, primarily community-based organizations or their representatives. Based on our evaluation of those comments, the final changes we are now making differ from our porposed changes in some respects. The comments that we received and our decisions are discussed below.

Peer Review

At present, Departmental policy is silent on this subject. As a result, practices of our awarding agencies vary. In the Public Health Service, peer review groups for research grant applications review the direct costs requested by research grant applicants but do not see the amount being requested for indirect costs. Other awarding agencies generally include both direct and indirect costs in the application reviewed by such panels. Subsection 6-150-20I of the August 1986 proposed revision would have required all applications reviewed by any grant application review panel to show both direct and indirect costs requested. This would enable reviewers to reach more informed judgments about the overall cost of proposed projects, because they would see the total estimated costs, and not merely the direct costs. However, the proposed revision stated explicitly that the review panels would have no authority to change the indirect cost rates or restrict their application.

Negotiating indirect cost rates would continue as the responsibility of the various negotiation offices of the cognizant Federal agency—in HHS, our Regional Divisions of Cost Allocation. Making sure that the rates are properly used would continue as the responsibility of grants management officials, financial management officials, or both, in our awarding agencies.

This issue affects only the research community and nearly all commenters who addressed this proposal opposed it. They generally claimed that it would undermine the merit assessment process by the introduction of extraneous indirect cost data which they felt would be misunderstood and misused. They believed that panel members, who are scientists not administrators, would tend to be biased against high indirect cost rates an would allow those biases to creep into their evaluation of proposals. They stated that this bias against indirect costs would reduce the general quality level of research approved and funded and would discriminate against proposals from organizations with higher rates in general and against private institutions in particular (since they are generally perceived to have higher rates than public institutions).

We note that commenters presented no evidence of biased results from the National Science Foundation's process and were informed by an NSF official that NSF did not believe any existed. PHS, the only affected HHS component, supports the proposed policy and believes that the commenters' concerns are not justified, since the direct cost information will continue to be presented in the traditional format and will be the only cost elements for which the reviewers may recommend changes. However, mindful of the concerns expressed by the commenters, PHS will provide positive instruction to peer review groups in order to protect the integrity of the merit evaluation process and will monitor the process with a view to identifying and remediating any inappropriate actions by reviewers.

Accordingly Departmental policy is being amended as proposed in August 1986 but PHS's implementation will include the training and monitoring discussed above.

Amount of Indirect Costs Awarded and Reimbursed

Current policy is to provide full reimbursement for indirect costs in accordance with rates negotiated by the Government with each grantee. Thus, initial awards are made at the most current available rates and most HHS granting agencies make supplemental awards to cover increased indirect costs incurred due to rising rates and altered direct cost budgets. The latest available information for PHS showed net annual upward adjustments of approximately $32.5 million.

Subsection 6-150-20D (now 6-150-20B.3.) of the proposed revision would have eliminated the practice of providing additional funds, except in the following circumstances:

(a) An error made by the granting agency in computing the award;

(b) The restoration of funds previously recaptured by the Department as part of a grantee's unobligated balance;

(c) New or delinquent grantees for whom valid rates are subsequently established; and

(d) Expansion or extension of projects (limited to the indirect costs attributable to any additional direct costs awarded).

In addition, subsection 6-150-20D would have provided that the amount of indirect costs awarded (or as subsequently amended) would be a ceiling amount beyond which the grantee could not charge the grant except with the prior approval of the awarding agency. In other words, grantees would have been required to obtain prior approval for any rebudgeting of grant funds from direct to indirect costs. Finally, subparagraph 6-150-50A.1.b. would have been revised to eliminate the existing restrictions on an awarding agency's authority to reduce an award immediately to reflect a lower indirect cost rate subsequently established (and thus reduce the indirect cost ceiling). As mentioned earlier, a companion proposal to add the prior approval requirement to the Department's grants administration regulations at 45 CFR Part 74 was also published in the **Federal Register**.

About a quarter of the 34 university respondents recognized the need for some action and expressed reluctant support for our non-supplementation proposal but only if coupled with the NSF practice of allowing institutions flexibility in rebudgeting between direct and indirect costs. Several other respondents supported the rebudgeting restriction but coupled this with retention of supplemental awards. As expected, only a very few supported the proposal in its entirety.

The remaining commenters opposed the proposed changes. They argued that eliminating supplemental awards would create not savings but forced cost sharing which the institutions could not afford and which the Government should pay (under the theory that it should reimburse the full cost of projects it supports). They pointed out that a

number of these increases were caused by external forces such as the energy crisis of some years past and delays in completion of audits and/or negotiations by the Federal Government. They considered it unfair to make reductions, but not increases, due to changes in rates and to deny additional funds in those cases where the award rates are negotiated as provisional rates to be adjusted later when actual costs become known. The rebudgeting approval requirement was opposed as inflexibile, not part of the NSF system or that of any other major Federal agency, and as a creator of a large amount of paperwork. Commenters predicted that loss of indirect cost reimbursements from the proposed policy would force grantees to abandon other worthy activities or to increase tuition rates. Some predicted that small and new organizations might no longer be able to afford to participate in Federal programs.

Upon reflection the Department has decided that the most reasonable alternative is to follow the general practices of NSF and most other Federal agencies (i.e. no supplemental awards and rebudgeting flexibility). Accordingly, the policy is being revised to eliminate supplemental awards as originally proposed. However, awards will be immediately adjusted downward to reflect a lower rate only in exceptional circumstances such as a grantee officially designated as "delinquent" for not submitting its indirect cost proposal. Other downward adjustments, when appropriate, will be routinely made in the disposition of unobligated balances reflected in financial reports submitted after completion of the budget period. The total amount awarded (direct plus indirect) will constitute the maximum amount that the Government pays for a grant. Grantees will be allowed to rebudget between direct and indirect costs (in either direction) without prior Federal approval. However, grantees will remain subject to other prior approval requirements, including 45 CFR 74.103 which requires prior approval for certain programmatic changes such as the scope or objectives of a project. Thus, for example, a rebudgeting from direct to indirect costs which changes a project's scope or objectives will require Federal approval; but if no change in project scope or objectives is involved, no such approval is required.

To accomplish this rebudgeting flexibility, the Department hereby announces that the Secretary has decided to withdraw the August 13, 1986 proposed revision of 45 CFR 74.105(a)(1) (51 FR 28960–1) and that it is, in accordance with § 74.105(b), generally waiving the existing prior approval requirement of that provision of the regulation for all grants subject to the revised indirect cost reimbursement policy. Unlews the awarding agency—by a specific term or condition of a grant or other more general programmatic provision—reasserts the requirement, grantees may rebudget from indirect to direct costs without prior approval. It should be noted that other prior approval requirements are not affected by this waiver.

When the Department's August proposal was being developed, NIH noted that adopting the NSF policy would result in lower indirect cost awards to its grantees and expressed concern that this might induce some of them to reduce their budgeted level of direct research effort in order to use the resulting unexpended funds to cover their indirect cost shortfall. In extreme cases, this could impair the research itself.

Accordingly, our August proposal differed from NSF's policy by continuing the current HHS practice of separate direct and indirect cost budgets, and by adding a requirement for awarding agency approval for rebudgeting from direct to indirect costs. While we have now decided to rely instead on the good faith of our grantees, coupled with the existing rule prohibiting changes in scope or objectives of a project without prior approval, we recognize the potential seriousness of NIH's concerns. If NIH experiences a significant adverse impact, the Department will reconsider this decision.

Application of Policy to Non-Research

OSTP's recommendation mentioned only research grants. However, on the grounds that the issues were the same for nonresearch discretionary programs and that two different policies were undesirable, we proposed to make the revisions apply equally to all discretionary project grants and cooperative agreements except training and some other grants which are already subject to special indirect cost limitations or prohibitions.

The non-research respondents, primarily representing community-based organizations, pointed out that the OSTP recommendation was directed at research operations with relatively high indirect cost rates. They contended it was unfair to extend it to Community Action Agencies, Head Start recipients, etc. whose rates are low and who are sometimes subject to statutory administrative cost limits (such as 15 percent in the Head Start program). They also argued that such organizations have no revenue base to absorb losses from unrecovered indirect costs, and that the rebudgeting proposal would in many cases cause a mandatory cash contribution from Head Start grantees in contravention of statutory intent. Finally, they pointed out that for certain purposes, such as cost principles, the Government already uses different policies for different types of recipients.

We remain convinced that the policy should apply equally to research and non-research discretionary grants. However, most of the objections have become moot because of changes we have decided to make. The final revised policy is now the same as the longstanding practices of the Office of Human Development Services, the major Departmental funding source of the non-research respondents, in its major features; i.e., no supplementation and direct to indirect rebudgeting without prior approval. In addition, several lesser aspects of the revised policy involve relaxations of current practice, i.e., we will allow rebudgeting from indirect to direct costs without prior approval and we will no longer make immediate downward adjustments to reflect lower rates. Accordingly, the revised policy applies to non-research programs as originally proposed.

Time Limit for Submission of Summary Report of Expenditure Adjustment Sheets

In August we proposed to reduce the time period for submission of summary report of expenditure adjustment sheets from 1 year to 6 months. Several commenters objected in terms that indicated a misunderstanding that the time period starts with the end of the budget period or the end of the Federal fiscal year. Neither of these is correct. Instead, the time period starts with the date of execution of a rate agreement between the institution and Government. Furthermore, the reports are needed only if a Financial Status Report has already been submitted using the earlier non-permanent rate. Thus, the commenters' concerns that the full six months might not be available are unfounded. We believe that six months is sufficient for the submission of these reports and the revised policy so provides.

Other Proposed Revisions

In addition to the conforming changes needed throughout the chapter to reflect the policy changes discussed above, we are taking this opportunity, as proposed last August, to make a number of editorial improvements as well as

changes to reflect current terminology and Departmental organization. Also, we are clarifying both the limited extent to which formula grants are affected by the chapter and the fact that policy concerning Public Assistance Programs is contained in a different chapter. Finally, we are adding explicit recognition of the longstanding Departmental practice of not reimbursing indirect costs under grants to Federal organizations or in support of conferences. None of these items was addressed in the public comments.

Effects of Revisions

In August we estimated that a maximum amount of $40 million, out of total annual amounts of indirect costs awarded of about $1 billion, could be saved. Many commenters read this to mean that $40 million would be saved annually and complained that these were not truly savings but were merely unreimbursed actual costs, i.e., forced cost sharing.

As we pointed out in our August notice, we cannot quantify with any assurance the effects of the changes being made. It is impossible to predict, for example, the amount of rebudgeting which will occur, or the extent to which grantees will try to get higher funding rates, to establish rates earlier, to negotiate multi-year rates, or to convert to predetermined or fixed rates. Our current estimate is that the revised policy would initially result in eliminating an escalating amount of supplemental awards over about a five-year period. The amount would start at about $4 million in the first full year and grow to between $30 and $35 million in the fifth and subsequent years. However, an undeterminable part of these theoretical savings may not be realized. Grantee actions mentioned earlier to minimize the effects of the policy changes could result, not in unreimbursed costs, but in higher initial awards and reduced amounts of unobligated grant funds which would otherwise be available for use in the subsequent budget period.

Some small additional administrative and paperwork savings will accrue to both the Department and its grantees from elimination of: (1) The existing prior approval requirement, (2) few midstream grant amendments due to lower rates, and (3) a much larger number of no-longer needed summary report of expenditure adjustment sheets.

Respondent Misunderstandings

The Department would like to correct misinterpretations of several parts of the August proposal by a number of commenters.

Several commenters complained that the proposal eliminated the indirect cost carryover provisions of the cost principles. The policy as proposed and as finally adopted has no effect on how indirect cost rates are to be computed and negotiated under the carry forward provisions of the various cost principles.

Many commenters objected to HHS using the rate in effect at the start of the first budget period to compute the indirect costs for an entire multi-year project. Both the proposed and revised policies would use the rate current at the time of an award for computing the indirect costs of the budget period being funded by that award. Budget periods are usually 12 months long. Thus, any new rate negotiated before the award of a continuation award will be reflected in that continuation award.

Finally, a few commenters complained that, similar to the results of NSF's process, the HHS peer review panels would recommend arbitrarily-rounded off total dollar amounts lower than requested. Thus commenters feared that HHS awarding officials would negotiate a direct/indirect cost division with the principle investigator rather than the applicant organization. In the first place, HHS peer reviewers will not be allowed to make recommendations about the amount of indirect costs to be awarded. Their recommendations will address only the amount of direct costs to be funded. Therefore, the type of negotiation described by the by the commenters will not occur. More importantly, the Department will negotiate with whomever the applicant organization authorizes to do so. Thus, the applicant organization can control who negotiates on its behalf.

Negotiation Problems

A number of respondents objected to the proposed non-supplementation revision ont he grounds of governmental actions. They mentioned delays on the part of the Government in completing audits or negotiations as well as prohibitions against use of predetermined rates by contractor organizations other than colleges and the reluctance of HHS indirect cost negotiators to grant fixed rates with carryover to most non-profit organizations. We recognize that such circumstances will cause some problems under our revised policy. Accordingly, we will do what we can, within available resources and legal authority, to work cooperatively with grantees to avoid negotiation delays and to negotiate fixed rates where we find a reasonably stable pattern of rates and can thus be reasonably assured of the likelihood of minimal future fluctuations. We also note that the gathering momentum of the non-Federal audit process will result in significant reductions in the number of Federal audits performed for rate-setting purposes. However, the prohibition against predetermined rates for contractors is based on a ruling by the General Accounting Office which we cannot waive.

NSF Firm Rate Option

Several commenters requested us to allow grantees the NSF option of computing costs under HHS grants by using the award rates regardless of any later changes. We believe that it is both managerially inappropriate and legally questionable to use non-final rates in such a fashion. We are fully willing to negotiate firm rates, both in advance and for extended periods, whenever it is reasonable to do so. This accomplishes the same purpose.

Additional Exceptions to Non-supplementation Provision

In addition to the four exceptions announced in the August proposal, commenters suggested a long list of additional ones which they felt were justifiable as exceptional circumstances or significant hardships. We believe these would best be considered on a case by case basis. We did note, however, that supplemental direct cost awards are sometimes made for reasons other than project expansions or extensions and in some of those cases additional indirect costs awards would be appropriate. Accordingly, in subparagraph 6-150-20B.3.(b)(4), we are adding this as an exception at the awarding office's option.

White House Science Council Report

Many commenters pointed out that the OSTP recommendations were based on a White House Science Council report entitled "A New Partnership." They complained that the report contained an additional indirect cost recommendation to change the OMB Circular A-21 use allowance rates which the Federal government has not addressed and a caution that the recommendtions not be selectively implemented. We can only observe that we are following the OSTP recommendations as presented to us and that this action completes all the actions on the indirect cost recommendations for which HHS is responsible.

Accordingly, as discussed above, HHS is revising Chapter 6-150 of its Grants Administration Manual, waiving the existing prior approval requirement of 45

CFR 74.105(a)(1) and withdrawing its August proposal to broaden that requirement.

Dated: April 22, 1987.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 87-13448 Filed 6-11-87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on the Toxicity of Carbonless Copy Paper

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning possible adverse health effects among workers who have used carbonless copy paper. Interested parties may submit medical case reports, experimental data, or other information relating to the effects caused by such exposures. This information will be used by NIOSH to evaluate whether exposure to the chemical substances in carbonless copy paper poses health risks, and to determine the need for preventive health measures or additional research.

DATE: Comments concerning this notice should be submitted by August 11, 1987.

ADDRESS: Any information, comments, suggestions, or recommendations should be submitted in writing to: Mr. Richard A. Lemen, Director, Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Dr. G. Kent Hatfield, Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C-15, Cincinnati, Ohio 45226, (513) 533-8310 or FTS 684-8310.

SUPPLEMENTARY INFORMATION: Under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.), NIOSH is directed to gather information for improving occupational Safety and Health Administration (OSHA) that it consider undertaking two activities: (1) Investigate the validity of reported undesirable health effects in workers occupationally exposed to chemicals contained in or released from carbonless copy paper, and (2) publish this information if confirmed. Their request was based on a worker's concern that skin and respiratory problems, and possible brain damage were due to consistent exposure to carbonless copy paper. In addition, 10-12 coworkers, who were also exposed to carbonless copy paper, were reported to have adverse health effects.

I. Background

A. Carbonless Copy Paper System

Carbonless copy is used to simultaneously make multiple paper copies of an original document. This system eliminates the need for carbon paper by using paper with a microencapsulated undercoating containing dyes and solvents. Writing, typing or printing on the top sheet breaks the microcapsules immediately underneath, releasing the dyes and solvents to form the image on the paper surface below.

B. Chemical Content

Some substances used in carbonless copy paper have been identified in published sources. Some selected substances cited have included aliphatic compounds (C_{10}—C_{14}), aromatic compounds such as alkyl substituted biphenyls (pholychlorinated biphenyls have not been used in carbonless copy paper in the United States since the early 1970's), phenyl methyl benzenes and hydrogenated terphenyls, and diaryl ethanes, alkyl benzenes, benzyl xylene, isoparaffins, diisopropyl naphthalenes, dibutyl phthalate, glutaraldehyde, formaldehyde, organic dyes, phenol-formaldehyde resin, kaolin, starch, styrene, butadiene-latex, and hydrogenated aluminum silicate, mineral oil, and santasol oil.

C. Routes of Worker Exposure

Carbonless copy paper chemicals can be absorbed dermally or by inhalation. Several factors such as chemical composition and volume of the paper used, ambient temperature and ventilation rates in work or storage areas, and work practices may affect the extent of exposure.

D. Permissible Exposure Levels

No standards or recommended exposure limits exist for exposure to carbonless copy paper. However, the following are OSHA permissible exposure limits (PEL), NIOSH recommended exposure limits (REL), or American Conference of Governmental Industrial Hygienists thereshold limit values (TLV®) for some chemicals which may be contained in carbonless copy paper:

Compound	Exposure Limits[a], mg/m³			
	OSHA TWA	NIOSH REL	ACGIH	
			TLV	STEL[b]
Dibutylphthalate	5	None	5	None
Formaldehyde[c]	[d] 3.67	([e])	1.5	3
Glutaraldehyde	None	None	([f])	None
Hydrogenated terphenyls	None	None	5	None

[a] Eight hour time weighted averages (TWA).
[b] Short term exposure limit.
[c] NIOSH or ACGIN suspected human carcinogen.
[d] Acceptable ceiling concentration: 6.12 mg/m³. Acceptable maximum peak concentration: 12.25 mg/m³.
[e] 15 minute ceiling value: 0.12 mg/m³.
[f] Ceiling value: 0.7 mg/m³.

E. Health Signs and Symptoms of Worker Exposure

Even though carbonless copy paper was introduced in the 1950's, it was not until the late 1960's that adverse health effects in exposed workers were reported in the scientific literature. The signs and symptoms attributed to dermal exposure have included dryness, redness, irritation, eczema, tingle, and itchiness of the skin. The signs and symptoms attributed to inhalation exposures have included nasal congestion, drainage, bleeding, and irritation; upper respiratory tract irritation; asthma; throat tickle and hoarseness; and joint pain, fatigue, and headache.

F. NIOSH Health Hazard Evaluations

1. A health hazard evaluation (HHE) was performed during 1983 at a municipal court building in Englewood, Colorado. The cause of respiratory disorders, and eye and skin irritations which occurred in a group of employees who used carbonless copy paper was examined. Bulk samples of the carbonless copy paper used were heated and the effluent air analyzed by gas chromatography. Based on the analyses, the working environment was monitored for formaldehyde, aliphatic compounds (C_{10}–C_{14}), and aromatic compounds such as alkyl substituted biphenyls, phenyl methyl benzenes, and hydrogenated terphenyls. Only formaldehyde (<0.05 mg/m³) was detected. The report concluded that the undesirable health effects observed might have been produced by the levels of formaldehyde to which those workers were repeatedly exposed.

2. Another HHE conducted during 1985 investigated complaints of throat

and eye irritation among workers following a new application for carbonless copy paper at a U.S. Post Office in Indianapolis, Indiana. Environmental monitoring and analyses were performed for respirable particulates, airborne carbonless copy paper microcapsules, and volatile organic compounds (undefined) which included formaldehyde. The analyses did not reveal any association between the carbonless copy paper and worker complaints of throat and eye irritation. The author concluded that the worker's symptoms may have been due to environmental factors not considered in the investigation.

G. References

1. Baier, E., Request that Consideration be Given to Performing a Health Hazard Evaluation of Carbonless Copy Paper Exposed Workers, Directorate of Technical Support, Occupational Safety and Health Administration, U.S. Department of Labor, Washington DC, September 24, 1986.

2. Calnan, C.D., Unsolved Problems in Occupational Dermatology, Br. J. Dermatol. 105(21):3–6, 1981.

3. Cameron, B.D., Dunsire, J.P., Draffan, G.H., and Bruce, J.C., The Percutaneous Absorption of Phenoxazine Type Colour Former Components of Carbonless Copy Papers, Ann. Occup. Hyg. 30(1):115–122, 1986.

4. Camp, J.E., and Morgan, M.S., University of Washington, Upper Respiratory Irritation from Carbonless Copy Paper Exposure, NIOSH training grant number 5 T15 OH 07087–07.

5. Encyclopaedia of Occupational Health and Safety, Parmeggiani, L., (Ed.), 3rd (Revised) Ed. International Labour Office, Geneva, Volume 1, p. 549, 1983.

6. Gockel, D.L., Horstman, S.W., and Scott, C.M., Formaldehyde Emissions for Carbonless Copy Paper Forms, Am. Ind. Hyg. Assoc. J. 42:474–476, 1981.

7. Jeasson, I., Lofstrom, A., and Lidblom, A., Complaints Relating to the Handling of Carbonless Copy Paper in Sweden, Am. Ind. Hyg. Assoc. J. 45(11):B24–B27, 1984.

8. Kleinman, G.D., and Horstman, S.W., Health Complaints Attributed to the Use of Carbonless Copy Paper (A Preliminary Report), Am. Ind. Hyg. Assoc. J. 43:432–435, 1982.

9. Kuratsune, M., and Masuda, Y., Polychlorinated Biphenyls in Non-carbon Copy Paper, Environ. Health. Perspect., April 1972, pp. 61–62.

10. Marks, J.G., Jr., Allergic Contact Dermatitis from Carbonless Copy Paper, JAMA 245:2331–2332, 1981.

11. Menne, T., Asnaes, G., and Hjorth, N., Skin and Mucous Membrane Problems from 'No Carbon Required' Paper, Contact Dermatitis 7:72–75, 1981.

12. Millar, J.D., Assistant Surgeon General, Director, National Institute for Occupational Safety and Health, Centers for Disease Control, U.S. Public Health Service, Letter to Senator Alan Cranston in Reply to an Inquiry of the Health Risks Associated with Exposures to Chemical Carbonless Paper, U.S. Senate, Washington DC., Feb. 15, 1984.

13. Molhave, L., and Grunnet, K., Headspace Analysis of Gases and Vapors Emitted by Caronless Paper, Contact Dermatitis 7(2):76, 1981.

14. Morgan, M.S., and Camp, J.E., Upper Respiratory Irritation from Controlled Exposure to Vapor from Carbonless Copy Forms, J. Occup. Med. 28(6):415–419, 1986.

15. NIOSH Health Hazard Evaluation—HETA 83–313–1534, Municipal Court Section, City of Englewood, Englewood, Colorado, Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services, Cincinnati, Ohio, August 1985.

16. NIOSH Health Hazard Evaluation—HETA 83–023, U.S. Post Office, Indianapolis, Indiana, Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services, Cincinnati, Ohio, December 1985.

17. Norback, D., Wiselander, G., and Gothe, C.J., Carbonless Copy Paper. Aspects of Occupational Medicine and Occupational Hygiene, Newsletter, National Board of Occupational Safety and Health, Arbetarskyddsstyrelsen, Sweden, Volume 1, pp. 3–5, 1984.

H. Request for Information

NIOSH is interested in obtaining existing and available materials including reports and research findings to evaluate whether recommendations for health protection or further research on carbonless copy paper chemicals are needed. Examples of these materials may include:

1. The health signs or symptoms associated with occupational exposure to carbonless copy paper or its components, and the frequency and location of their occurrence in the United States.

2. Epidemiology data.

3. Industrial hygiene data and reports of symptoms that correlate with the chemical composition of carbonless copy paper.

4. *In Vivo* or *In Vitro* toxicity data.

All information received in response to this notice, except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or personnel identifying information contained in medical case reports and data, will be available for public examination and copying at the above address.

Dated: June 8, 1987.

Larry W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87–13518 Filed 6–11–87; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

Boehringer Ingelheim Animal Health, Inc.; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Boehringer Ingelheim Animal Health, Inc. The NADA provides for use of dihydrostreptomycin boluses in calves. The firm requested the withdrawal of approval.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3184.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, is the sponsor of NADA 65–413 which provides for Sol-Mycin (dihydrostreptomycin) Calf Scour Bolus. The drug is labeled as an aid in the treatment and control of bacterial scours (colibacillosis) in calves caused by *E. coli*. The NADA was originally approved on November 2, 1973.

The sponsor has requested that approval of the NADA be withdrawn because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 370b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Center for Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 65–413 and all supplements thereto is hereby withdrawn, effective June 22, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing § 544.110 that reflects this approval.

Dated: June 5, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87–13417 Filed 6–11–87; 8:45 am]

BILLING CODE 4160–01–M

Boehringer, Ingelheim Animal Health, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Boehringer Ingelheim Animal Health, Inc. The NADA provides for use of topical preparations containing hexetidine. The firm requested the withdrawal of approval.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, is the sponsor of NADA 13-772 which provides for use of Udder-Care, Udder-Sav, Udder-Sol, and Udder-Lotion, topical preparations containing hexetidine. The preparations are recommended for the treatment and prevention of chapped or cracked teats and to reduce the number of common mastitis causing organisms present on the surface of the teat. The NADA was originally approved by letter on June 13, 1963.

The sponsor requested withdrawal of approval because the product is not being manufactured nor marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commission of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 13-772 and all supplements thereto is hereby withdrawn, effective June 22, 1987.

Dated: June 5, 1987.

Gerald B. Guest

Director, Center for Veterinary Medicine.

[FR Doc. 87-13418 Filed 6-11-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0152]

CIBA-GEIGY Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acrylic acid, telomer with sodium 2-acrylamido-2-methyl-1-propanesulfonate and sodium phosphinate as a deposit control additive in the manufacture of paper and paperboard in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, 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: Under the Federal Food, Drug, and Cosmetic Act (sec. 490(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3993) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of acrylic acid, telomer with sodium 2-acrylamido-2-methyl-1-propanesulfonate and sodium phosphinate as a deposit control additive in the manufacture of paper and paperboard in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and finds this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 4, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-13419 Filed 6-11-87; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Anti-Infective Drugs Advisory Committee

Date, time, and place. July 13, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m., to 4:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious disease.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss the safety and efficacy of ganciclovir, also known as DHPG.

Radiologic Devices Panel

Date, time, and place. July 27, 9 a.m., Rm. 416, FDA's Center for Devices and Radiological Health, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Robert Phillips, Center for Devices and Radiological (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7514.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentation should notify the contact person before July 20, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss reclassification petitions for magnetic resonance devices.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee

deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory comittees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFW-35), Food and Drug Administration Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-13420 Filed 6-11-87; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225-87-0002]

Memorandum of Understanding Between the National Center for Toxicological Research, Food and Drug Administration, and the Korea Research Institute of Chemical Technology, Ministry of Science and Technology of the Republic of Korea

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Korea Research Institute of Chemical Technology (KRICT), Ministry of Science and Technology of the Republic of Korea, and FDA, U.S. Department of Health and Human Services. This MOU expresses the intention of FDA and KRICT to cooperate in the exchange of toxicological information for their mutual benefit.

DATE: The agreement became effective April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: June 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the National Center for Toxicological Research, Food and Drug Administration, Department of Health and Human Services of the United States of America and the Korea Research Institute of Chemical Technology, Ministry of Science and Technology of the Republic of Korea.

I. Purpose

This agreement expresses the intention of the Food and Drug Administration's (FDA) National Center for Toxicological Research (NCTR) and the Korea Research Institute of Chemical Technology (KRICT) to cooperate in the exchange of toxicological information for their mutual benefit. Employees of KRICT will receive training at NCTR and arrangements will be made to establish a system to exchange techniques and information with a goal of conducting joint research in the future.

II. Background

On May 17 and 18, 1984, Dr. Jung Koo Roh, Director, Toxicology Research Center, KRICT, visited NCTR and was provided briefings on the U.S. approach to basic research, conduct of chronic bioassays, and technology problem solving. Dr. Roh susequently proposed the development of a cooerative, technical exchange program with NCTR. NCTR repesentatives visited KRICT on October 11 through 18, 1985 to discuss possible collaboration between NCTR and KRICT.

III. Substance of Agreement

A. Training for KRICT Personnel

KRICT is in the early stages of developing a toxicology program to conduct chronic animal studies. Because of NCTR's expertise in this area, it would be useful for members of KRICT to receive training at NCTR in certain techniques relevant to such a program.

NCTR will provide training for indivduals from KRICT in the following disciplines: animal husbandry, general toxicology, clinical chemistry, short-term testing (e.g., genetic toxicity), pathology, and teratology.

KRICT will provide travel and living expenses for the trainees participating in projects at NCTR. The scheduling will be done in a manner which is mutually satisfactory to NCTR and KRICT.

B. Loan of NCTR Personnel

At mutually agreed times, NCTR personnel with specific expertise will be sent to Korea to assist program development at KRICT. Their expenses within Korea will be borne by KRICT. Their salaries and transportation costs to Korea and back will be paid by NCTR.

C. Information Exchange

Because there is a need for the mutual exchange of information between KRICT and NCTR, there should be arrangements to facilitate that exchange using both formal and informal mechanisms. NCTR and KRICT will exchange on a regular basis publications of research projects, final reports, and documents relevant to toxicological methods and processes. Any such exchange will not include trade secret or confidential commercial information as determined by U.S. law. NCTR will provide assistance to KRICT in designing a management information system.

D. Funding

All activities under the terms of this agreement are subject to the availability of funds by the participating parties.

E. Future Plans

NCTR and KRICT, through this plan, will work toward future joint research programs. Representatives of the respective institutions will meet annually, alternately in the United States and Korea, to discuss progress and plans for expansion of joint research programs.

IV. Participating Parties

A. Toxicology Research Center, Korea Research Institute of Chemical Technology, P.O. Box 9, Daeduk Danji, Daejeon, Korea.
B. National Center for Toxicological Research, Food and Drug Administration, Jefferson, AR 72079, U.S.A.

V. Liaison Officers

The parties respectively appoint the following officials to serve as liaison officers for all communications regarding matters relative to this arrangement.

A. For the Ministry of Science and Technology: Director, Toxicology Research Center (currently Jung Koo Roh, Ph.D.), Korea Research Institute of Chemical Technology, P.O. Box 9, Daeduk Danji, Daejeon, Korea.
B. For the Food and Drug Administration: Director, National Center for Toxicological Research (currently Ronald W. Hart, Ph.D.), Jefferson, AR 72079, U.S.A.

VI. Entry Into Force, Duration and Termination

This agreement shall become effective upon acceptance by both parties and shall remain in effect for a period of five years. It may be amended by mutual written consent or terminated by either party upon written notice to the other party.

Approved and accepted for the National Center for Toxicological Research, Food and Drug Administration, Department of Health and Human Services of the United States of America:

By: Frank E. Young
Title: Commissioner of Food and Drug Administration
Date: February 27, 1987
Place: Rockville, Maryland
By: Ronald Hart
Title: Director, National Center for Toxicological Research
Date: March 2, 1987
Place: Jefferson, Arkansas

Approved and accepted for the Korea Research Institute of Chemical Technology, Ministry of Science and Technology of the Republic of Korea:

By: Tae-Sup Lee
Title: Minister, Ministry of Science and Technology
Date: April 6, 1987
Place: Seoul, Korea
By: Y.B. Chae
Title: President, Korea Research Institute of Chemical Technology
Date: April 6, 1987
Place: Daeduck, Korea

[FR Doc. 87-13421 Filed 6-11-87; 8:45 am]
BILLING CODE 4160-01-M

Health Resources and Services Administration

Health Professions Recruitment Program for Indians; Grants Application Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Competitive Grant Applications for the Health Professions Recruitment Program for Indians.

SUMMARY: The Indian Health Service (IHS), announces that competitive applications are now being accepted for the Health Professions Recruitment Program for Indians established by section 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612). There will be only one funding cycle during fiscal year 1987.

EFFECTIVE DATE: June 12, 1987.

FOR FURTHER INFORMATION CONTACT: M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A-33, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-5204. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Indian Health Service (IHS), announces that competitive applications are now being accepted for the Health Professions Recruitment Program for Indians established by section 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612). There will be only one funding cycle during fiscal year 1987.

While section 102 authorizes grants to recruit Indians into a number of health professions, the funds available for grants under this notice have been earmarked by Congress specifically to recruit Indians into masters level educational programs in public health and health care administration. Congress first earmarked appropriated funds for this purpose in 1983, and the present (FY 1987) IHS appropriation contains approximately $240,000 earmarked for this specific purpose. H.R. Report No. 99-1005 (Conference), 99th Congress, 2nd Session at page 726.

Moreover, the Indian Health Service, in consultation with Indian people, has determined that public health professional training at the graduate level continues to be necessary to meet the needs of the IHS program. This determination is evidenced by the inclusion of Health Administration: MS/MA as an Indian Health Scholarship Program Priority Category (52 FR 5586, February 25, 1987).

Therefore, based on the continuing need for Indian Public Health or Health Care Administrators at the Masters level, and Congressional direction, grants for this cycle will be limited to the recruitment of Indians into Public Health or Health Care Administration Program (Masters level).

This program is described at section 13.970 in the Catalog of Federal Domestic Assistance. Costs will be determined in accordance with OMB Circulars A-87, A-21 and A-122 depending on the type of applicant.

Scope of This Program Announcement

This announcement provides information on the general program purposes and objectives, programmatic priority, eligibility requirements, funding availability, and application procedures for the Health Professions Recruitment Program for Indians for fiscal year 1987.

A. *General Program Purposes:* To augment the number of health professionals serving Indians and

remove the multiple barriers to the entrance of health professionals into the IHS and private practice among Indians.

B. *Programmatic Priority:* Based on the projected manpower needs of the IHS, only organizations which can recruit and train for Masters of Public Health in various specializations will be considered for FY 87 funding.

C. *Program Objectives:*

1. To identify Indians with a potential for education or training in Public Health or Health Care Administration (Masters level) and to encourage and assist them to enroll in such programs.

2. To develop the necessary student support systems to help to ensure that students successfully complete their academic training. Each grantee is required to develop a "Retention Program" to support the students participating in this program.

3. To publicize existing sources of financial aid available to Indian students interested in enrolling in or enrolled in a health professions school.

Each proposal must respond to all three objectives.

D. *Eligibility Requirements:* Based on the specific requirements of objectives 1. and 2. of this cycle's grant program, eligibility will be limited to public or non-profit educational entities which offer accredited Masters of Public Health programs.

E. *Fund Availability:* Approximately $240,000 is available in fiscal year 1987 during this cycle for award of recruitment grants under Section 102 with up to four projects to be funded. The anticipated start date for selected projects will be September 1, 1987.

F. *Type of Program Activities Considered for Support:* Grant programs developed to locate and recruit students with potential for Public Health training and to support Indian students funded by the IHS Scholarship Programs and other funding sources. Support services may include providing career counseling and academic advice; assisting students to locate financial aid; and assisting with the determination of need for and location of tutorial services.

G. *Application Process:*

1. An *IHS Recruitment Grant Application Kit* may be obtained from the Grants Management Branch, Division of Grant and Contracts, Indian Health Service, Room 6A-33, 5600 Fishers Lane, Rockville, Maryland 20857. (Standard Form 424, OMB Approval No. 0348-0006)

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. An original and two copies of the completed Grant Application must be submitted, with all required documents, to arrive in the Grants Management Branch by the closing date, *July 15, 1987*. Applications received after the announced closing date will be returned to the applicant and will *not* be considered for funding. (See Part I of this announcement for deadline requirements.)

4. Each application will be reviewed at the Grants Management Branch for completeness, accuracy, and eligibility. All acceptable applications will be subject to a competitive review and evaluation in accordance with established objective review procedures.

5. If an application is disapproved or if funds are not available to support all approved applications, the affected applicants will be so notified by August 31, 1987.

H. *Criteria for Review and Evaluation:*

1. Each application will be evaluated against the following criteria:

• The potential effectiveness of the proposed project in carrying out the purposes of section 102;

• The demonstrated capability of the applicant to successfully conduct the project;

• The accessibility of the applicant to Indian communities or tribes, including evidence of past or potential cooperation between the applicant and such communities or tribes;

• The relation of project objectives to Indian Health manpower's deficiencies;

• The soundness of the fiscal plan for assuring effective utilization of grant funds;

• The completeness of the application.

• In support of the above criteria, the following specific areas will be closely reviewed:

• The demonstrated organizational and scholarly commitment to the recruitment, education, and retention of Indian students.

• The number of potential Indian students to be contacted and recruited as well as potential cost per student recruited.

• The objectives and methodology of the application.

2. Preference will be given in awarding grants to the public or non-profit educational entities that have the potential to serve a greater Indian population within its institutions normal service area.

3. The project period for any proposal will not exceed one year. However, annual continuations will be considered if a project has performed satisfactorily and the IHS needs still exist.

I. Closing Date of Receipt of Applications: The closing date for receipt of applications under this announcement is July 15, 1987. An application will be considered to have arrived by the closing date if: (1) It is received by the Grants Management Branch by 12:00 p.m. (EDT); or (2) it is clearly postmarked by 12:00 p.m. (EDT) of the announced closing date.

Date: May 17, 1987.

David Sundwall,

Administrator.

[FR Doc. 87-13546 Filed 6-11-87; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and explanatory material may be obtained by contacting the Office of the Secretary's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of the Secretary clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Claims for oil spill damages under the Trans-Alaska Pipeline Liability Fund, 43 CFR 29.9.

Abstract: In the event of an oil spill of sufficient severity to reach the threshold liability of the Trans-Alaska Pipeline Liability Fund, damaged parties must file claims with the Fund in order to recover. The information collection requirement sets out the claims information the parties must submit to the Fund.

Form number: No form required.

Frequency: When an oil spill of sufficient severity to reach the threshold liability of the Fund occurs.

Description of respondents: Parties damaged in a spill of Trans-Alaska Pipeline System oil.

Annual responses: 10.

Annual burden hours: 30.

Office of the Secretary clearance officer: John Strylowski, 202-343-6191.

Joseph W. Gorrell,
Principal Deputy Assistant Secretary-Policy, Budget and Administration.
[FR Doc. 87-13465 Filed 6-11-87; 8:45 am]
BILLING CODE 4310-17-M

Reservation of Colorado River Water for Use on Federally Owned Lands in Arizona; Boulder Canyon Project

Pursuant to the authority contained in the Boulder Canyon Project Act, dated December 21, 1928 (45 Stat. 1057), as amended; section 301(b) of the Colorado River Basin Project Act, dated September 30, 1968 (82 Stat. 887); and consistent with the Supreme Court Opinion of June 3, 1963 (373 U.S.C. 546); the Supreme Court Decree of March 9, 1964, in *Arizona* v. *California el at.* (376 U. S. 340), as supplemented January 9, 1979 (439 U.S. 419); and the February 9, 1944, contract between the United States and the State of Arizona, notice is given that there is hereby reserved to the United States out of the waters of the Colorado River the annual consumptive use of 1,930 acre-feet for use on Federally owned lands in Arizona which are administered by the Bureau of Land Management of the Department of the Interior. The water so reserved is in addition to 800 acre-feet previously reserved for said purpose in Arizona by notice dated August 30, 1973, Federal Register, Volume 38, No. 173, Pages 24389 and 24390, Friday September 7, 1973), and 1,280 acre-feet previously reserved for said purpose in Arizona by notice, dated September 29, 1981, Federal Register, Volume 46, No. 194, Pages 49654 and 49655, Wednesday, October 7, 1981). The water is for culinary, sanitary, and related nonagricultural domestic uses on Bureau of Land Management campsites, concession areas, cabinsites, and other purposes involved in the recreational program of the Bureau of Land Management along the Lower Colorado River in Arizona.

In times of shortage, the quantity of water available for delivery under this reservation will be accorded equal priority with all similar uses of water in Arizona authorized by contracts or other arrangements after September 30, 1968, irrespective of the order in which such contracts or other arrangements were made after September 30, 1968.

The aforesaid reservation of water is subject to:

(a) The provisions of the Colorado River Compact signed in Santa Fe, New Mexico, November 24, 1922;

(b) The provisions of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended;

(c) The provisions of the Supreme Court Opinion, dated June 3, 1963 (373 U.S. 546), and the Supreme Court Decree of March 9, 1964, in *Arizona* v. *California, et al.* (376 U.S. 340), as supplemented January 9, 1979 (439 U.S. 419);

(d) provisions of the Mexican Water Treaty, signed in Washington, DC, February 3, 1944, and Minute 242 of the International Boundary and Water Commission, United States and Mexico, dated August 30, 1973; and

(e) The provisions of section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885).

For further information, you may contact Mr. LeGrand Neilson, Contracts and Repayment Branch, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, at (702) 293-8536.

Dated: April 27, 1987.

Donald P. Hodel,
Secretary of the Interior.
[FR Doc. 87-13468 Filed 6-11-87; 8:45 am]
BILLING CODE 4310-09-M

Bureau of Land Management

[AA-650-07-4133-11]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer or to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Prospecting Application and Permit, (43 CFR Part 3500).

Abstract: Respondents/applicants utilize BLM Form 3510-1 entitled Prospecting Application and Permit, to apply for permission to prospect for minerals as authorized by the Mineral Leasing Act of 1920 (30 U.S.C. *et seq.*) and the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351). Departmental procedures for filing prospecting permits are found in Title 43 of the *Code of Federal Regulations* at § 3512.3 for phosphate; § 3522.3 for sodium; § 3532.3 for potassium; § 3542.3 for sulfur; § 3552.3 for gilsonite; and § 3562.3 for hardrock minerals. Additionally, general procedures releating to future interest prospecting permits as well as present fractional interest prospecting permits are contained in 43 CFR Subpart 3507. The information requested on the form allows the Bureau to determine if the applicant is qualified to obtain a prospecting permit as well as to maintain records pertaining to mineral development activities on public lands.

Bureau form number: 3510-1.

Frequency: Only once for a particular commodity for each parcel of land applied for.

Description of respondents: Respondents vary from individuals to small businesses and major corporations.

Annual responses: 410.

Annual burden hours: 259.

Bureau clearance officer: Richard Iovaine 202-653-8853.

Robert H. Lawton,
Assistant Director—Energy and Mineral Resourcers.
April 22, 1987.
[FR Doc. 87-13445 Filed 6-11-87; 8:45 am]
BILLING CODE 4310-84-M

[NV-010-07-4321-12]

Routine Use of Helicopter To Gather Wild Horses and Burros; Public Hearing

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Elko District: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses in FY 87 and in future years.

SUMMARY: In accordance with Pub. L. 92-195 and 92-579, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses from the Elko District during FY 87 and future years.

DATE: July 31, 1987, 10:00 a.m.

ADDRESS: The hearing will take place at the Elko District Office, 3900 Idaho Street, Box 831, Elko, Nevada 89801. Telephone (702) 738-4071.

SUPPLEMENTARY INFORMATION: The use of helicopters and motorized vehicles to gather wild horses from herd management areas in the Elko District will be discussed.

This hearing is open to the public. Interested persons may make oral or written statements. If you wish to make oral comments, please contact Rodney Harris by July 24, 1987. Written statements must also be received by this date. For further information, contact Rodney Harris, District Manager, P.O. Box 831, Elko, Nevada 89801, telephone (702) 738-4071.

Merle Good,

Acting District Manager.

[FR Doc. 87-13517 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-07-411-15; W-64743]

Proposed Reinstatement of Terminated Oil and Gas Lease; Crook County, WY

Pursuant to the provisionws of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-64743 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-64743 effective October 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-13411 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-93889]

Proposed Reinstatement of Terminated Oil and Gas Lease; Campbell County, WY

June 5, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-93889 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-93889 effective August 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-13412 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-22-M

Realty Action; Sales, Leases; Public Lands; Jackson County, OR

[OR-910-GP7-204]

AGENCY: Bureau of Land Managment, Interior.

ACTION: Non-competitive sale of a land parcel in Jackson County, Oregon.

SUMMARY: The Bureau of Land Management is considering the sale of a 1.89 acre parcel of land which is difficult and uneconomical to manage. The parcel will be offered to adjacent landowner.

DATE: Comments must be submitted on or before July 27, 1987.

ADDRESS: Comments may be mailed to District Manager, Bureau of Land Management, Medford District, 3040 Biddle Road, Medford, OR 97504.

FOR FURTHER INFORMATION CONTACT: James Badger, Realty Specialist at the Medford address given above, telephone (503) 776-3941, FTS 424-3941.

The following-described revested Oregon and California Railroad Grant land is suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat 2750, 43 U.S.C. 1713), at no less than the appraisal fair market value:

Willamette Meridian

T. 37 S., R. 4 W.
Sec. 19, Lot 3; Jackson County, Oregon.

No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning. The sale involves a 1.89 acre parcel which is difficult and uneconomical to manage and is not suitable for management by another Federal department or agency. The sale will also resolve a non-willful unauthorized occupancy. The public interest would best be served by offering this land for sale.

Direct Sale Procedure

The parcel identified by Serial No. OR 40469 is being offered using direct sale procedures (43 CFR 2711-3.3). The land will be sold at fair market value to adjacent landowers Roger J. and Gloria Specht.

Terms and Conditions of This Sale Are

The Spechts will be required to submit a deposit of either cash, bank draft, money order, or any combination for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from date of sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and forfeiture of the 20 percent deposit.

1. Mineral interest will be conveyed to purchaser at appraised value. The sale will also constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act, 43 U.S.C. 1719. The purchaser must include with their bid depsit a non-refundable $50.00 filing fee for the conveyance of the mineral estate.

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Medford District, 3040 Biddle Road, Medford, Oregon 97504. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, the realty action will become the final determination of the Department of the Interior.

Dated: June 1, 1987.

David A. Jones,

District Manager.

[FR Doc. 87-13413 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-33-M

[ORE-03393, ORE-06502, WASH-01318, OR-22-22444 (WASH); OR-943-07-4220-11: GP-07-213]

Oregon/Washington; Proposed Continuation of Withdrawals; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that all or portions of two separate land withdrawals continue for an additional 66 years and requests that the lands involved remain closed to surface entry and mining but be opened to mineral leasing subject to Department of Army concurrence.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

The U.S. Army Corps of Engineers proposes that the following identified land withdrawals be continued for a period of 66 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, Stat. 2751, 43 U.S.C. 1714. The followiwng described lands and projects are involved:

1. ORE 03393, Public Land Order No. 1096 of March 15, 1955. McNary Lock and Dam Project, 133.99 acres. Located in Umatilla County, Oregon, 8 miles of Hermiston, Oregon.
   T. 5 N., Rs. 29 and 30 E.; and T. 6 N., R. 31 E., W.M., Oregon.
2. ORE 06502, Public Land Order No. 606 of September 13, 1949. McNary Lock and Dam Project, 1,509.93 acres. Located in Umatilla County, Oregon, 8 miles north of Hermiston, Oregon.
   T. 5 N., Rs. 28, 29 and 30 E.; and T. 6 N., Rs. 30 and 31 E., W.M., Oregon.
3. WASH 01318, Public Land Order No. 1096 of March 15, 1955. McNary Lock and Dam Project, 123.90 acres. Located in Benton County, Washington, 8 miles north of Hermiston, Oregon.
   Tps. 6 and 7 N., R. 31 E.; and T. 10 and 11 N., R. 28 E., W.M. Washington.
4. OR 22444 (WASH), Public Land Order No. 606 of September 13, 1949. McNary Lock and Dam Project, 1,616.97 acres. Located in Benton and Walla Walla Countiess, Washingotn, 89 miles north of Hermiston, Oregon.
   T. 5 N., Rs. 28 and 29 E.; Tps. 6, 7 and 9 N., R. 31 E.; T. 7 N., R. 32 E.; and 10 N., R. 28 E., W.M., Washington.

The withdrawals currently segregate the lands from operations of the public land laws generally, including the mining laws and mineral leasing laws. The U.S. Army requests no changes in the purpose of segregative effect of the withdrawals except that the lands be opened to applications and offers under the mineral leasing laws.

For a period of 90 days from the date of publications of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer fo the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be preapred for consideration by the Secretary of the Interior, the President and Congress, who will detrmine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determiantion is made.

Dated: June 5, 1987.

B. LaVelle Black

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-13414 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

[PRT-718810, et al.]

Receipt of Applications for Permits; Audubon Zoological Gardens et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Audubon Zoological Gardens, New Orleans, LA.

[PRT-718810]

The applicant requests a permit to import one captive born male Jamaican boa (*Epicrates subflavus*) from the Reptile Breeding Foundation, Ontario, Canada as a breeding loan and for exhibit purposes.

Applicant: Audubon Zoological Gardens, New Orleans, LA.

[PRT-718807]

The applicant requests a permit to import one male and one female tuatara (*Sphenodon punctatus*) that are to be captured from the wild by the Wildlife Service Department of Internal Affairs, Wellington, New Zealand. These tuataras are to be imported for the purpose of developing a breeding program.

Applicant: San Diego Zoological Gardens, San Diego, CA.

[PRT-718812]

The applicant requests a permit to import and then reexport one female and one male giant panda (*Ailuropoda melanoleuca*) that have been held in captivity for 6 and 5 years, respectively from the Fuzhoe Zoo, Beijing, China, these bears are to be imported for the purpose of exhibition and conservation education.

Applicant: Gregory Kloenne, Kaakaaniu Plantation, Bird Farms, Kauai, HI.

[PRT-717864]

The applicant requests a permit to purchase two pairs of captive born golden conures (*Aratinga guarouba*) from Birds Unlimited, Inc., of Newhall, California, for captive propagation purposes.

Applicant: Jiri Zidek, Socorro, NM 87801.

[PRT-718749]

The applicant requests a permit to export nine Socorro isopods (*Thermosphaeroma* (=Exosphaeroma) *thermophilus*) that are preserved in alcohol to Institut Royal des Sciences Naturelles de Belgique, Bruxelles, Belgium for taxonomic purposes.

Applicant: Cleveland Metroparks Zoological Park, Cleveland, OH 44109.

[PRT-718748]

The applicant requests a permit to import three captive born female Asian elephants (*Elephas maximus*) from Laos for captive breeding and exhibition purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 9, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-13511 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-55-M

[PRT-716387]

Issuance of Permit for Marine Mammals; Sea World Research Institute

On March 20, 1987, a notice was published in the Federal Register (52 FR 9540) that an application had been filed with the Fish and Wildlife Service by Sea World Research Institute (PRT-716387) for a permit to take (harass) up to 100 California sea otters (*Erhydra lutris*) by subjecting them to acoustic stimuli for the purpose of scientific research.

Notice is hereby given that on May 28, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: June 8, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-13512 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the South Timbalier Block 135 Federal Unit Agreement No. 14-08-0001-06669, has submitted a DOCD describing the activities it proposes to conduct on the South Timbalier Block 135 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on June 3, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Stephen T. Dessauer; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2660.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 5, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-13415 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Motion To Terminate Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received a motion in the above-captioned investigation seeking to terminate the following respondents on the basis of a settlement agreement: HITACHI, LTD. and HITACHI AMERICA, LTD.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C.s 1337). The motion was filed on June 1, 1987.

Copies of the motion, the nonconfidential version of the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 5 calendar days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reason why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTRACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: June 10, 1987.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 87-13585 Filed 6-11-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Southern States Cooperative, Inc. and Farmland Foods, Inc. Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: June 9, 1987.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt interstate transportation must file the Notice Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name

and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A. (1) Southern States Cooperative, Inc.
 (2) P.O. Box 26234, Richmond, VA 23260
 (3) 6606 West Broad Street, Richmond, VA 23260
 (4) Garry L. Horn, P.O. Box 26234, Richmond, VA 23260

B. (1) Farmland Foods, Inc.
 (2) 6910 North Holmes, Kansas City, MO 64116
 (3) P.O. Box 403, Denision, IA 51442
 (4) Larry Schwarte-William Wait, P.O. Box 403, Denison, IA 51442

Noreta R. McGee,
Secretary.

[FR Doc. 87-13467 Filed 6-11-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31023]

Maine Central Railroad Co., and Springfield Terminal Railway Co.; Lease Exemption

Maine Central Railroad Company (MEC) and Springfield Terminal Railway Company (ST) filed a notice of exemption for MEC to lease to ST the following lines of railroad near Lewiston, Portland, and Bangor, ME: (1) The Low Road Main Line between a connection with the Freight Main Line at milepost 13.30 (CPF-13) and another connection with the Freight Main Line at milepost L81.70 (CPL 82), a distance of approximately 68.4 miles; (2) the Lewiston Branch between a connection with the Low Road Main Line at milepost 28.58, at Brunswick, ME, and Lewiston Lower at milepost 48.40, a distance of approximately 19.82 miles; (3) the Mountain Branch between a connection with the Freight Main Line at milepost 1.16 (CPF-1E) and milepost 24.63 (Steep Falls), a distance of approximately 23.47 miles; (4) the Hinckley Branch between a connection with the Freight Main Line at milepost 84.32 (CPF-84) and milepost 93.69 (Hinckley), a distance of approximately 9.6 miles; (5) the Madison Branch between a connection with the Freight Main Line at milepost 79.23 (CPF-79) and milepost 104.49 (North Anson), a distance of approximately 25.26 miles; and (6) the Freight Main Line between milepost 46.26 (Sprague Road) and milepost 129.51 (Bog Road, Hermon), including all tracks in the Waterville Yard, a distance of approximately 83.25 miles. MEC will retain the right to operate through trains over the Freight Main Line.

MEC and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI), which also owns the Delaware and Hudson Valley Company (D&H) and the Boston and Maine Corporation (B&M). As a result of the proposed transaction, it is intended that ST will provide more responsive and efficient service to rail customers than that MEC is now providing and that MEC will improve its financial viability by eliminating operations that are costly to perform in relation to the revenue realized. In addition, it is expected that with its lower cost structure, ST will be able to perform the operations more profitably.

Since MEC and ST are members of the same corporate family, the lease falls 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 transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

Any employees affected by the lease transaction would normally 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) (*Mendocino*). These conditions satisfy, the statutory requirements of 49 U.S.C. 10505(g)(2) for lease transactions. However, in a decision in Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company, et al.* (not printed), served May 18, 1987, the Commission set for modified procedure a series of notices filed by the GTI carriers because labor interests raised issues related to the level of employee protection for the transactions. The Commission asked the parties to that proceeding to address several issues and present additional evidence, including the existence of similar notices and transactions, such as this one, involving the GTI carriers. This lease transaction will therefore be considered in that proceeding.

If, prior to the Commission's determination of the appropriate level of labor protection for these GTI transactions, MEC consummates this transaction and provides its employees with *Mendocino* protection, it does so at its own risk. Should the Commission subsequently determine that a higher level of protection is required, MEC will be required to provide its employees with that greater protection.

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 transaction.

Decided: June 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-13057 Filed 6-11-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping /Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration

Guidelines for the State Employment Security Agency Program Budget Plan for the Unemployment Insurance Program
1205-0132; ETA Handbook 336: ETA 8701, 8623A, 2208, 2208A
Annually
State or local governments
53 respondents; 2,067 burden hours; 4 forms

The Program Budget Plan provides the basis for an application for funds for State Unemployment Insurance operations for the coming year. In the PBP States certify intent to comply with assurances. The affected public are the 53 State Employment Security Agencies.

Contribution Operations
1205-0178; ETA 581
Quarterly
State or local governments
53 respondents; 848 burden hours; 1 form

Provides quarterly data on State agencies' volume and performance in wage processing, number and promptness of liable employer registration, number delinquent in filling contribution reports, number and extent of tax delinquency and results of field audit program.

CAP and Interest
1205-0205; ETA RC 59
Annually
State or local governments
20 respondents; 800 burden hours; no forms

This data will provide the basis for the Secretary to certify that a State may obtain a cap or partial limitation on offset credit reduction, deferral, and delay of interest payment, and a discounted interest rate.

Signed at Washington, DC, this 9th day of June 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-13494 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-19, 189, et al.]

Metzger Group, Inc., New York, NY; et al.

Dismissals of Applications for Reconsideration Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance for workers at the Metzger Group, Incorporated, New York, New York; Phillips Petroleum Company, Western Division, Exploration and Production Group, Denver Colorado; Dual Drilling Company, Dallas, Texas; and Superior Blast Hole Bit Company, Incorporated, Virginia, Minnesota. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-19,189
Metzger Group, Inc., New York, NY (June 5, 1987)

TA-W-19,035
Phillips Petroleum Co., Western Division, Exploration and Production Group, Denver, CO (May 26, 1987)

TA-W-19,294
Dual Drilling Co., Dallas, TX (June 2, 1987)

TA-W-19,320
Superior Blast Hole Bit Co., Inc., Virginia, MN (June 2, 1987)

Signed at Washington, DC, this 5th day of June 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-13495 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-30-M

[Unemployment Insurance Program Letter No. 17-87]

Questions and Answers on the Effects of Strikes and Lockouts on Eligibility for Trade Readjustment Allowances

The Trade Act of 1974 (Pub. L. 93-618) as amended through Pub. L. 99-272 provides trade adjustment assistance (TAA) benefits to workers who become unemployed because of increased imports. The Department of Labor must certify that the workers' employment has been adversely affected by imports. The State agencies who administer the TAA program as agents of the Department of Labor have raised a number of questions on how strikes and lockouts affect workers' eligibility for TAA benefits.

The Department of Labor has provided questions and answers to address the concerns of State agencies in Unemployment Insurance Program Letter No. 17-87. Unemployment Insurance Program Letter No. 17-87 is published below:

Dated: June 4, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration, Washington, D.C. 20213

Classification: UIS/TRA
Correspondence Symbol: TEUMI
Dated: April 8, 1987.

Directive: Unemployment Insurance Program Letter No. 17-87
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management
Subject: Questions and Answers on the Effects of Strikes and Lockouts on eligibility for Trade Readjustment Allowances

1. Purpose.

To provide Guidance to State Employment Security Agencies (SESAs) regarding the effects of strikes and lockouts on eligibility for Trade Readjustment Allowance (TRA) and other trade adjustment assistance (TAA) (training and job search and relocation allowances).

2. References.

Trade Act of 1974 as amended (Pub. L. 93-618, Pub. L. 97-35, Pub. L. 98-120, Pub. L. 98-369, and Pub. L. 99-272).

3. Background.

A number of SESAs have raised questions about the effects of labor disputes on trade adjustment assistance

and particularly the effects on TRA eligibility. While answers have been provided in memoranda to some of the Regional Offices, this directive consolidates the questions asked and provides further guidance to all SESAs.

4. Questions and Answers.

(1) Q. May a worker establish eligibility for TAA based on a separation which is due to a strike or lockout?

A. No. The Trade Act requires that a worker must have a lack of work separation from adversely affected employment to qualify for TRA or other TAA benefits. Refer to section 247(2) of the Trade Act which defines an "adversely affected worker". Since a separation due to a strike or lockout does not meet the lack of work separation criterion, a worker may not establish TAA eligibility based on such separation.

(2) Q. If a worker who was laid off because of a strike or lockout returns to work after the labor dispute has ended and is told by the employer that there is no longer any work for him or her, may the worker establish TAA eligibility?

A. Yes. This separation is due to lack of work not a strike or lockout. However, all other requirements for TRA, must also be met with respect to the separation.

(3) Q. If State law allows Unemployment Insurance (UI) benefits to be paid in case of a lockout, may TRA also be paid?

A. TRA eligibility (or any other TAA entitlement) may not be established based on a separation due to a lockout. However, a worker who had previously established TRA eligibility, returned to work and was subsequently out of work because of lack of work due to a lockout, could reopen a TRA claim if there were remaining weeks of eligibility and under the State law the lockout is not disqualifying for UI purposes.

(4) Q. If a worker is out of work because of a strike or lockout and decides to enter training, may the training be approved for TAA purposes?

A. Training may be approved only if there is a lack of work separation to establish eligibility. However, a worker who is out of work because of a labor dispute and has previously established eligibility for TAA benefits might be approved for TAA training if the work the individual was performing before the labor dispute was not "suitable." Eligibility for basic or additional weeks of TRA depends on the disqualification provisions of State law relating to a strike or lockout.

(5) Q. If a worker was on strike for over seven months, returned to work and is laid off within two weeks because of lack of work, could the individual meet the wage qualifying requirements to receive TRA?

A. No. the worker must have 26 or more wage qualifying weeks (including qualifying weeks of leave) within the 52-week period ending wih the week of separation to meet the qualifying requirements of section 231(a)(2) of the Act.

(6) Q. Is a worker who was on leave at the time a labor dispute occurred but is unable to return to work because of the labor dispute eligible for TAA benefits?

A. No. There is not a lack of work separation to establish eligibility.

(7) Q. Where a worker receives a notice of layoff after the settlement of a strike in which he/she participated, what is the date of separation for purposes of the worker's eligibility for TRA?

A. The date of separation is the *effective* date of the notice for TRA purposes. A worker on strike remains in employment status and is not separated from employment until actual separating action is taken by the employer or the worker. Whether a separating action taken by an employer is a layoff for lack of work for TAA purposes is a fact to be determined in each case. The fact that a worker is laid off after a strike must be coupled with evidence that the layoff was due to lack of work in adversely affected employment to establish that the worker is an adversely affected worker.

(8) Q. Would an individual who was receiving TRA while in approved training be disqualified from receiving further TRA payments if, while a labor dispute was in progress, the individual was offered and refused employment in an establishment where jobs are vacant because of the labor dispute?

A. No. The individual could not be denied TRA by a State on these facts without violating the labor standards in section 3304(a)(5)(A) of the Federal Unemployment Tax Act. This section requires that compensation not be denied to an otherwise eligible individual for refusing to accept new work if the position offered is vacant due directly to a strike, lockout or other labor dispute. Denial of TRA in this situation would also be inconsistent with section 3304(a)(8) of the FUTA, and section 236(e) of the Trade Act of 1974.

(9) Q. If a plant is permanently closed down immediately following the settlement of a labor dispute, what is the date of separation for those workers who participated in the labor dispute?

A. The separation date would be the date the employment was actually terminated. However, a separation caused by a labor dispute does not constitute a TAA qualifying separation; there must be a layoff because of lack of work in adversely affected unemployment.

(10) Q. May a worker not participating in a labor dispute qualify for TRA where the worker is laid off because his/her employer supplies a firm involved in the labor dispute?

A. A worker who is laid off because his/her employer is no longer able to supply the firm involved in a labor dispute may experience a lack of work separation for which he/she could qualify for TAA if the worker group of which he/she is a member has been certified as eligible to apply for TAA.

5. Action Required.

SESA administrators should distribute the contents of this UIPL to appropriate staff.

6. Inquiries.

Direct questions to the appropriate Regional Office.

Expiration date: April 30, 1988.

[FR Doc. 87-13496 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter No. 22-87, Consolidating Earlier Issuances Into a Single Directive

The Employment and Training Administration (ETA) interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State employment security agencies.

Section 3304(a)(15) of the Federal Unemployment Tax Act (FUTA) provides that if an individual is receiving retirement income, then the amount of unemployment compensation that might otherwise be claimed for any given week shall be reduced (but not below zero) by an amount equal to such income which is reasonably attributable to that week. This deduction is conditioned, however, on the requirements contained in clauses (i) and (ii) in Subparagraph (A) of Section 3304(a)(15), FUTA. In addition, States may use the discretionary authority they have under subparagraph (B) to reduce the deduction otherwise required for the offset by taking into account employee

contributions to retirement plans or programs.

Section 3304(a)(15), FUTA, commonly called the pension offset requirements, reflects the minimum requirements for deduction which must be contained in State law. Although a State may broaden the scope of deduction for pension payments beyond the requirements of the FUTA, it may not adopt less stringent conditions.

Unemployment Insurance Program Letter 22-87 consolidates the Department's interpretation of section 3304(a)(15), FUTA, into a single directive in order to eliminate any confusion that may exist about the pension offset requirements. It rescinds certain earlier directives on the subject but does not modify or change the Department's basic interpretation of Section 3304(a)(15), FUTA. It is being published in the **Federal Register** to inform the public.

Dated: June 4, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 22-87

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator for Regional Management

Subject: Pension Offset Requirements Under the Federal Unemployment Tax Act

1. *Purpose.* To consolidate the numerous directives interpreting the pension offset requirements under section 3304(a)(15), Federal Unemployment Tax Act (FUTA) into a single directive and to rescind previous guidance on this subject.

2. *References.* Section 3304(a)(15), Section 3304(a)(10), FUTA.

3. *Background.* Section 3304(a)(15), FUTA, enacted in 1976, became effective as a rquirement for State certification on April 1, 1980. As originally enacted, Section 3304(a)(15), FUTA, required the States to include in their laws specific provisions for dollar-for-dollar deductions in unemployment benefits for pensions and certain other types of retirement income received by a claimant.

On September 26, 1980, Congress amended section 3304(a)(15), FUTA. The 1980 amendment was intended to ameliorate the one hundred percent offset imposed by the 1976 law. The 1980 amendment provided, among other things, for deduction only when a base period or chargeable employer had contributed to the fund from which the retirement benefit was being paid, and permitted States to take into account contributions made by the claimant. The 1980 amendment permitted States to refrain from offsetting substantial amounts of pension and other retirement income, but it did not prohibit the States from adhering to the original offset requirement or an offset requirement in excess of the minimum offset requirement.

4. *Effect on Previous Issuances.* Over the years a number of UIPLS have been issued concerning the pension offset requirements. This has resulted in some confusion and misunderstanding as to the basic requirements of section 3304(a)(15), FUTA.

Accordingly, this UIPL is being issued to consolidate our interpretation of section 3304(a)(15), FUTA, into a single directive. This UIPL does not modify or change our interpretation of section 3304(a)(15), FUTA. The previous UIPLs which have been incorporated into this UIPL and are hereby rescinded are indicated below.

a. UIPL 24-80, dated March 17, 1980, was issued to inform State Employment Security Agencies (SESAs) of the requirements of section 3304(a)(15), FUTA.

b. UIPL 43-80, dated July 28, 1980, transmitted to the SESAs information and instructions relating to the implementation of section 3304(a)(15), FUTA.

c. UIPL 43-81, dated October 23, 1980, was issued to inform SESAs of Federal law requirements prohibiting the total reduction of benefit rights as a result of a disqualification imposed where an individual is only "eligible for" or has only "applied for" pension benefits.

d. UIPL 7-81 Change 2, (Revised), dated March 11, 1980, reinstated the interpretation of subpargraph (B) of section 3304(a)(15), FUTA, provided in UIPL 7-81. (Note: UIPL 7-81, Change 1 was previously revoked by this Change 2.)

e. UIPL 23-83, dated April 14, 1983, was issued to provide clarification on the effect of military pensions on UCFE benefits.

5. *Federal Requirements.* Section 3304(a)(15), FUTA, reads as follows:

(15) The amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week except that—

(A) The requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(i) Such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(ii) In the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(B) The State law may provide for limitations on the amount of any such reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;

6. *Interpretation of Federal Requirements—*

a. *Basic Requirement.* Section 3304(a)(15), FUTA, provides that if an individual is receiving retirement income, then the amount of unemployment compensation that might otherwise be claimed for any given week shall be reduced (but not below zero) by an amount equal to such income which is reasonably attributable to that week. This deduction is conditioned, however, by the requirements contained in clauses (i) and (ii) in Subparagraph (A) of section 3304(a)(15), FUTA. In addition, States may use the discretionary authority they have under subparagraph (B) to reduce the deduction otherwise required for the offset by taking into account employee contributions to retirement plans or programs.

Section 3304(a)(15), FUTA, reflects the minimum requirements for deduction which must be contained in State law. Although a State may broaden the scope of deduction for pension payments beyond the requirements of the FUTA, it may not adopt less stringent conditions.

b. *Payments to Which Section 3304(a)(15), FUTA, Apply.* Because section 3304(a)(15), FUTA, specifies that the reductions in unemployment compensation must occur for retirement payments "based on the previous work of such individual," the reduction applies only to retirement income collected by the person who actually earned this income. It does not apply, for example to, a survivor's or widow's

or widower's benefit that is payable to a survivor, and is not based on the previous work of that individual. Amounts equal to other types of disability compensation such as temporary disability insurance and worker's compensation (including Black Lung benefits), which are not payable as retirement or pension payment, also are not required by section 3304(a)(15), FUTA, to be deducted. No exhaustive list of all of the kinds of payments that are deductible is available. Based on the broad language of section 3304(a)(15), FUTA, payments provided for under the programs or plans listed below are subject to the pension offset requirements:

1. Primary social security old age and disability retirement benefits, including those based on self-employment;

2. State and local government pensions of all types;

3. Federal Civil Service pensions, including disability pensions;

4. Private for-profit employer pensions;

5. Non-profit employer pensions;

6. Military retirement pensions and disability retirement pensions;

7. Railroad Retirement annuities;

8. Benefits derived from Individual Retirement Accounts;

9. Benefits based on Keogh plans.

c. *Limitation for Base Period or Chargeable Employers.* Under clause (i) of section 3304(a)(15)(A), FUTA, the requirement that unemployment compensation be offset by retirement benefits is limited to such benefit paid under a plan maintained or contributed to a base period or chargeable employer. Whether or not the employer is a chargeable or a base period employer is determined under provisions of State law. The employer does not need to be both a base period employer and also the employer chargeable with benefits payable under the State law. But, where the base period or chargeable employer did not maintain or contribute to the plan under which the individual is receiving the retirement benefit, the benefit is not deductible under the Federal law. For example, if an individual at company A retires and collects retirement benefits under a particular plan maintained by that employer, but then goes to work for Company B, which has an entirely different plan, and this person is subsequently laid-off, the retirement benefit from Company A would not be deductible under Federal law (unless Company A is also a base period employer).

In relation to clause (i) questions have arisen as to whether Federal law requires deduction of military pensions from UCFE benefits when:

a. The claimant's military service, which supported the pension, was before the State's base period, and

b. The claimant's military pension was not affected by the Federal civilian employment, which supported the UCFE claim. Under these circumstances, Federal law does not require the deduction of military pensions from UCFE benefit payments, since the UCFE service and wages in the State's base period had no affect upon the military pension that was supported by military service, which occurred before the State's base period. However, if a State law requires the deduction of all pensions, based on an individual's previous work, then military pensions would be deductible from UCFE benefits as they are from State UI.

Under clause (ii) of section 3304(a)(15), FUTA, amounts equal to Social Security and Railroad Retirement are always deductible if a base period or chargeable employer contributed to the pension plan. But, for other types of pension or retirement income, deductions are required only if the services performed for the base period or chargeable employer affect "eligibility for, or increase the amount of" the pension or retirement income.

"Eligibility for" refers to whether the individual satisfies the conditions necessary to first qualify for the pension or retirement income. For example, if the individual qualifies for a pension only by using some of the wages for services performed for a base period or chargeable employer, the pension payment is deductible. Similarly, if the amount of a pension payment is increased as a result of performing such services, then an amount equal to the pension payment is also deductible.

States may, of course, disregard the clause (i) requirement that the deduction be made only if the retirement income is derived under a plan that a base period or chargeable employer contributed to or maintained, and instead, provide that all such retirement income be deductible from unemployment compensation benefits. However, States may not exempt any retirement income that meets the requirements of subparagraph (A) from deduction, except when they are limiting deductions under the authority of subparagraph (B).

d. *Employee Contributions.* Under subparagraph (B) in section 3304(a)(15), FUTA, States have very broad latitude in reducing the amount of any offset in order to take account of employee contributions. But it must be set forth in State law that the offset is reduced because of employee contributions to the retirement program or plan. If a State elects to exercise this option under subparagraph (B), there is no requirement that the amount of employee contributions taken into account not exceed the proportions of an employee's contribution to the retirement plan or program.

Any retirement plan or program to which a claimant has made contributions may be included in the subparagraph (B) reduction in offset, regardless of the relative proportions of employee and employer contributions, and, similarly, the broad discretion of the State law may permit any reduction in the offset (from 1 percent to 100 percent), regardless of the relative proportions of employee and employer contributions. Similarly, States have broad latitude in determining which types of retirement plans or programs to include or exclude from the subparagraph (B) reduction. Specifically, it is not required that public and private plans be treated identically or even similarly.

e. *Treatment of Lump-Sum and Retroactive Payments.* Under section 3304(a)(15), FUTA, the amount of unemployment compensation payable for any week shall be subject to deductions for retirement income "reasonably attributable to such week." In the case of lump-sum retirement payments, States have the option whether to treat them as "similar periodic payments" which are deductible under their laws, and if they treat them as such they have the further option of providing in their laws whether the payments shall apply only to the week in which they were paid, or to the week following the last week worked prior to retirement, or whether they shall be allocated to the weeks or months or other applicable periods following the last week worked prior to retirement.

Severance pay and separation payments are not required to be treated as lump sum retirement payments, or as any other form of retirement, pension, or annuity required by section 3304(a)(15), FUTA, to be deducted from unemployment compensation.

7. *Disqualification Due to "Eligibility For" Rather Than "Receipt Of" Retirement Income.* Section 3304(a)(10) of the FUTA provides that under an approved State law:

Compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or *receipt of*

disqualifying income. (Emphasis Supplied.)

A disqualification based on "eligibility for" payments covered under section 3304(a)(15), FUTA, is inconsistent with Section 3304(a)(10), FUTA, in those cases in which the disqualification results in a total reduction of benefit rights. In addition, if the individual has only "filed for" or "applied for" such pension or other retirement payment, but where no determination of entitlement has been made, it is inconsistent with section 3304(a)(10), FUTA, to totally reduce benefit rights. This would occur where the prospective payment exceeds the unemployment benefit amount, and the denial is applied on a week-to-week basis with the result that the individual never receives unemployment conpensation during the benefit year because of deductions. However, if the disqualification imposed in these circumstances allows some residual payment of unemployment benefits (e.g., if a pension payment is an amount less than the unemployment benefit), then such deduction would be consistent with section 3304(a)(10), FUTA, because no total reduction of unemployment benefits occurred.

While an assumption that an individual is entitled to receive some type of retirement payment covered under section 3304(a)(15), FUTA, is not a sufficient basis under section 3304(a)(10), FUTA, for totally reducing unemployment benefits, benefits may be totally reduced if there is a finding of "constructive receipt." This occurs when an individual has applied for a payment or benefit covered by section 3304(a)(15), FUTA, and has been determined by responsible authorities to be entitled to such payment or benefit in specified amounts for the same period that unemployment compensation is payable. Such a determination or award of entitlement constitutes "constructive receipt" for the purposes of section 3304(a)(10), FUTA, and total reduction of unemployment benefit would be permissible. This is only true, however, if the State law also provides, or is interpreted to provide, that should such individual not receive a pension or other retirement payment that covers such period, then this individual must be entitled to the unemployment benefit previously denied.

8. *Action Required.* Administrators are required to advise appropriate staff of the information contained in this letter.

9. *Inquiries.* Questions should be directed to appropriate regional staff.

[FR Doc. 87-13497 Filed 6-11-87; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

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 Determinations Decisions

The number 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 numbers(s).

Volume III

Wyoming:
WY87-2 (Jan. 2, 1987)—pp. 404(a)-404(f)

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

District of Columbia:
DC87-1 (Jan. 2, 1987)—pp. 88-89

Georgia:
GA87-3 (Jan. 2, 1987)—pp. 228, 229
Kentucky:
KY87-7 (Jan. 2, 1987)—pp. 310-311
New Jersey:
NJ87-3 (Jan. 2, 1987)—pp. 636
New York:
NY87-11 (Jan. 2, 1987)—pp. 784-788
Pennsylvania:
PA87-2 (Jan. 2, 1987)—pp. 856, 858
PA87-5 (Jan. 2, 1987)—pp. 886-887
PA87-6 (Jan. 2, 1987)—pp. 898-899
PA87-10 (Jan. 2, 1987)—pp. 934-937
Tennessee:
TN87-1 (Jan. 2, 1987)—pp. 1078-1079

Volume II

Iowa:
IA87-2 (Jan. 2, 1987)—p. 31
Illinois:
IL87-1 (Jan. 2, 1987)—p. 76
IL87-2 (Jan. 2, 1987)—p. 100, pp. 108-111
IL87-3 (Jan. 2, 1987)—p. 115
IL87-4 (Jan. 2, 1987)—p. 121
IL87-5 (Jan. 2, 1987)—p. 126
IL87-7 (Jan. 2, 1987)—p. 138
IL87-12 (Jan. 2, 1987)—p. 163
IL87-14 (Jan. 2, 1987)—p. 188
IL87-15 (Jan. 2, 1987)—p. 198
IL87-16 (Jan. 2, 1987)—p. 208
IL87-17 (Jan. 2, 1987)—p. 222
Indiana:
IN87-1 (Jan. 2, 1987)—p. 237
IN87-2 (Jan. 2, 1987)—pp. 250, 253
IN87-4 (Jan. 2, 1987)—p. 282
Kansas:
KS87-6 (Jan. 2, 1987)—p. 349
KS87-7 (Jan. 2, 1987)—p. 354
KS87-8 (Jan. 2, 1987)—p. 358, pp. 360-361
Michigan:
MI87-4 (Jan. 2, 1987)—pp. 452-453
MI87-17 (Jan. 2, 1987)—p. 520
Missouri:
MO87-5 (Jan. 2, 1987)—p. 622
Oklahoma:
OK87-13 (Jan. 2, 1987) p. 892
OK87-17 (Jan. 2, 1987)—p. 912h

Volume III

Oregon:
OR87-1 (Jan. 2, 1987)—pp. 278, 281
Utah:
UT87-3 (Jan. 2, 1987)—p. 322
Wyoming:
WY87-1 (Jan. 2, 1987)—pp. 399-401
Listing by Decision (index)—p. xxxiv
Listing by Location (index)—p. xxxii

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 purchasesd 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 5th day of June 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-13253 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-121-C]

D & D Darby Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

D & D Darby Coal Company, 224 Intermont Heights, Baxter, Kentucky 40806 has filed a petition to modify the application of 30 CFR 75.504 (permissibility of new, replacement, used, reconditioned, additional, and rebuilt electric face equipment) to its No. 1 Mine (I.D. No. 15-15728) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all new, replacement, used, reconditioned, and additional electric face equipment used in any mine be permissible and maintained in permissible condition.

2. Petitioner states that it is impossible to install a methane monitor on the 1950-model Jeffrey bottom cutting machine due to the nature of the electric components and lack of area on the machine itself.

3. In addition, petitioner states that no methane has ever been detected in the seam.

4. As an alternate method, petitioner proposes to use a hand-held methane spotter to test for methane every five minutes when cutting coal.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 13, 1987. Copies of the petition are available for inspection at that address.

Dated: June 1, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-13498 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-119-C]

Gordon Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Gordon Coal Company, HC-73, Box 415, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 4 (I.D. No. 15-15347), its Mine No. 5 (I.D. No. 15-15805) and its Mine No. 6 (I.D. No. 15-15988) all located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen

detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 13, 1987. Copies of the petition are available for inspection at that address.

Dated: June 3, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-13499 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-48-C]

Mingo Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mingo Coal Company, Inc., Route 4, Box 178, Corbin, Kentucky 40701 has filed an amendment to a petition for modification. On March 2, 1987, Mingo Coal Company, Inc., submitted a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-15213) and its Mine No. 4 (I.D. No. 15-15811) both located in Whitley County, Kentucky. On March 2, 1987, MSHA published notice of the petition in the **Federal Register** (52 FR 9974), allowing interested parties 30 days to submit comments. On April 18, 1987, petitioner submitted a request to amend the originally submitted petition for modification to include its new Mine No. 5 (I.D. No. 15-15932) located in Whitley County, Kentucky. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 13, 1987. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: June 3, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-13500 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-115-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420-1990 has filed a petition to modify the application of 30 CFR 75.1403-6(b)(3) (criteria—self-propelled personnel carriers) to its Sinclair Underground Mine No. 2 (I.D. No. 15-07166) located in Muhlenberg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each track-mounted self-propelled personnel carrier be equipped with properly installed and well-maintained sanding devices.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected because the mine is damp with some water on the track. During the summer months, water drips from the top and moisture is in the air, which causes factory sanders to become inoperative. There is a problem with bent linkage with factory sanders. In addition, factory sanders may appear to

be working while not applying ample sand to the track.

3. As an alternate method, petitioner proposes to install sand boxes on each end of the track-mounted self-propelled personnel carriers. The sand boxes will be checked and maintained prior to each shift. Sand will be applied directly to the track by mechanical device.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 13, 1987. Copies of the petition are available for inspection at that address.

Dated: June 1, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-13501 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the state has submitted by letter dated December 8, 1986, from Judy Knight, Acting Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to 29 CFR 1910.95, Occupational Noise Exposure, Hearing Conservation Amendment, as published in the **Federal Register** (46 FR 4161) on January 16, 1980, and subsequently amended on August 21, 1981 (46 FR 42622), September 11, 1981 (46 FR 45333), August 13, 1982 (47 FR 35189), March 8, 1983 (48 FR 9738), and June 28, 1983 (48 FR 29687). The State's original standards were adopted on November 18, 1982 and December 6, 1983. Regional review of the State's standards revealed technical errors which the State corrected by the adoption of changes on April 15, 1985, and by administratively correcting editorial errors.

These State standards, which are contained in AAC 040.0104, Occupational Noise Exposure, were promulgated after public notice under authority vested by AS 18.60.020 to Jim Robison, Commissioner, and became effective March 20, 1983; February 19, 1984; and June 9, 1985. The State incorporated modifications consisting of defining coverage for seasonal employees, and deleting the phrase *the employer shall* throughout the standard, as the employer's responsibilities are spelled out in Alaska's State Statutes, Section 18.075, Safe Employment.

2. Decision

The above State standards have been reviewed and compared with the relevant Federal standards. OSHA has determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves these standards.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comments and further public participation would be repetitious.

This decision is effective June 12, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 27th day of April 1987.

Carl A. Halgren,

Acting Regional Administrator.

[FR Doc. 87-13502 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-26-M

[V-87-1]

Zurn Industries, Inc.; Grant of Variance

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Grant of Variance.

SUMMARY: This notice announces the grant of variance to Zurn Industries, Inc., from the boatswain's chair requirements prescribed in 29 CFR 1926.451(1)(5) and the personnel hoist requirements prescribed in 29 CFR 1926.552(c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i) and (c)(16).

DATE: The effective date of the variance is June 12, 1987.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210

or the following Regional Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, 16-18 North Street, 1 Dock Square Building, 4th Floor, Boston, Massachusetts 02109

U.S. Department of Labor, Occupational Safety and Health Administration,

1515 Broadway, (1 Astor Plaza), Room 3445, New York, New York 10036

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 32nd Floor, Room 3244, Chicago, Illinois 60604

U.S. Department of Labor, Occupational Safety and Health Administration, 525 Griffin Square Building, Room 602, Dallas, Texas 75202

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street, Room 406, Kansas City, Missouri 64106

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 1554, 1961 Stout Street, Denver, Colorado 80294

U.S. Department of Labor, Occupational Safety and Health Administration, 11349 Federal Building, 450 Golden Gate Avenue, Post Office Box 36017, San Francisco, California 94102

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6003, 909 First Avenue, Seattle, Washington 98174

SUPPLEMENTARY INFORMATION:

I. Background

Zurn Industries, Inc., (the Applicant), 405 North Reo Street, Tampa, Florida 33609, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 for a permanent variance from the boatswain's chair requirements in 29 CFR 1926.451(1)(5) and the personnel hoist requirements in 29 CFR 1926.552 (c)(l), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i) and (c)(16). Those provisions are discussed below.

The facilities covered by the application are the Applicant's present and future construction projects in States under Federal jurisdiction where the erection, maintenance and modification of chimneys, towers and similar work occur.

Notice of the application was published in the **Federal Register** on January 2, 1987 (52 FR 184). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the variance application. The only comment letter was received form Bernard J. Colleran, a certified safety professional. The issues raised by that letter are discussed below.

II. Facts

The Applicant constructs, modifies and maintains reinforced concrete cooling towers, chimneys and related structures. These activities involve the transportation of personnel and material to and from an elevated work platform, which is located inside the structure. Prior to installing the work platform a concrete foundation approximately 40 to 50 feet high must be cast. The platform, which is assembled at ground level, is suspended by chains from umbrella beams which are part of the derrick system. When the derricks are raised, the work platform is lifted off the steel form system and the concrete wall itself. Once raised to the desired level, normally six to ten feet per lift, the platform is reconnected to the derrick umbrella system. Before raising the derrick, employees use the scaffold located inside the shell of the structure below the work platform to strip the form, so the form can be used to cast the next section. A scaffold, located on the outside shell of the structure is used by employees for placing concrete and finishing the outer portion of the shell.

Structures constructed by the Applicant often taper as they rise. This feature contributes essential stability to the structures, but makes it necessary to modify the work platform to fit the tapering chimney as the work progresses and to adjust the scaffold to fit the circumference of the structure.

In order to transport employees and materials, the Applicant installs a hoist system which runs the cage or concrete bucket to and from a work platform located inside the structure. A hoist engine located and controlled, normally outside the structure powers the system. The rope spools off the hoist drum, enters the structure and passes through a footblock which changes the rope direction from horizontal to vertical. The rope is then routed through the ovehead sheaves, which are supported by a cathead, and connected to the cage. The cathead is fastened to the uppermost portion of the derrick and moves upward as the derrick is raised. Two guide cables are suspended from the cathead to prevent swaying and rotation of the cage and to provide support upon which safety clamps can activate and grip if the hoist rope breaks. The Applicant places a headache ball on the rope end fitting directly above the cage to counterbalance the rope's weight between the cathead sheaves and the footblock. For lifting material to the work platform, the personnel cage is usually disconnected from the main hoist line below the headache ball and a concrete bucket or hopper is used. The cage is occasionally used to transport reinforcing bars and other materials to the work platform. Compliance with the safety factors and other precautions required by the pertinent provisions of § 1926.552(c), Personnel Hoists, ensures that the material hoisting does not endanger employees.

Safety features, such as limit switches to prevent overtravel by the cage, are incorporated in the hoist control to ensure that the highest level of employee safety is maintained. Employees located at the bottom of the structure are protected from falling material during hoisting and overhead activities by canopies and shields.

Section 1926.552(c) sets forth the requirements for personnel hoists. OSHA believed, at the time these provisions were adopted, that compliance with these provisions would ensure that employees were hoisted safely. This standard, however, does not provide specific safety requirements for hoisting personnel to and from work platforms and scaffolds which taper and are constantly being relocated. In addition, the Applicant states that requiring compliance with §§ 1926.552(c)(1) and (c)(2), which regulate enclosures of hoist towers constructed outside and inside structures, would expose the Applicant's employees to a significant risk of injury and death from fall hazards as they attempt to compensate for tapering by adding bracing and other supports to connect the work platform and scaffold with the structure.

For example, § 1926.552(c)(1) requires that hoist towers located outside a structure to be enclosed for the full height on the side or sides used for entrance to and exit from the structure. According to the Applicant, it is impractical and hazardous to locate a hoist tower outside small diameters and tapered stacks, chimneys or shaft structures, because it becomes increasingly difficult to provide safe access from an outside hoist tower either to the structure or to the movable scaffolds used in constructing the chimney liner as a structure rises. Also, the Applicant notes that a hoist tower must be kept higher than the structure under construction. Consequently, the extension of an outside hoist tower would expose the employees to potentially dangerous wind conditions. The difficulties experienced in guying,

erecting and bracing the hoist tower would also potentially endanger employees.

Section 1926.552(c)(2) requires that hoist towers located inside a structure be enclosed on all four sides throughout the height of the structure. The Applicant states that it would be hazardous for it to erect and brace a hoist tower inside a structure. Indeed, it would effectively bar use of critical design features and the construction of small diameter or tapered structures or structures which have sub-levels, because the structures have insufficient room for hoist towers. Also, the Applicant states that the necessity for clearing the reinforced steel which projects above the chimney work level as construction progresses compounds the access problems. Therefore, the Applicant states that it cannot comply with the personnel hoist requirements of §§ 1926.552(c)(1) and (c)(2).

In addition, the Applicant states that it would be inappropriate for OSHA to require compliance with certain other requirements presented in § 1926.552(c) which would conflict with the proposed provisions of the variance. The additional requirements from which a variance is sought are: § 1926.552(c)(3), anchoring the hoist tower to the structure; § 1926.552(c)(4), hoist-way doors or gates; § 1926.552(c)(8), electrically interlocking entrance doors or gates to the hoistway and cars; § 1926.552(c)(13), emergency stop switched located in the car; § 1926.552(c)(14)(i), using a minimum of two wire ropes for drum type hoisting; § 1926.552(c)(14)(iii), wire rope safety factors; and § 1926.552(c)(16), specifications for personnel hoist construction, safety devices and assembly.

Accordingly, rather than construct a hoist tower in the manner required by §1926.552(c)(1) or §1926.552(c)(2), the Applicant proposes to use the ropeguided hoist system described herein to transport employees to and from the elevated work platform.

In addition, the Applicant states that it is occasionally necessary to transport employees to and from a bracket scaffold on the outside of an existing structure during flue installation or repair work, or transport employees to and from an elevated scaffold when the structure has a small or tapering diameter. In those circumstances, the use of a personnel cage would be unsafe because the employees would not properly reach the work involved. The Applicant proposes to raise and lower employees on a work platform, where space permits, or in a boatswain's chair when it is not feasible to use the cage or work platform. Under the Applicant's proposal, when the use of boatswain's chair is necessary, the cage or work platform will be disconnected from the hoisting cable and a work platform or boatswain's chair will be securely attached in its place. Hoisted employees will wear safety belts attached to appropriate lifelines which are secured to the rigging at the top and to a weight at the bottom in order to maximize stability and further ensure employee safety.

Under the terms of §1926.451(1)(5), employers are required to provide and enforce the use of a block and falls with a boatswain's chair. The primary purpose of the standard is to provide an employee who is suspended in a boatswain's chair with a safe method for controlling ascent, descent and stopping locations. Indeed, the Applicant notes that a block and falls is very difficult or impossible to operate on a structure over 200 feet tall. Therefore, the Applicant proposes to substitute a hoisting cable, operated from the hoist machine, for the block and falls required by §1926.451(1)(5).

The Applicant submitted detailed specifications and drawings, which decribe how the components and safety devices provided in the special workmen's hoist system will function to protect the safety of employees transported in a cage, work platform or boatswain's chair. The Applicant also submitted suggested terms for a variance order, based on previous variance grants, the circumstances of its application and discussions with OSHA personnel.

As stated above, the agency received a comment from Bernard J. Colleran, a Certified Safety Professional, in response to the **Federal Register** notice of the Zurn Industries, Inc. variance application.

Mr. Colleran expressed concern regarding several aspects of the variance request. For example, Mr. Colleran took issue with the notice of application where it stated that §1926.552(c) did ". . . not provide specific requirements for hoisting personnel to and from an elevated work platform." OSHA agrees with Mr. Colleran that §1926.552(c) provides specifications for hoist apparatus. The Agency intended simply to indicate that these requirements do not cover the specific circumstances under which the Applicant operates. Indeed, it is the inapplicability of the existing standards which makes it necessary for the Applicant and other chimney construction companies to seek variances.

Furthermore, Mr. Colleran noted that, while there were circumstances under which the variance would be needed, Zurn Industries would have some projects where it would be feasible to follow §1926.552(c). Therefore, Mr. Colleran suggested that OSHA restrict the variance so that it would only apply when compliance with the standard was shown to pose a greater hazard.

OSHA notes that, since 1973, nine chimney erection companies have demonstrated that the hoist tower requirements of §1926.552(c) create access problems and pose dangers for chimney workers. Those companies have received variances from the personnel hoist requirements of §1926.552(c) under which they use, effectively, the same apparatus and procedures that the Applicant proposes to use. In particular, the technology which the Applicant proposes to use has already been approved by OSHA in variances granted to Rust Engineering, et al. (38 FR 8545, April 3, 1973) and Union Boiler Company (50 FR 40627, October 4, 1985).

OSHA held numerous meetings with representatives of the chimney construction industry to assist them in complying with the terms of their variances and the pertinent OSHA standards through improved equipment, procedures and training. The industry conducted tests, at OSHA's request, which demonstrated the reliability of the technology employed under the variances. Therefore, the Agency believes that there is adequate precedent for issuing this variance without restricting its application.

OSHA has not, however, simply ratifed the findings made regarding previous variance applications. The Agency has, for example, evaluated the chimney erection methods proposed for incorporation in the variance order and observed them in use during the variance investigation at one of Zurn's chimney construction sites. OSHA determined that those methods are generally consistent with safe industry practice. Insofar as OSHA determined that the proposed requirements did not adequately protect employee safety, the Agency set the terms of the variance order to require the necessary additional safeguards.

The Applicant states that it is safe and appropriate to use this rope-guided hoisting system on small diameter chimneys. When constructing larger chimneys, the Applicant notes it will normally continue to use an automated hositing system, for which the Applicant has already obtained a variance (50 FR 20145, May 14, 1985). This system safely

hoists employees using the most advanced technology and equipment for larger chimneys where conventional personnel hoists would be infeasible or more dangerous.

The commenter also recommends that the equipment comply with the specifications outlined in the ANSI standard for Workmen's Hoists (A10.4–1963) because the same hoisting assembly is used to hoist personnel and material. The Applicant states, that all hoisting will satisfy the pertinent requirements of § 1926.552(c), which set more demanding requirements, such as safety factors, than § 1926.552(b), Material hoists. OSHA believes that compliance with the pertinent requirements of § 1926.552(c) will provide the necessary protection for employees. Therefore, the Agency has not adopted the commenter's suggestion.

In addition, Mr. Colleran noted that the application does not state that the work platforms will have a roof or be suspended by a closed shackle configuration, that the Applicant will ensure the wearing of safety belts secured to lifelines or that the Applicant will implement a uniform system of regularly scheduled inspections for all components of the hoisting apparatus. OSHA observes that the Applicant will be required to provide overhead protection for scaffold platforms under the terms of § 1926.451 (a)(16), from which no variance has been sought. Furthermore, OSHA determined that the shackle's configuration has been addressed with appropriate specificity in section 4(e) of the order, and that the necessary inspections are already required under the terms of §§ 1926.20(b)(2) and (b)(3) and § 1926.552(c)(15).

III. Decision

Section 1926.552(c) sets forth the requirements for the use of personnel hoists. OSHA determined, however, that the standard does not include pertinent safety requirements for hoisting personnel to and from an elevated work platform during the construction of certain chimney or shaft structures and does contain other requirements which are inapplicable to chimney construction. As a consequence, the Applicant is unable to comply with certain sections of the standard and lacks the necessary regulatory guidance to protect employee safety and health.

The Applicant demonstrated, through the submission of its variance application and supporting data, that compliance with the specified hoist tower requirements is infeasible and hazardous. For exemple, a hoist tower inside a chimney or tower would be incompatible with the design and the use of scaffolding. Also, the space within a small diameter or tapering chimney is not large enough or configured so that it can accommodate a hoist tower. Moreover, an outside hoist tower exposes the employees to additional fall hazards because they need to install extra bridging and bracing between the hoist tower and the tapered chimney or stack structures.

OSHA determined, however, that the wire rope safety factors presented in § 1926.552(c)(14)(iii) provide the necessary guidance for the operation of the Applicant's proposed hoisting system. Therefore, the Agency denies the various request insofar as it involves § 1926.552(c)(14)(iii).

Under the terms of § 1926.451(1)(5) employers are required to provide and enforce the use of block and falls with a boatswain's chair to provide a safe means of access and egress. The Applicant has demonstrated that compliance with the block and falls requirement is not always feasible. For example, as a rule, the block and falls may be used safely to reach heights up to 200 feet. Many chimney and stack structures are over 200 feet high. Therefore, OSHA determined that a properly controlled hositing cable may be substitutred for the block and falls in order to safely hoist employees between the ground and elevations over 200 feet.

On the basis of the variance application, supporting data, and the variance investigation, OSHA decided that the procedures used by the Applicant during the construction of a chimney or similar structures will provide employment and places of employment which are as safe as or, indeed, safer than those anticipated if the Applicant was to comply with the requirements of the specified standards. Accordingly, OSHA determined that the Applicant established a method for hoisting personnel which results in the least hazardous exposure to the employee. Therefore, Zurn Industries, Inc. merits relief from the requirements of 29 CFR 1926.451 (1)(5) and 29 CFR 1926.552(c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i) and (c)(16), which are addressed herein.

IV. Order

Pursuant to the authority in section 6(d) of the Occupational Safety and Health Act of 1970, the Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1905, it is ordered that Zurn Industries, Inc. is authorized to:

(1) Utilize a rope-guided hoist system to safely transport personnel between the bottom landing and elevated work platform during the construction of chimneys, liners and similar work in lieu of complying with 29 CFR 1926.552(c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i) and (c)(16). The system includes the hoist machine, cage, safety cables, and safety measures, such as limit switches to prevent overrun of the cage at the top and bottom landings and safety clamps that grip the safety cables, in the event the main hoist line fails.

(2) Use a work platform in accordance with the terms of this order to safely transport personnel to and from the elevated scaffold when constructing structures of small diameter which will not accommodate the rope-guided case system or to safety transport employees to and from the bracket scaffold. The work platform shall be raised and lowered by the hoisting cable used for the cage.

(3) Use a boatswain's chair, complying with the terms of this order, in situations where the use of a cage or work platform is infeasible. A hoisting cable may be used with the boatswain's chair where the height of the structure precludes the safe use of the block and falls required by 29 CFR 1926.451(1)(5).

All other applicable provisions of 29 CFR Part 1910 and 29 CFR Part 1926 are unaffected by this order and must be complied with in conjunction with the terms of the order.

The terms of the order are as follows:

1. Qualified Competent Person

(a) A qualified competent person as defined in §§ 1926.32(f) and (1) shall be responsible for ensuring that the design, maintenance and inspection of the personnel hoisting system comply with this order and the pertinent requirements in 29 CFR Part 1926.

(b) A qualified competent person shall be present at ground level at all times when employees are being transported to and from the elevated work platform to assist if there is an emergency.

2. Hoist Machine

(a) *Type of hoist.* The hoist machine shall be designated as a portable man hoist.

(b) *Power up and power down.* The hoist machine shall be a basemounted drum hoist designed so that linespeed is controlled. Power up and power down requirements are as follows:

(i) Lowering by disengagement of the driving components (free-wheeling) shall not be permitted;

(ii) The drive system for the hoist shall be continuously interconnected through a torque converter, mechanical coupling or equivalent coupling;

(iii) Where forward/reverse coupling or shifting transmission is used, the

braking mechanism shall automatically apply when the transmission is in the neutral position; and

(iv) Belt drives shall not be permitted.

(c) *Source of power.* The hoist machine may be powered by an air, electric, hydraulic or internal combustion drive mechanism.

(d) *Constant pressure control switch.*

(i) The hoist shall be equipped with a hand or foot operated constant pressure control switch (deadman control switch) which shall stop the hoist immediately upon release; and

(ii) The switch shall be provided with appropriate protection to prevent it from activating in the event it is struck by falling or moving objects.

(e) *Line speed indicator.*

(i) The hoist shall be equipped with a line speed indicator maintained in good working order; and

(ii) The line speed indicator shall be within clear view of the hoist operator during hoisting.

(f) *Braking systems.* The hoist shall be provided with two independent braking systems located on the winding side of the clutch or couplings (one automatic braking system and one manual) each capable of stopping and holding 150 percent of the maximum rated load.

(g) *Slack rope switch.* The hoist shall be equipped with a slack rope switch to prevent further rotation of the hoist drum in slack rope conditions.

(h) *Frame.* The hoist machine frame shall be self-supporting, rigid, welded steel structure with skid base. Holding brackets for anchor lines, as well as legs for anchor bolts, shall be integral components of the frame.

(i) *Location.* The hoist machine shall be located far enough from the footblock to obtain correct fleet angle for proper spooling of the cable on the drum.

(j) *Drum and flange diameter.*

(i) The hoist shall have a winding drum not less than 30 times the diameter of the rope used; and

(ii) The flange diameter shall be approximately 1½ times the rope drum diameter.

(k) *Spooling of the rope.* The rope shall not be spooled closer than two inches from the outer edge of the hoist drum flange.

(1) *Electrical system.* All electrical equipment shall be weatherproof.

(m) *Limit switches.* The hoisting system shall be equipped with limit switches and related equipment which will automatically prevent overtravel of the cage at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

3. Methods of Operation

(a) *Operator.* Only trained and experienced employees who are knowledgeable in the operation of the hoist system shall control the hoist machine.

(b) *Speed limitations.* The hoist shall not be operated at a speed in excess of:

(i) 100 ft./min. when using the work platform or boatswain's chair;

(ii) 250 ft./min. (±10%) for the cage when transporting employees; and

(iii) Line speed for material hoisting shall be maintained within the design limitations of the system.

(c) *Communication.*

(i) Communication between the hoist operator and employees on all working platforms, in the moving cage, or in the boatswain's chair, shall be maintained by a voice type intercommunication system; and

(ii) When communication stops, is interrupted or fails, the hoisting motion shall cease until safe movement is ensured.

4. Hoist Rope

(a) *Grade.* Hoisting wire rope shall be extra improved plow steel or equivalent grade of nonrotating type or regular lay rope with suitable swivel.

(b) *Factor of safety.* The hoist rope shall maintain a factor of safety not less than 8.9 throughout its use for hoisting personnel or material.

(c) *Size.* The hoist rope shall be not less than one-half inch in diameter.

(d) *Installation, removal and replacement.*

(i) Wire rope shall be thoroughly inspected before the start of each job or new setup; and

(ii) During use, wire rope shall be removed and replaced with new wire rope if any of the conditions described in § 1926.552 (a)(3) for wire rope removal or severe corrosion occurs.

Attachments. The rope shall be attached to the cage, work platform or boatswain's chair by a keyed-screwpin shackle or positive locking link.

(f) *Wire rope fastenings.* Where clip fastenings are used:

(i) Table H-20 of § 1926.251 shall be used to determine the number and spacing of clips;

(ii) There shall be at least three drop-forged clips used at each fastening;

(iii) Clips shall be installed with the "U" of the clips on deadend of rope; and

(iv) Spacing clip-to-clip shall be six times the diameter of the rope.

5. Footblocks

(a) *Type of block.* The footblocks shall be:

(i) Construction-type blocks of solid single-piece bail or an equivalent block with roller bearing and a safety factor of four times the safe workload;

(ii) Designed for the applied loading, size and type of rope being used;

(iii) Designed with a guard to ensure containment of the rope within the sheave groove;

(iv) Rigidly bolted down; and

(v) Designed and installed so that they turn the moving rope to and from the horizontal or vertical for appropriate change of direction of rope travel.

(b) *Directional change.* The change from the horizontal direction of the hoist rope at the footblock to the vertical direction shall be approximately 90°.

(c) *Diameter.* The line diameter of the footblock shall be not less than 24 times the rope diameter. (Note: This diameter to diameter ratio for rope to sheave size is predicated on regular inspection of the rope and immediate discard from the system when any one of the conditions mentioned in § 1926.552(a)(3) is observable.)

6. Cathead and Sheaves

(a) *Qualifed competent person.* A qualitied competent person shall be reponsible for the design and maintenance of the cathead (overhead structure).

(b) *Support.* The cathead shall consist of a wide flange beam or two steel channel sections securely bolted to back-to-back to prevent spreading.

(c) *Installation.* All sheaves shall revolve on shafts which rotate on the bearings. Bearings shall be securely mounted to maintain proper bearing position at all times.

(d) *Sheave safeguards.* Each sheave shall be provided with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves in case there is abnormal vibration or swing of the hoist rope.

(e) *Diameter.* The cathead sheaves shall have a minimum diameter equal to 24 times the diameter of the rope when the rope travels on the sheave at an angle of 90° (see note to 5(c)).

7. Guide Ropes

(a) *Number of cables.* Two guide ropes (steel safety cables not less than one-half inch in diameter) shall be fixed by swivels to the cathead and shall be free of damage or defect at all times.

(b) *Cable fastening and alignment tension.* One end of each cable shall be securely and suitably fastened to the overhead support, with appropriate tension applied at the foundation.

(c) *Safety clamps.* Safety clamps shall be appropriately designed and constructed to fit the guide ropes.

(d) *Application of tension.* The clamping device used for tension shall be a type that will not damage the ropes.

(e) *Height.* The guide ropes shall run the height of the structure.

8. Cage

(a) *Construction.* The cage shall be of steel frame construction.

(b) *Floor.* The floor shall be securely fastened in place with a loading factor of 4.

(c) *Walls.*

(i) The cage walls shall consist of 14 gauge ½ inch expanded metal mesh or equivalent; and

(ii) The walls shall cover the full height of the cage between the floor and the overhead covering.

(d) Roof. The roof shall be sloped and constructed of ⅛ inch aluminum or equivalent.

(e) *Overhead weight.*

(i) An overhead weight, such as a headache ball of appropriate weight, shall compensate for the weight of the hoist rope between the cathead and footblock, if required, to prevent line run; and

(ii) Provisions shall be made to restrain the movement of the overhead weight so that it does not interfere with the safe hoisting of personnel.

(f) *Enclosures.* The cage shall be permanently enclosed on the top and all sides except the entrance and exit.

(g) *Types of gates.*

(i) The gate shall guard the full height of the entrance openings; and

(ii) The gate shall be equipped with a functioning mechanical locking device to prevent accidental gate opening.

(h) *Operating procedures.* Procedures for operating the cage shall be conspicuously posted at the hoist operator's station.

(i) *Handholds.* The cage shall be equipped with handholds such as rope-grips to accommodate each occupant (rails or protrusions may pose hazards).

(j) *Capacity.* The rated capacity of the cage shall conform to the following:

(i) The maximum load for personnel hoisting for a two-man cage shall be two men or 500 pounds, and for a four-man cage it shall be four men or 1000 pounds;

(ii) The weight of the cage, its contents and all auxiliary equipment attached to the cage shall be included in the maximum rated load for material hoisting; and

(iii) A sign stating the loading capacities shall be posted in the cage, notifying employees of either the reduced rating for the specific job or the standard rating which applies when the initial job drop tests have been performed without damaging any components at 125 percent of the posted load.

9. Safety Clamps

(a) *Attachment and operation.* Safety clamps shall be attached to the cage for gripping the guide ropes and shall operate on the broken rope principle.

(b) *Function.* the safety clamps shall be capable of stopping and holding the cage at the maximum allowable speed and load.

(c) *Spring compression force.* The clamping force required for each individual hoisting system shall be pre-determined and pre-set.

(d) *Maintenance.* The safety clamp assemblies shall be kept clean and functional at all times.

10. Overhead Protection

All employees located at the base of the structure shall be protected from falling material and other debris from the elevated work platforms by an appropriate canopy or shield.

11. Emergency Escape Device

(a) *Location.* An emergency escape device shall be provided in the cage or at the bottom landing. The device shall conform to the following requirements:

(i) If the emergency escape device is stored in the cage it shall be long enough to reach the bottom landing from the highest escape point;

(ii) If the emergency escape device is stored at the bottom landing there shall be a means provided in the cage for raising the device to the highest escape point; and

(iii) Operating instructions shall be attached to the escape device.

(b) *Training.*

(i) All employees to be transported in the cage shall be instructed in the use of the emergency escape system prior to being transported; and

(ii) All employees shall be given instruction periodically in the operation of the hoisting and emergency escape systems.

12. Work Platforms and Boatswain's Chairs

(a) *Work platform.*

(i) A work platform with 42-inch high enclosure may be used to raise and lower employees whenever it is not feasible to use the cage;

(ii) The work platform shall have overhead protection wherever there is an overhead hazard;

(iii) The employer shall comply with the applicable scaffolding strength factor provisions in §§ 1926.451(a)(7) and (a)(19).

(b) *Boatswain's chair.* A boatswain's chair shall only be used when the use of a cage or work platform is not feasible.

(c) *Hoisting cable.* A hoisting cable shall be substituted for the block and falls required by § 1926.451(1)(5) on structures over 200 feet to provide an employee who is suspended in the boatswain's chair with a safe method of controlling ascent, descent and stopping location.

(d) *Safety belts and lifelines.*

(i) An employee riding on the work platform or in the boatswain's chair shall be equipped with a safety belt and lifeline in accordance with § 1926.104 and the applicable provisions of § 1926.451(1); and

(ii) The employer shall ensure wearing of safety belts secured to lifelines prior to the employee use of the work platform and boatswain's chair.

13. Inspection

(a) Inspection shall be consistent with §§ 1926.20 and 1926.552(c)(15), except the first drop tests shall be 125 percent of the rated capacity. Subsequent drop tests may be at 100 percent of the rated capacity.

(b) Visual inspection shall be performed daily on the hoisting system.

14. Welding

All field welding shall be done by qualified welders in accordance with § 1926.556(b)(5).

Zurn Industries, Inc. shall notify all affected employees of the terms of this variance by the same means required to inform them of the variance application.

Effective Date: This order shall become effective on June 12, 1987, and shall remain in effect unless modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, DC, on this day of June 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87-13503 Filed 6-11-87; 8:45 am]

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Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 87-50; Exemption Application No. D-6746 et al.]

Grant of Individual Exemptions; Samuel Francis Ross, Jr., Keogh Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Samuel Francis Ross, Jr. Keogh PLan, Profit Sharing retirement Plan (the Plan) Located in Belleville, Illinois

[Prohibited Transaction Exemption 87–50; Exemption Application No. D–6746]

Exemption

The application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan by the Plan of the lesser of $19,341 or 25% of the Plan's assets (the Loan) to Samuel Francis Ross, Jr. (Mr. Ross), a disqualified person with respect to the Plan, provided that the terms of the Loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the Loan.*.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1987 at 52 FR 11774.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Wells Fargo Bank, N.A. (the Bank) Located in San Francisco, CA

[Prohibited Transaction Exemption 87–51; Exemption Application No. D–6770]

Exemption

The restrictions of section 406(b)(2) of the Act and shall not apply to: (1) The purchase and sale of stocks between collective investment index funds (the Index Funds) sponsored by the Bank; (2) the purchase and sale of stocks between the Index Funds and various Model-Driven collective investment funds (the Model-Driven Funds; (3) the purchase and sale of stocks between Model-Driven Funds; and (4) the purchase and sale of stocks between Index or Model-Driven funds and various large pension plans, under the terms and conditions set forth in the notice of proposed exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1987 at 52 FR 11774.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Sterling-Rock Falls Clinic Self-Employed Retirement Trust (the Plan) Located in Sterling, Illinois

[Prohibited Transaction Exemption 87–52; Exemption Application No. D–6878]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash by the Plan of an undivided Three-Fourths interest in certain real property (the Three-Fourths Interest) from the individual account of John R. Erickson, M.D. (Dr. Erickson), a party in interest with respect to the Plan, to Dr. Erickson, provided that the price paid is no less than the greater of the fair market value of the Three-Fourths Interest on the date of sale or the total expenses to the Plan in connection with the acquisition and holding of the Three-Fourths Interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 21, 1987 at 52 FR 13152.

For Further Information Contact: Joseph L. Roberts of the Department, telephone (202) 523–8194. (This not a toll-free number.)

C. Fred Deuel & Associates, Inc. Profit Sharing Plan (the Plan) Located in St. Petersburg, Florida

[Prohibited Transaction Exemption 87–53; Exemption Application No. D–6886]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale on August 29, 1983 of a certain parcel of improved real property (the Property) to Mr. C. Fred Deuel, a party in interest with respect to the Plan, for $42,300, provided that such amount was not less then the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1987 at 52 FR 11781.

Effective Date: The effective date of this exemption is August 29, 1983.

* The applicant represents that Mr. Ross is the sole participant in the Plan (a Keogh plan). Accordingly, there is no jurisdiction under Title I of the Act pursuant to 20 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Simpson Manufacturing Co., Inc. Profit Sharing Plan (the Plan) Located in San Leandro, California

[Prohibited Transaction Exemption 87-54; Exemption Application No. D-7002]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of a parcel of real property located at 1450-1532 Doolittle Drive, San Leandro, California (the Property) to Simpson Manufacturing Co., Inc., for $2,500,000 in cash, including the repayment by the Plan of the loan financing the Property to Bank of America N.T. & S.A., provided the sales price was not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1987 at 52 FR 11783.

Effective Date: This exemption is effective December 22, 1986.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Albion National Bank Profit Sharing Plan (the Plan) Located in Albion, NE

[Prohibited Transaction Exemption 87-55; Exemption Application No. D-7056]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective August 17, 1984, to the past cash sale on August 17, 1984, by the Plan of 3000 shares of the stock (the Stock) of Packers Service Group, Inc. and Packers Management Company, to Elaine S. Wolf, a party in interest with respect to the Plan, for $126,000, provided that the sales price was no less than the fair market value of the Stock on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 17, 1987 at 52 FR 8379.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Richard F. Pawlowski, M.D., P.C. Defined Benefit Pension Plan (the Plan) Located in Carmichael, California

[Prohibited Transaction Exemption 87-56; Exemption Application No. D-7086]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of a certain parcel of unimproved real property (the Property) to Dr. and Mrs. Richard F. Pawlowski, disqualified persons with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of its fair market value on the date of the Sale or the price originally paid by the Plan plus its holding costs.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 21, 1987 at 54 FR 13157.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/ or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/ or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of June 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations Pension and Welfare Benefits Administration, U.S. DEPARTMENT OF LABOR.

[FR Doc. 87-13513 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6757 et al.]

Proposed Exemptions; David L. Smith Trust Fund-Profit Sharing Plan et al.

AGENCY: Pension and Welfare benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearings

All interested persons are invited to submit written comments or requests for a hearing on the pending examptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public

Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secrearty of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

David L. Smith Trust Fund-Profit Sharing Plan (the Plan) Located in Ramona, California

[Application No. D-6757]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed lease by the Plan of certain real property to David L. Smith (Mr. Smith) dba SMV Insurance Agency, a disqualified person with respect to the Plan*, provided that the terms and provisions of the lease are no less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated third party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan in which Mr. Smith, a self-employed independent insurance broker in Ramona, California, doing business as SMV Insurance Agency, is the sole participant. As of June 25, 1986, the Plan had assets of approximately $185,000. The Plan trustee is San Diego Trust and Savings Bank of San Diego, California.

2. On February 21, 1986 the Plan purchased three identical office buildings located in Ramona, California, from John and Louise De Kock, unrelated third parties, for $150,000, paying $55,00 in cash, with the remainder secured by a first trust deed fully amortized over fifteen years at 10% interest per annum.

3. The applicant proposes that the Plan lease one of those office buildings, located at 326 Sixth Street, Ramona, California (the Real Property), to Mr. Smith for $500 per month with an increase in the monthly payments, beginning on January 1 of each year, equal to the increase in the Consumer Price Index (CPI) for the 12 months ending on the preceding October 1st. The term of the proposed lease would be for a period of five years, with the Plan having the right to grant a two-year renewal option.

4. On November 17, 1986, Rosemary McDowell of Century 21 Consultants, Inc., a real estate firm doing business in San Diego, California, estimated the value of the Real Property at $48,833. In reaching this conclusion she estimated fair market rental for the Real Propery to be $500 per month. On May 28, 1986, Helen Johnson, Broker Owner of Century 21 San Vicente, a real estate firm doing business in Ramona, California, stated that she believed the fair and equitable rental value of the Real Property to be $500 per month.

5. Inasmuch as the estimated value of the Real Property was $48,833 as of November 17, 1986, or 26.4% of the Plan assets, the Department proposes granting this exemption subject to the express condition that the value of the Real Property represent no more than 25% of the Plan assets as of the date of the beginning of the proposed transaction.

6. The applicant represents that there have been no participants in the Plan other than Mr. Smith, and that if there are ever any other employees eligible to be participants under the Plan, another plan with comparable benefits will be established for them.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Plan will receive the fair market rental value for the Real Property as established by the two realtors' appraisals cited above over the term of leases; (b) the lease provides for periodic adjustments on the first day of January of each year of an amount equal to the increase in the CPI for the year ending on the preceding October 1st; (c) the transaction involves the Real Property valued at no more than 25% of the Plan's assets.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Sweeney, Ferrari Endodontic Associates Profit Sharing Plan (the Plan) Located in Pittsburgh, PA

[Application No. D-6894]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) the proposed cash sale by Dr. and Mrs. James E. Sweeney (the Sweeneys) of an undivided one-half interest in a parcel of unimproved real property (Lot 2), for the total consideration of $20,000, to Dr. Sweeney's individual account (the Account) in the Plan, provided the amount paid is not greater than the fair market value of the interest in Lot 2 on the date of the sale; and (2) the proposed cash sale by the Account of an undivided one-half interest in another parcel of unimproved real property (Lot 3), for the total consideration of $22,000, to the Sweeneys, provided the amount paid is not less than the fair market value of the interest in Lot 3 on the date of the sale.

Summary of Facts and Representations

1. The Plan, which provides for participant-directed investments, is a profit sharing plan with four participants

* Since Mr. Smith, a self-employed individual, is the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

and total assets of $667,239 as of July 31, 1986. Also, as of July 31, 1986, the total assets in Dr. Sweeney's Account in the Plan were approximately $204,046. The trustees of the Plan are Dr. Sweeney and two of his associates. Dr. Sweeney, an endodontist, maintains his dental practice in the Pittsburgh, Pennsylvania metropolitan area.

2. On June 10, 1968, the Sweeneys commenced purchasing certain unencumbered property located on a private road off Old William Penn Highway in the Penn Hills Township of Allegheny County, Pennsylvania. The Sweeneys, who are the exclusive owners of another parcel of land also located in the same area and identified as Lot 1, acquired undivided one-half interests in Lots 2 and 3 and a 40 percent interest in Lot 4 from members of the Vasilo S. Bukes Family (the Bukes), who are unrelated parties, for the total consideration of $63,500. On April 15, 1971, the Sweeneys purchased another 40 percent interest in Lot 4 from Peter and Ero Strategos, also unrelated parties. On April 25, 1977, the Account purchased undivided one-half interersts in Lots 2 and 3 and a 20 percent interest in Lot 4 from the Bukes for $19,000.*

3. On November 26, 1986, the Account sold to the Sweeneys its interest in Lot 4 for $7,500, a price which was less than the fair market value of the subject parcel. The Sweeneys acknowledge that their purchase of the Account's interest in Lot 4 constituted a prohibited transaction in violation of the Act. Accordingly, the Sweeneys represent that they will pay the Internal Revenue Service (the Service) all excise taxes that are applicable under section 4975(a) of the Code within 30 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption. In addition, the Sweeneys represent that they will pay the Account the difference between the fair market value of the interest in Lot 4 and the sales price of such interest.

4. During the period it co-owned Lot 4 with the Sweeneys and since the time of its continued ownership with the Sweeneys of the interests in Lots 2 and 3, the Account has not permitted its holdings in any of properties to be used or leased by anyone, including parties in interest. Until 1983, the Account paid real estate taxes totaling $1,611 for its interest in the properties. In 1984 and 1985, the real estate taxes were paid by the Sweeneys. In 1986, the Account again resumed its payment of real estate taxes. The taxes for that year were $897.

5. To facilitate the complete ownership of Lot 2 by the Account, an exemption is requested to permit the Sweeneys to sell their undivided one-half interest in Lot 2 to Dr. Sweeney's Account. An exemption is also requested to permit the Account to sell its undivided one-half interest in Lot 3 to the Sweeneys. Both transactions will involve lump sum cash payments. In addition, Dr. Sweeney's Account will not be required to pay any real estate fees or commissions in connection with the proposed transactions.

6. The Real Property was appraised by Mr. William W. Reilly (Mr. Reilly), S.R.P.A., M.A.I., an independent appraiser affiliated with Kelly-Reilly Associates, Inc. of Pittsburgh, Pennsylvania. In an appraisal report dated August 11, 1986, Mr. Reilly placed the fair market values of Lots 2 and 3 at $40,000 and $37,000 respectively. Another independent appraiser, Mr. Dennis Cestra (Mr. Cestra), I.F.A. of Howard Hanna Company Realtors of Pittsburgh, Pennsylvania placed the fair market values of Lots 2 and 3 at $42,000 and $44,000, respectively, on August 14, 1986.

7. The Sweeneys will sell their interest in Lot 2 to the Account for $20,000 based upon the lower appraised value as determined by Mr. Reilly. The Sweeneys will purchase the Account's undivided one-half interest in Lot 3 for $22,000. This amount is based upon the higher fair market valuation for the lot that has been determined by Mr. Cestra.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale and purchase transactions will involve lump sum payments for cash; (b) the interests in Lots 2 and 3 will be sold and purchased for their fair market values as determined by two qualified independent appraisers; (c) Dr. Sweeney's Account will not be required to pay any real estate fees or commissions in connection therewith; (d) the only account in the Plan that will be affected by the proposed transactions is that of Dr. Sweeney; (e) the Sweeneys will pay the difference between the fair market value of the interest in Lot 4 and the sales price of such interest; and (f) within 30 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption, the Sweeneys will pay the Service all applicable excise taxes which may be due by reason of their purchase of the undivided 20 percent interest in Lot 4 from the Account.

Notice to Interested Persons

Because Dr. Sweeney is the only participant in the Plan whose account will be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, all written comments and requests for a public hearing are due within 30 days from the date of the publication in the **Federal Register** of the notice of proposed exemption.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Spreitzer, Inc. Profit Sharing Trust (the Plan) Located in Cedar Rapids, Iowa

[Application No. D-7094]

Proposed exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a)(1), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed loans of funds (the Loans) for a period of five years by the Plan to Spreitzer, Inc. (the Employer), sponsor of the Plan, provided such terms and conditions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party; and (2) the personal guarantee of the Loans to the Plan by Mr. Joseph Spreitzer (Mr. Spreitzer), a party in interest with respect to the Plan.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of the granting of the exemption.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with thirteen participants. The Employer and sponsor of the Plan is an Iowa corporation engaged in the selling, leasing and servicing of construction and heavy mining equipment. As of December 31, 1986 the Plan had net assets of approximately $690,921.00. Mr. Spreitzer is the Trustee of and decision-maker for the Plan with respect to Plan investments.

2. The Trustee seeks an exemption to allow the Plan to enter into a loan

* In this proposed exemption, the Department is not extending exemptive relief to transactions which may have resulted in conflicts of interest by reason of the sharing of ownership in Lots 2, 3 and 4 by the Sweeneys and the Account.

agreement (the Loan Agreement) with the Employer whereby the Plan will periodically lend to the Employer amounts of money up to an aggregate at any point in time of the lesser of $170,000 or 25% of Plan assets. The Loans will be made over a five-year period, the first day of which will be the date the grant of an exemption is published in the Federal Register. All of the proposed Loans will mature and become due and payable on or before the last day of such five-year period. Each individual Loan will have a maturity of ninety days or less. The interest rate for any Loan granted under the Loan Agreement will be 1 percent above the rate charged by the Merchants National Bank (the Bank) of Cedar Rapids, Iowa to its customers for secured prime commercial loans of ninety day maturity, but in no event less than 9% per annum. Jon M. Doll, Assistant Vice President of the Bank, has represented that the Employer is a valued customer of the Bank and that the Bank would continue to extend credit to the Employer at the Bank's prime rate plus 1% on a secured basis. Principal and interest of the Loans will be amortized equally and be payable at maturity. The applicant represents that no Loan will be made under the Loan Agreement unless its terms and conditions are at least as favorable as those which the Plan could obtain from an unrelated third party, as determined by an independent fiduciary.

3. Each Loan made during the five year period will be secured by a first lien on new and used construction and mining equipment (the Collateral). The Collateral is presently owned by the Employer and used to conduct the Employer's business operations. The Plan will have a perfected first securty interest in the Collateral through the execution and filing by the Employer of security agreements on behalf of the Plan. The Employer will pay all costs associated with the maintenance of the Collateral, including but not limited to paying all taxes, insurance premiums, repairs and storage costs. The Employer will warrant to own throughout the terms of the Loans all Collateral free from any adverse claims, security interests (other than security interests granted to the Plan) or encumbrances. The Employer represents that the Collateral is marketable and that its value is not expected to decrease appreciably over the five-year term of the Loans. The appraised market value of the Collateral will at all times during the term of the Loans be not less than 200% of the amount of the outstanding Loan balances. The fair market value of each piece of equipment comprising the Collateral will be determined by an independent appraiser to be selected by an independent fiduciary. Each appraisal will be updated annually to assure that the required value of the Collateral is maintained. If new equipment is used as collateral, its wholesale price will be deemed the appropriate value. The Collateral will be kept insured at the Employer's expense with the Plan designated as beneficiary of the insurance policy. The release of any Collateral from the Loan Agreement, such as in the event of sale or trade-in, shall require the prior approval of the independent fiduciary.

4. An independent attorney, Mr. Richard F. Nazette (Mr. Nazette) of Nazette, Hendrickson, Marner & Good in Cedar Rapids, Iowa, has been appointed as an independent fiduciary to approve, monitor and enforce the proposed Loans. Mr. Nazette represents that substantially less than 1% of his firm's business originates from the Employer. He has reviewed the needs of the Plan and the transactions as proposed and has concluded that the proposed Loans are in the best interests of the Plan. Mr. Nazette is authorized to approve or disapprove any of the Loans made under the Loan Agreement. He will monitor all terms and conditions of the Loans and will enforce collection on the Loans in the event of a default. Mr. Nazette will also monitor the value of the Collateral so that at no time during the term of the Loans will the value of the Collateral fall below 200% of the aggregate outstanding Loan balances.

5. Additionally, Mr. Spreitzer, a major shareholder of the Employer, will personally guarantee to cure any default on the Loans within thirty days of receiving notice of such default. Mr. Spreitzer has a personal net worth in excess of $1,000,000.

6. In summary, the applicant represents that the proposed transactions satisfy the criteria for an exemption under section 408(a) of the Act because: (a) Mr. Nazette, the independent fiduciary for the Plan, represents that the proposed Loans are in the best interest of the participants and beneficiaries of the Plan; (b) Mr. Nazette will approve and monitor each Loan made under the Loan Agreement; (c) the Loans will be for a relatively short duration; (d) each Loan made will have a floor of 9% per annum and will at all times be secured by fully insured Collateral which will have a value of not less than 200% of the outstanding balance of all Loans; (e) Mr. Spreitzer will personally guarantee to cure any default on the Loans within thirty days of receiving notice of such default; and (f) the Loans will represent no greater than 25% of the Plan's assets.

For Further Information Contact: Betsy Scott of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of June 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-13514 Filed 6-11-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel (Radio/Programming in the Arts Section); National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio Programming in the Arts Section) to the National Council on the Arts will be held on June 30, 1987, from 9:00 a.m.-5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel reveiw, 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 session 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.

June 8, 1987.

John H. Clark,

Director, Council and Panel Operations National Endowment of the Arts.

[FR Doc. 87-13446 Filed 6-11-87; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Humanities; Meeting(s)

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting(s) of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meeting(s) are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting(s) will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meeting(s) dated January 15, 1978, I have determined that these meeting(s) will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: July 1-2, 1987
   Time: 9:00 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review Challenge Grants applications from educational institutions, submitted to Challenge Grants Office, for projects beginning after December 1, 1987.
2. Date: July 7-8, 1987
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430
   Program: This meeting will review Challenge Grants applications from colleges, submitted to the Challenge Grants Office, for projects beginning after December 1, 1987.
3. Date: July 13-14, 1987
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430
   Program: This meeting will review Challenge Grants applications from educational institutions, submitted to the Challenge Grants Office, for projects beginning after December 1, 1987.
4. Date: July 20-21, 1987
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430
   Program: This meeting will review Challenge Grants applications from museums and historical organizations, submitted to the Challenge Grants Office, for projects beginning after December 1, 1987.
5. Date: July 27-28, 1987
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430
   Program: This meeting will review Challenge Grants applications from public education and outreach centers, submitted to the Challenge Grants Office, for projects beginning after December 1, 1987.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87-13460 Filed 6-11-87; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences, Subcommittee for Oversight Review of Astronomy Centers Section

Date and Time:
June 29, 1987—10:30 A.M.-5:00 P.M.
June 30, 1987—9:00 A.M.-5:00 P.M.
July 1, 1987—9:00 A.M.-2:00 P.M.

Place: National Science Foundation, Room 523, 1800 G Street NW., Washington, DC

Type of Meeting:
June 29 and July 1, 1987, Open
June 30, 1987, Closed

Contact Person: Dr. Kurt W. Riegel, Head, Astronomy Centers Section, Room 615, National Science Foundation, Washington, DC 20550 (202/357-9450)

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advisory appraisal of the technical, as distinct from the administrative, stewardship by the National Science Foundation of the National Astronomy Centers Program.

Agenda:

Monday, June 29

10:30 AM-5:00 PM—NSF presentations on Astronomy Centers Section activities and documentation over a 3-year period.

Tuesday, June 30

9:00 AM-5:00 PM—Committee Review of the Astronomy Centers Section, including examination of proposal jackets, peer reviews, comments, and other privileged materials.

Wednesday, July 1

9:00 AM–2:00 PM—Subcommittee discussion and draft report preparation.

Reason for Closing: The meeting will consist of review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are with exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

June 8, 1987.

[FR Doc. 87–13408 Filed 6–11–87; 8:45 am]

BILLING CODE 7555-01-M

Meeting

The Office of Science and Technology Policy, in conjunction with the National Science Foundation, announces the following meeting:

Name: Task Force of Women, Minorities, and Handicapped in Science and Technology

Date and Time: June 30, 1987 from 10 a.m. to 4 p.m.

Place: Department of Health and Human Services, Room 800, 200 Independence Avenue, SW. Washington, DC.

Type of Meeting: Open

Contact Person: Sue Kemnitzer, Executive Director, 200 Independence Avenue, SW., Room 612, Washington, DC 20201, (202) 245–6111

Minutes: May be obtained from the Executive Director.

Purpose of Meeting: Organization of the Task force.

Agenda: Discussion of purpose of Task Force, approach and organization of the work.

M. Rebecca Winkler,

Committee Management Officer.

June 8, 1987.

[FR Doc. 87–13409 Filed 6–11–87; 8:45 am]

BILLING CODE 7555-22-M

NUCLEAR REGULATORY COMMISSION

Government Accountability Project; Request for Action on the Basis of the Chernobyl Accident

Notice is hereby given that by petition dated May 1, 1987, the Government Accountability Project (GAP) and other named petitioners requested that the Commission take action on the basis of the accident that occurred at the Chernobyl nuclear reactor. Specifically, the petition requests that the NRC suspend further licensing of nuclear facilities in the United States pending a study and report of the accident at the Chernobyl plant, and that the NRC review the findings and request public comment on the report and on the applicability of the findings to facilities licensed by the NRC. The petition asserts, as grounds for ths request, that there is a similarity between Chernobyl and features of boiling water plants in the United States and that the Chernobyl accident provides important industry experience which warrants review of existing industry standards under NRC regulations. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 8th day of June 1987.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87–13507 Filed 6–11–87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of Amendments of Two Existing Systems of Records

AGENCY: Office of Personnel Management.

ACTION: Notice; publication of amendments of two existing systems of records.

SUMMARY: This notice amends two Office of Personnel Management (OPM) Government-wide (GOVT) systems of records under the Privacy Act. Those systems are OPM/GOVT-5, "Recruiting, Examining, and Placement Records;" and OPM/GOVT-10, "Employee Medical File System Records." These amendments specifically identify records arising from drug testing of applicants (OPM/GOVT-5) and employees (OPM/GOVT-10) under Executive Order 12564, as part of the laboratory test result records already included in the system.

DATE: These amendments are effective on July 13, 1987.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, Workforce Records Management Division, (202) 632–5433.

ADDRESS: The Office, while not required to solicit comments, for the reasons stated in the "Supplementary Information" section below, invites comments. Written comments on these amendments may be sent or delivered to the Assistant Director for Workforce Information, Room 5415, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION. Pursuant to section 6 of Executive Order 12564, "Drug-Free Federal Workplace," the Director, Office of Personnel Management (the Office), is required to issue Government-wide guidance to agencies on the implementation of the terms of the Order. Accordingly, the Office is modifying two of its Government-wide Privacy Act systems of records to include these records, both agency and contractor-laboratory maintained as part of these systems. As records covered by the OPM/GOVT systems of records, records arising from drug testing of applicants and employees under E.O. 12564 will be subject to the Privacy Act's requirements and the Office's directives regarding personnel records. Disclosure of drug test records under the "routine use" exception to the Privacy Act's disclosure prohibition will be limited.

The overall systems of records amended here cover millions of applicant and employee records involving numerous data elements. Because drug testing will not necessarily be performed for all applicants and all employees, and because other laboratory results are already included in the OPM/GOVT-5 and OPM/GOVT-10 systems of records, and because the drug testing information added essentially constitutes only a few data elements already covered generically by the published "Categories of Records" in these systems, the Office has determined that these amendments do not constitute any substantial change in the scope of the information being maintained nor the population covered. Therefore, these amendments do not require a "Report on New System," within the meaning of guidelines established for determining when such a report is to be filed with the Office of Management and Budget and Congress. For convenience and clarity, the Office is publishing the entire text of these notices.

Office of Personnel Management.
Constance Horner,
Director.

Accordingly, the Office gives notice of changes to the OPM/GOVT-5, (Recruiting, Examining, and Placement Records) and the OPM/GOVT-10, (Employee Medical File System Records) as indicated by *italicized text* in those notices:

OPM/GOVT-5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

SYSTEM LOCATION:

Associate Director, *Career Entry Group*, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, OPM regional and area offices, and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including names, dates of birth, social security numbers, and home addresses. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and to certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases.

This system includes such records as:

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to object/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable or preference eligible with 30 percent or more disability. (*Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.*)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals. These records are retained both by the Office and agencies acting under the Office delegated authorities.

i. Agency applicant supply file systems (when the agency retains applications, resumes, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (e.g., evidence of confirmed positive test results and copies of notices to applicants of their being rated ineligible for Federal employment because of the confirmed positive test results) or by a contractor laboratory e.g., the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

Note 1.—*With the exception of Routine Use i, none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take action affecting the individual.*

Note 2.—The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personal identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notification of a system of records pertaining to such records.

Note 3.—To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533; and Executive Orders 9397 *and 12564.*

PURPOSES:

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications

including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may he used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

With the exception of Routine Use i, none of the other Routine Uses apply to records identified in paragraph 1 of the Categories of Records in the System section of this notice. Otherwise, records in this system may be used:

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or other identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years; e.g., applicant records that are part of medical

determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, *Career Entry Group*, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to he located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 291.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification numher (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

Note.—In responding to an inquiry or a request for access or amendment, Resource Specialists may contact the Office's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied; reports from medical personnel on physical qualifications; results of examinations that are made known to applicants, agencies and Office records; and vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would:

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

a. Answer keys.
b. Assessment center exercises.
c. Assessment center exercise reports.
d. Assessor guidance material.
e. Assessment center observation reports.
f. Assessment center summary reports.
g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.
h. Item analyses and similar data that contain test keys.
i. Ratings given for validating examinations.
j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.
k. Rating sheets.
l. Test booklets, including the written instructions for their preparation.
m. Test item files.
n. Test answer sheets.

OPM/GOVT-10

SYSTEM NAME:

Employee Medical File System Records.

SYSTEM LOCATION:

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency, with another agency providing such services for the employing agency, or with private sector contractors.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal Records Storage Centers operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (e.g., up to 3 years) some records on former employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include:

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

b. Medical records, forms, and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

c. Records resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (e.g., by the agency Medical Review Official) and include records of who has been tested, who failed to report for testing, confirmed positive test results, and related documents.

Note.—Records maintained by an agency dispensary are included in the system only when they are the result of a condition of employment or related to an on-the-job occurrence.

d. Agency maintained files containing reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file, physically being maintained by the Department of Labor's Office of Workers' Compensation Program (OWCP) is part of that agency's system of records and not covered by this notice.)

e. All other medical records, forms, and reports created on an employee during his or her period of employment, including records retained on a short-term/temporary basis (i.e., those designated to be retained only while the employee is with that agency) and records designated for long-term retention (i.e., those retained for the employee's duration of Federal service and for some period of time after).

Note.—Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Programs established pursuant to 5 U.S.C. chapter 79, are *not* part of this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12107 and *12564* and 5 U.S.C. chapters 11, 31, 33, 43, 61, 63, and 83.

PURPOSES:

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

Note.—*Except for Routine Uses d and o, no other Routine Use for this system of records applies to records included in paragraph c in the Categories of Records in the System section of this notice. Further, agencies are reminded that Routine Use disclosures are permissive in nature and should be limited to only those records/portions of a record that meet the requirement of the requester.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Department of Labor, Veterans' Administration, Social Security Administration, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable diseases.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to officials of the Merit Systems Protection Board including the Office of Special Counsel, the Federal Labor Relations Authority and its general counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet JCAH standards.

k. To disclose information to the National Archives and Records Service in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

l. To disclose information to health insurance carriers contracting with the Office of Personnel Management (hereafter referred to as "the Office") to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under:

(1) Medical evaluation (formerly Fitness for Duty) examinations procedures; or

(2) Agency-filed disability retirement procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal work force.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the ensurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in automated record systems, and on file cards, X-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Some records are retained for the duration of employment with a given agency. Other records are retained for the duration of Federal employment, plus 30 years. *Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 2 years.* Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U. S. Office of Personnel Management, Room 5415, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. *Current employees.* Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required

by the agency for their records to be located and identified.

b. *Former employees.* Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF, they should submit a request to the Office's regional office nearest their residence. (See list of the Offices' regional and area office addresses in the Appendix.) Individuals submitting requests to the Office's regional and area offices must submit the following information for their records to be located and identified:

1. Full name.
2. Date of birth.
3. Social security number.
4. Name and location of agency where last employed and dates of employment.
5. Signature.

RECORDS ACCESS PROCEDURE:

a. Current employees should contact the appropriate agency office as indicated in the "Notification Procedure" section and furnish such identifying information as required by the agency to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the Office's regional or area office nearest their residence for access to their EMF. (See list of the Office's regional and area office addresses in the Appendix.) When submitting a request to the Office, the individual must furnish the following information to locate and identify the record sought:

1. Full name.
2. Date of birth.
3. Social security number.
4. Name and location of agency where last employed and dates of employment.
5. Signature.

c. Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should:

a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the record to be amended. Former employees may also submit such a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information to locate and identify the records to be amended:

1. Full name.
2. Date of birth.
3. Social security number.
4. Name and location of agency where last employed and dates of employment.
5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

a. The individual to whom the records pertain.

b. Agency employee health unit staff.

c. Federal and private sector medical practitioners and treatment facilities.

d. Supervisors/managers and other agency officials.

e. Other agency records.

[FR Doc. 87-13407 Filed 6-11-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24555; File No. SR-AMEX-87-15]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval To Proposed Rule Change

On June 2, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to apply the listing requirements for warrants under Section 105 of the Amex *Company Guide* to the listing of foreign currency warrants. The Exchange is proposing to list foreign currency warrants, which will be unsecured obligations of their issuer and subject to cash settlement in U.S. dollars during a term not to exceed approximately five years from date of issuance. Section 105 provides that the issuer of the warrants must meet the size, earnings, and distribution criteria set forth in sections 101 and 102(a), respectively, of the *Company Guide*.

The warrants that the Exchange anticipates listing at this time will be offered with a note issued under a common prospectus.[3] The notes and warrants will be offered separately and not as units. The warrants will be issued under a Warrant Agreement which will provide for settlement in U.S. dollars rather than through physical delivery of the foreign currency, during a term of approximately five years from date of issuance.[4] The warrant issuer will be an entity that has assets in excess of $100 million and that otherwise substantially exceeds the size and earnings requirements of section 101 of the *Company Guide*.

The warrants will be cash settled, based upon the value of the U.S. dollar in relation to a particular foreign currency. The first warrant to be listed will be based on the value of the Japanese yen. Generally speaking, if the value of the foreign currency on which the warrant is based falls below a pre-determined base price, the warrant can be expected to increase in value.[5] On the other hand, an increase in the value of the foreign currency relative to the U.S. dollar would tend to lessen the value of the warrants. Prior to the warrant expiration date, a holder may exercise no fewer than 2,000 warrants at any one time. All warrants not exercised two days prior to the warrant expiration date will be deemed automatically exercised on the expiration date.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] The notes will be listed pursuant to the criteria set forth in section 104 of the *Company Guide* (Bonds and Debentures).

[4] The Exchange expects that other foreign currency warrant listings may involve a term of other than five years or be sold by means other than a separate issuance of notes and warrants.

[5] While a holder of warrants, prior to the warrant expiration date, may exercise no fewer than 2,000 warrants at any one time, the Exchange states that it will provide a continuous market for the warrants, regardless of order size.

regardless of the number of warrants a person holds, except that warrants that are "out-of-the-money" at the end of the stated term will expire worthless.

Because of the unique characteristics of such foreign currency warrants, the Exchange will distribute to its membership a circular providing specific guidance to member firms regarding their compliance responsibilities when handling transactions in the warrants. The text of the circular is attached hereto as an *Exhibit*. Specifically, the circular recommends that investors in the warrants be afforded an explanation of the special characteristics and risks attendant to trading thereof, including the limitation on exercise (*i.e.*, 2,000 or more warrants). In addition, the circular recommends that warrants "be sold only to investors whose accounts have been approved for options trading." If, however, a member or member organization undertakes to effect a transaction in warrants for a customer whose account has not been so approved, such member or member organization should make a careful determination that such warrants are suitable for such customer.[6]

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(b)(5),[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Amex anticipates that nearly all trading in listed foreign currency warrants, which are securities subject to Rule 19c-3 of the Act,[8] will occur on the Amex. Transactions effected through the facilities of the Exchange will be subject to, and customers will have the protections of, Amex rules. To the extent that any trading occurs off the Exchange in the "third market", the trading will be subject to the rules of the National Association of Securities Dealers. In addition, the Exchange will issue to members a circular, discussed above, describing certain factors to be considered by members or member organizations prior to effecting transactions in foreign currency warrants for customers. More specifically, that circular will alert members to the special disclosure and suitability obligations involved in this product. Finally, the minimum size of the issuer—at least $100 million in assets—will ensure that the issuer has sufficient financial means to meet its settlement obligations.

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**. The underwriter has indicated to the Exchange that the timing of the offering is critical, in view of fluctuations in foreign currency exchange rates. Thus, the foreign currency warrants may have to be issued prior to the thirtieth day following publication of notice of the proposed rule change. It is necessary, therefore, that the Exchange inform the underwriter, in connection with its negotiation of the offering, that the warrants are eligible for Exchange listing, so that the underwriter will know that the warrants will be eligible for trading on the Exchange on the date of the offering.

It Is Therefore Ordered, pursuant to section 19(b) of the Act,[9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: June 5, 1987.

Shirley E. Hollis,

Assistant Secretary.

Exhibit—Circular to the Membership

The following securities of ——— Corporation have been approved for Exchange listing and will commence trading at a date to be announced.

- $ ——— Principal Amount of ——— % Notes due ———,
- $——— five-year cash settled [Foreign Currency] Warrants expiring ———

The above securities are being offered separately, and not as a unit, under a common prospectus. Each security will trade independent of the other with the following ticker symbols:

- *XYZ* for the Notes, and *XYZ.WS* for the Warrants.

The [Foreign Currency] Warrants have several unique characteristrics and can be expected to flucturate in value due to a number of interrelated factors, including, but not limited to, the exchange rate between the [Foreign Currency] and the Dollar. For these reasons, the Exchange recommends that [Foreign Currency] Warrant investors be afforded an explanation of the special characteristics and risks attendant to trading thereof, including the fact that, prior to the warrant expiration date, a holder may exercise no fewer than 2,000 warrants at any one time.

The Exchange recommends that [Foreign Currency] Warrants be sold only to investors whose accounts have been approved for options trading pursuant to the rules regarding standardized options trading. However, if a member or member organization undertakes to effect a transaction in Warrants for a customer whose account has not been approved for options trading and who, for some reason, does not wish to open an options account, such member or member organization should make a careful determination that such Warrants are suitable for such customer.

Any questions regarding this matter should be directed to ——— at 306–———.

[FR Doc. 87-13461 Filed 6-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24560; File No. SR-CBOE-87-10]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on March 6, 1987, submitted to the Securities and Exchange Commission ("Commission") a proposed rule amendment relating to hand signals in the OEX pit.[3]

The proposal was published for comment in Securities Exchange Act Release No. 24396 (April 27, 1987), 52 FR 16011. No comments were received.

The proposed amendment to CBOE Rule 6.24 would allow the Exchange to

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[6] *See* Amex Rules 411 (Duty to Know and Approve Customers) and 923 (Suitability). In this regard, the Commission expects that member organizations, before effecting transactions in these warrants for an account, will evaluate the various factors used to determine whether an account is suitable for options trading. The Commission notes further that an account which is not approved for options trading generally would be appropriate for trading foreign currency warrants to the extent that the account satisfies the general options suitability requirements. *See* Letter from Richard G. Ketchum, Director Division of Market Regulation, to Benjamin D. Krause, Senior Vice President, Securities Division, American Stock Exchange, and Robert B. Hidden, Esquire, Sullivan and Cromwell, dated April 21, 1987.

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] 17 CFR 240.19c-3 (1986).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30-3(a)(12) (1986).

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b-4 (1986).

[3] "OEX" is the Exchange symbol for the Standard & Poor's 100 index option contract.

exempt options classes from the current requirement that any initiation, cancellation or change of an order relayed to a floor broker by hand signal also must be relayed to the floor broker in written form. In addition, for any such exempted class, the record-keeping obligation would lie with the exchange member signalling the order by hand signal. Under the CBOE proposal, the OEX option would be the only exempt options class.

The proposed rule amendment is designed to avoid unnecessary confusion and congestion in the OEX pit. Because of the large volume of OEX trading, a floor broker who receives a written order that follows up a hand signal order may think he or she has received a new order. The elimination of the requirement that written follow-up tickets be relayed to floor brokers should help to reduce this confusion. The elimination of the ticket delivery requirement also should help to reduce the congestion in the OEX pit, which routinely contains more than 400 traders.

All other reporting duties would continue to apply in the OEX pit, so that there would be hard copies of the order and the order would be reported properly. The member who signals the order by hand would be obligated to record the entry time, the execution time and any other information required to be on the order ticket.

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 rule amendment should facilitate transactions in OEX and reduce confusion and congestion in the OEX pit.

It Is Therefore Ordered, pursuant to section 19(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.

Dated: June 5, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-13462 Filed 6-11-87; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78f (1984).

[5] 15 U.S.C. 78s(b)(2) (1984).

[Release No. 34-24557; File No. SR-NASD-87-5]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 10, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend subsection (c) of section 35, Article III of the NASD's Rules of Fair Practice. The proposal would require NASD members to file all advertising and sales literature concerning public direct participation programs within 10 days after its first use or publication, and would recommend that members file this material *before* its use. The amendment would exempt members from the filing requirement where the advertising or sales literature has been filed by the sponsor, general partner, or underwriter of the program, or by another member.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 34-24272, March 26, 1987), and by publication in the **Federal Register** (52 FR 10648, April 2, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Dated: June 5, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-13463 Filed 6-11-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-16714]

Application and Opportunity for Hearing; Citicorp

June 9, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and two pooling and servicing agreements, each dated February 1, 1987, under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under any of such indentures or the agreements. Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of the same obligor upon the indenture securities are outstanding.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures under which the Applicant is the obligor. The indenture dated February 15, 1972 involved the issuance of floating rate notes due 1989; the indenture dated March 15, 1977 involved the issuance of various series of unsecured and unsubordinated notes; the indenture dated August 25, 1977 involved the issuance of rising-rate notes, Series A; and the indenture dated April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statement Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Act. The four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes."

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On Februry 19, 1987, the Trust Company entered into a Pooling and Servicing Agreement dated February 1, 1987 (the "1987-C Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under

which there were issued on February 19, 1987 Mortgage Pass-Through Certificates, Series 1987–C 8.50% Pass-Through Rate (the "Series 1987–C Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987–C Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $101,690,745.27 at the close of business on February 1, 1987, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987–C Certificates. On February 19, 1987, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1987–C Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987–C Certificates, to be liable for 7.25% of the initial aggregate principal balance of the 1987–C Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987–C Guaranty. The 1987–C Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987–C Guaranty would rank on a parity with the obligations evidenced by the Notes. The series 1987–C Certificates were registered under the Securities Act of 1933 (registration statement on Forms S–11 and S–3, File No. 33–6358) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the 1933 Act. The Series 1987–C Certificates were offered by a prospectus supplement dated January 22, 1987, supplemental to a prospectus dated November 7, 1986. The 1987–C Agreement has not been qualified under the Act.

(4) On February 24, 1987 the Trust Company entered into a pooling and servicing agreement dated February 1, 1987 (the "1987–D Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on February 24, 1987 Mortgage Pass-through Certificates, Series 1987–D 8.50% Pass-through Rate (the "Series 1987–D Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987–D Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $124,644,240.22 at the close of business on February 1, 1987 which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987–D Certificates. On February 24, 1987 Applicant entered into a guaranty of even date (the "1987–D Guaranty") pursuant to which applicant agreed, for the benefit of the holders of the Series 1987–D Certificates, to be liable for 8.0% of the initial aggregate principal balance of the 1987–D Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987–D Guaranty. The 1987–D Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987–D Guaranty would rank on a parity with the obligations evidenced by the Notes.

The Series 1987–D Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–6358) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1987–D Certificates were offered by a prospectus supplement dated February 11, 1987 supplemental to a prospectus dated February 11, 1987. The 1987–D Agreement has not been qualified under the Act.

(5) The obligations of Applicant under the Indentures and the 1987 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1987 Guarantees are unlikely to cause any conflict of interest in the trusteeship of the Trust Company under the Indentures and 1987 Agreement.

(6) The Applicant has waived notice of hearing, and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matter of fact and law asserted, all persons are referred to said application, File No. 22–16714, which is public document on file in the office of Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is further given that an interested person may, not later than July 3, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application that he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–13464 Filed 6–11–87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM–8/1086]

Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 7, 1987, at 10:00 a.m. in Room 856, (Commission Meeting Room) of the Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

The purpose of this meeting is to review the actions taken at the Fourth Meeting of the Preparatory Committee of the World Administrative Telegraph and Telephone Conference (PC/WATTC) held in Geneva April 27–1 May, 1987 and to discuss any recommendations for future WATTC activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Co-chairman. Admittance of public members will be limited to the seating available.

If you have any questions please contact Glenn E. deChabert (202) 632 3214.

Dated: June 5, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87–13447 Filed 6–11–87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 43343; Notice 87-12]

Electronic Tariff System; Advisory Committee Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Department announces the second meeting of the Electronic Tariff System Advisory Committee to be held on June 30, 1987, in Washington, DC. The agenda for this meeting includes discussion of initiatives set forth at the April 22-23 meetings of two Subcommittees established by the Committee to study various issues involved in the development of the Electronic Tariff System (ETS), as well as other issues within the scope of the current rulemkaing (50 FR 33452). The meeting will be open to the public.

DATE: The Advisory Committee meeting will commence on June 30, 1987, at 1:00 p.m.

ADDRESS: The Advisory Committee meeting will be held in Room 0234 at 400 7th Street SW., Washington, DC. Comments should be sent to the Docket Clerk, C-55, Docket 43343, Department of Transportation, Room 4107, 400 7th Street SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time- and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Desta McDowell or Thomas G. Moore, Tariffs Division, Office of International Aviation, 400 7th Street SW., Washington, DC 20590. Telephone: (202) 366-2414.

SUPPLEMENTARY INFORMATION: The Department of Transportation's Electronic Tariff System Advisory Committee will meet at 1:00 p.m. on June 30, 1987, in Conference Room 10234 at the Department's Headquarters Building, 400 7th Street SW., Washington, DC.

The Advisory Committee was established in November of 1986 (51 FR 42327) to advise the Department on the study, development, and operation of an automated tariff filing system. The Committee includes representatives of airlines, airline associations, tariff agents, consumer groups, and the information industry. The Committee held its first meeting on March 24 and 25, 1987. At that meeting, two Subcommittees were formed (Posting Requirements and Technical/Data Base Issues) to study issues involved in the Electronic Tariff System and report their findings to the full Committee. Meetings of the Subcommittees were held at DOT headquarters on April 22 and 23, 1987.

The agenda for this meeting consists primarily of a discussion of the recommendation of the Posting Requirements Subcommittee which was reached at the April meeting, that the Department modify tariff posting requirements. The work in progress of the Technical/Data Base issues Subcommittee will also be discussed.

The meeting will be open to public observation. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes for each individual. Public comments regarding Committee affairs may be submitted at any time before or after the meeting. Limited seating will be available for the public (including media representatives) on a first-come, first-served basis.

Dated: June 8, 1987.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-13450 Filed 6-11-87; 8:45 am]

BILLING CODE 4910-62-M

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held Monday, July 20, 1987, at 5;30 p.m. at the Los Angeles Airport Hilton & Towers, 5711 W. Center Blvd., Room: Catalina A, Los Angeles, CA 90045. The agenda for the meeting is as follows:

—Update on OSDBU Program Initiatives
—OSDBU Outreach/Marketing Efforts
—Status of Surface Transportation Assistance Act of 1987

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statemens should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Josie Graziadio, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-1930. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 8, 1987.

Amparo B. Bouchey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 87-13451 Filed 6-11-87; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 9, 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, DC 20220.

Internal Revenue Service

OMB Number: 1545-0184
Form Numbers: 4797
Type of Review: Revision
Title: Gains and Losses from Sales or Exchanges of Assets Used in a Trade or Business and Involuntary Conversions
Description: Form 4797 is used by taxpayers to report sales, exchanges or involuntary conversions of assets, other than capital assets, and involuntary conversions of capital assets held more than one year. It is also used to compute ordinary income from recapture and the recapture of prior year section 1231 losses.
Respondents: Individuals, Farms, Businesses
Estimated Burden: 4,049,353 hours

OMB Number: 1545-0214
Form Numbers: 5695
Type of Review: Revision
Title: Residential Energy Credit Carryforward
Description: This form is used by individual taxpayers to claim any unused residential energy credit carryforward the taxpayer may have from previous tax years.
Respondents: Individuals
Estimated Burden: 20,348

OMB Number: 1545-0222

Form Numbers: 6047
Type of Review: Reinstatement
Title: Windfall Profit Tax
Description: The IRS uses Form 6047 to determine if filers have correctly computed the windfall profit tax on domestically produced crude oil.
Respondents: Businesses
Estimated Burden: 188,763 hours

OMB Number: 1545–0228
Form Numbers: 6252
Type of Review: Revision
Title: Computation of Installment Sale Income
Description: Information is needed to figure and report an installment sale for a casual or incidental sale of personal property, and a sale of real property by someone not in the business of selling real estate. Data is used to determine whether the installment sale has been properly reported and the correct amount of profit included in income on the taxpayer's return.
Respondents: Individuals, Farms, Businesses, Non-profit institutions
Estimated Burden: 320,320 hours

OMB Number: 1545–0712
Form Numbers: 6198
Type of Review: Extension
Title: Computation of Deductible Loss From an Activity Described in Section 465(c)
Description: Internal Revenue Code section 465 requires taxpayers to limit their at risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.
Respondents: Individuals, Farms, Businesses
Estimated Burden: 76,755 hours
Clearance Officer: Garrick Shear, (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

U.S. Savings Bond Division

OMB Number: 1535–0001
Form Number: SB–60; SB–60A
Type of Review: Extension
Title: United States Savings Bonds Payroll Savings Report
Description: The total number of payroll savers is determined from reports SB–60 and SB–60A competed by companies that offer sale of Savings Bonds through Payroll Savings Plans. Total number of savers is used in budget formulation and measure of program effectiveness.
Respondents: State or local governments, Businesses
Estimated Burden: 28,889 hours
Clearance Officer: William L. McCarney, (202) 634–5295, U.S. Savings Bonds Division, Room 219, Vanguard Building, 1111 20th Street, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Comptroller of the Currency

OMB Number: 1557–0120
Form Number: None
Type of Review: Extension
Title: Securities Offering Disclosure Rules
Description: The offering circular is the disclosure document used by a bank making a public offering of its own securities. It includes all material facts relating to the bank and the securities being offered.
Respondents: Businesses
Estimated Burden: 2,105 hours
Clearance Officer: Eric Thompson, (202) 447–1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Fishman, (202) 395–7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 87–13515 Filed 6–11–87; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 113
Friday, June 12, 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

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 16, 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: 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. Summary Prior Approval Items
2. Policy Directives: Consideration of FCA's Position Concerning Reserve Accounting for System Loan Losses Under the Tax Reform Act of 1986

*3. Discussion of the Fulbright and Jaworski Report

*4. Review of Financial Condition of Farm Credit System Institutions and Consideration of Certifying to the Treasury That the System is in Need of Financial Assistance

*5. Examination and Enforcement Matters

* Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–13574 Filed 6–10–87; 1:11 pm]

BILLING CODE 6705-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, June 22, 1987.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *Venrick* v. *Office of Personnel Management*, MSPB Docket No. DE8318610267.
2. *Harris* v. *Office of Personnel Management*, MSPB Docket No. DA831M8710030.
3. *Slater* v. *Office of Personnel Management*, MSPB Docket No. AT831M8610577.
4. *Kamount* v. *Office of Personnel Management*, MSPB Docket No. DA831M8610545.
5. *Eaton* v. *Office of Personnel Management*, MSPB Docket No. DA831M8610424.
6. *Denney* v. *Office of Personnel Management*, MSPB Docket No. DE0831M8610077.
7. *Schacherer* v. *Office of Personnel Management*, MSPB Docket No. CH831M8610217.
8. *Moore* v. *Office of Personnel Management*, MSPB Docket No. DC831M8610193.
9. *Foster* v. *Office of Personnel Management*, MSPB Docket No. DA831M8610035.
10. *Hildebrandt* v. *Office of Personnel Management*, MSPB Docket No. AT831M8610116.
11. *Dunham* v. *Office of Personnel Management*, MSPB Docket No. AT831M8610845.
12. *Fusco* v. *Office of Personnel Management*, MSPB Docket No. PH831M8610647.
13. *Petrone* v. *Office of Personnel Management*, MSPB Docket No. SL831M86104880.
14. *Harrison* v. *Office of Personnel Management*, MSPB Docket No. PH831M8610595.
15. *Carroll* v. *Office of Personnel Management*, MSPB Docket No. DE08318610386.
16. *Greenberg* v. *Office of Personnel Management*, MSPB Docket No. SE831M8610320.
17. *Aguon* v. *Office of Personnel Management*, MSPB Docket No. SF831M8610745.
18. *McGuffin* v. *Office of Personnel Management*, MSPB Docket No. SF831M8610560.
19. *Hatfield* v. *Office of Personnel Management*, MSPB Docket No. DE08318610133.
20. *Derrico* v. *Office of Personnel Management*, MSPB Docket No. DC831M8610440.
21. *Fisher* v. *Office of Personnel Management*, MSPB Docket No. NY831M8610071.
22. *Mason* v. *Office of Personnel Management*, MSPB Docket No. CH831M8610551.
23. *Clinton* v. *Office of Personnel Management*, MSPB Docket No. DA831M8710035.
24. *Newcomb* v. *Office of Personnel Management*, MSPB Docket No. SF831M8610210.
25. *Wilson* v. *Office of Personnel Management*, MSPB Docket No. SF831M8510977.
26. *Branch* v. *Office of Personnel Management*, MSPB Docket No. AT831M8610274.
27. *Allison* v. *Office of Personnel Management*, MSPB Docket No. AT831M8610486.
28. *Schirmer* v. *Office of Personnel Management*, MSPB Docket No. DC831M8610342.
29. *Partridge* v. *Office of Personnel Management*, MSPB Docket No. DA831M8610484.

TIME AND DATE: 10:00 a.m., Friday, June 26, 1987.

PLACE: Eighth Floor, 1120 Vermont Avenue, N.W., Washington, D.C. 20419

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *Walsh* v. *U.S. Postal Service*, MSPB Docket No. DC07528510422.
2. *Alex* v. *U.S. Postal Service*, MSPB Docket No. SF07528610009.
3. *Brinkley* v. *Veterans Administration*, MSPB Docket No. SL07528610181.
4. *Gunn* v. *U.S. Postal Service, MSPB Docket No. CH07528610422.*
5. *McCaffrey* v. *U.S. Postal Service*, MSPB Docket No. PH07528610112.
6. *Hougins* v. *U.S. Postal Service*, MSPB Docket No. PH07528610373.
7. *Dougherty* v. *Department of Treasury*, MSPB Docket No. DC07528510576.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Date: June 10, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87–13579 Filed 6–10–87; 1:12 pm]

BILLING CODE 7400-01-M

Corrections

Federal Register
Vol. 52, No. 113
Friday, June 12, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 866, 868, 876, and 890

[Docket No. 87N-0317]

Medical Devices; Clarifications of Effective Dates of Requirement for Premarket Approval for Class III Devices

Correction

In rule document 87-10472 beginning on page 17732 in the issue of Monday, May 11, 1987, make the following corrections:

§ 866.3 [Corrected]

1. In § 866.3, on page 17734, in the first column, in paragraph (b), in the fifth line, "substantially" was misspelled; and in paragraph (c), in the fourth line, the section citation should read "520(l)".

§ 868.1120 [Corrected]

2. On page 17735, in the first column, in § 868.1120(c), in the fourth line, the section citation should read "§ 868.3.".

§ 876.1 [Corrected]

3. On page 17737, in the third column, in § 876.1(d), in the third line, "Chapter I to" should read "Chapter I of".

§ 890.3890 [Corrected]

4. On page 17742, in the second column, in § 890.3890(c), in the first line, "or" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-930-07-4220-10; NM NM-35829]

New Mexico; Withdrawal of Lands Under Section 2 of the Military Lands Withdrawal Act of 1986, McGregor Range

Correction

In notice document 87-11551 beginning on page 18960 in the issue of Wednesday, May 20, 1987, make the following land description corrections:

1. On page 18960, in the second column, the 16th line should read:

Sec. 18, lots 3, 4, E½, and E½SW¼;

2. On the same page, in the third column, the first line should read:

Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;

3. On page 18961, in the second column, the 30th and 31st lines from the bottom of that column should read:

Sec. 31, lots 1 to 5, inclusive, N½NE¼, and NE¼NW¼;

4. On page 18962, in the second column, the 26th to the 29th lines should read:

Sec. 31, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 33, lots 1, 2, 3, 4, N½, and N½S½;

5. On the same page, in the same column, the 32nd and the 33rd lines should read:

Sec. 35, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 36, lots 1, 2, 3, 4, N½, and N½S½;

6. On the same page, in the third column, the 20th line should read:

Sec. 2, S½,

7. On page 18963, in the first column, the 29th line should read:

Sec. 26, SW¼NE¼, and E½SE¼;

8. On the same page, in the same column, after the 43rd line, insert:

Sec. 6, lots 1 to 14, inclusive, E½SW¼, and SE¼;

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Reader Aids; List of Libraries That Have Announced Availability of Federal Register and Code of Federal Regulations

Correction

In the List of Libraries beginning on page 10854 in the issue of Friday, April 3, 1987, make the following corrections:

1. On page 10855, in the third column, the library telephone number under District of Columbia, Office of the Federal Register, should read "(202) 523-5240".

2. On page 10864, in the third column, the telphone number under Wisconsin, Milwaukee, Milwaukee County Law Library, should read "278-4900".

BILLING CODE 1505-01-D

federal register

Friday
June 12, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Species Status for the Blackside Dace and Determination of Endangered Status for Lysimachia asperulaefolia; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Species Status for the Blackside Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the blackside dace (*Phoxinus cumberlandensis*) to be a threatened species under the Endangered Species Act of 1973 (Act), as amended. Historically, this fish likely inhabited many small cool-water streams in the upper Cumberland River System in southeastern Kentucky and northeastern Tennessee. However, primarily due to the impacts of siltation from coal mining prior to adoption of current regulations, silviculture, agriculture, and road construction, and the impacts of unregulated acid mine drainage and impoundments, the species is now restricted to short stream reaches (an estimated total of 14 stream miles) in 30 streams. Most of these streams are now threatened by many of the same factors that caused the species' original decline. Determination of threatened status implements the protection provided by the Act for the blackside dace.

DATE: The effective date of this rule is July 13, 1987.

ADDRESS: A complete file for this rule is available for public inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The blackside dace (*Phoxinus cumberlandensis*) was discovered in 1975 (a few misidentified specimens from old collections have now been found) and described by Starnes and Starnes (1978). This fish occupies streams on both public and private property in the upper Cumberland River drainage (primarily above Cumberland Falls) in Pulaski, Laurel, McCreary, Whitley, Knox, Bell, Harlan, and Letcher Counties, Kentucky; and Scott, Campbell, and Claiborne Counties, Tennessee; where it inhabits small (7 to 15 feet wide) upland streams with moderate flows. The extent of the blackside dace's historic distribution is unknown, but available records show that it has been extirpated from at least 10 streams (O'Bara 1985). Starnes (1981) reported that, based on his physical habitat evaluation, it may have existed in at least 52 other streams, but was eliminated before it was discovered in these waters. Presently, it is known from a total of only about 14 stream miles in 30 separate streams (O'Bara 1985).

The areas of Kentucky and Tennessee inhabited by the fish are rich in coal reserves and forest resources. It is believed that impacts associated with the development of these resources in the past has caused the loss of many blackside dace populations. Harker *et al.* (1980b) stated that many streams in the upper Cumberland River basin have been affected by acid mine drainage. This report further stated that the major source of pollution in the area is the excessive siltation associated with strip mining, highway construction, and poor land use. Future mining of the area's coal reserves (if not conducted in accordance with all existing regulations), increased silvicultural and agricultural activities, road and bridge construction, and other activities that are not conducted with the welfare of the species in mind are expected to further threaten the species.

The blackside dace is listed by the Kentucky Nature Preserves Commission (Harker *et al.* 1980a) as a "threatened (endemic)" species and by the Tennessee Heritage Program of the Tennessee Department of Conservation as "endangered." This small fish (less than 3 inches long) has a single black lateral stripe, a green/gold back with black specks, and a pale or sometimes brilliant scarlet belly (Starnes and Etnier 1980). The fish's fins are often bright yellow with metallic silver surrounding the base of the pelvic and pectoral fins. The species is generally associated with undercut banks and large rocks, and the better populations are found within relatively stable, well-vegetated watersheds with good riparian vegetation (Starnes 1981). Stable watersheds help maintain cool water temperatures and minimize silt to the benefit of the species. O'Bara (1985) also found that the fish's presence was apparently closely correlated with healthy riparian vegetation where canopy cover exceeded 70 percent and where stream flows were of sufficient velocity to remove silt from areas just downstream of the riffles. The fish was not found in low gradient silty streams nor in high gradient mountain tributaries. The blackside dace spawns in May and June and is thought to feed on algae, detritus, and sometimes insects (Starnes 1981).

On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that the blackside dace, along with 146 other fish species, was being considered for addition to the List of Endangered and Threatened Wildlife. On May 1, 1984 (received by the Service May 16, 1984), Mr. George Burgess, Secretary-Treasurer of the Southeastern Fishes Council, submitted a petition to list the species as threatened. The Service reviewed the petition and in the **Federal Register** of September 4, 1984 (49 FR 34878), announced its finding that the information submitted was substantial in indicating the petitioned action may be warranted. On January 4, 1985, the Service notified Federal, State, and local governmental agencies and interested parties of its review of the species' status. That notification requested information on the species' status and threats to its continued existence. Nine responses to the January 4, 1985, notification were received. Support for some measure of protection for the fish was contained in four letters, four letters outlined potential impacts on agency programs, and five letters commented on specific threats. On July 18, 1985, the Service published a notice in the **Federal Register** (50 FR 29238) concluding that the petition to list the species received from Mr. George Burgess on behalf of the Southeastern Fishes Council was warranted but was precluded from immediate proposal because of other pending actions to list, delist, or reclassify species. The blackside dace was proposed for listing as a threatened species on May 21, 1986 (51 FR 18624).

Summary of Comments and Recommendations

In the May 21, 1986, proposed rule (51 FR 18624) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted and requested to comment. At the request of Congressman Harold Rogers' office, an informal meeting was held by the Service with the Congressman's staff and individuals representing the U.S. Forest Service, Kentucky Department of Fish and Wildlife Resources, Kentucky Department of Surface Mining Reclamation and Enforcement, coal mining and logging interests, and private landowners. A newspaper notice was published in the *McCreary County*

Record on June 10, 1986, the *Independent Herald* and the *Whitley Republican* on June 12, 1986, and the *Middlesborough News* on June 14, 1986. A news release summarizing the proposed rule and requesting comments was also provided to newspapers in Kentucky and Tennessee. Fifteen written comments were received and are discussed below.

Senator Wendell Ford asked a series of questions regarding the potential effect of listing on the Commonwealth of Kentucky. His questions and the Service's response follow: *Question 1:* If habitat for blackside dace cannot be maintained under present mining regulations, could all mining be eliminated? *Response:* The Service has had numerous discussions with personnel from the Kentucky Department of Fish and Wildlife Resources, Kentucky Nature Preserves Commission, Kentucky Department of Surface Mining, plus other individuals with knowledge of the relationship between coal mining and the survival of the blackside dace. The consensus among these agencies is that the blackside dace is presently able to coexist with current coal mining regulations. Therefore, the Service believes that the species will continue to survive in watersheds where coal mining will occur as long as existing regulations which protect water quality are adhered to. If in the unlikely event the species cannot coexist with coal mining, even after all measures have been taken to reduce mining's impacts, coal mining still would not be stopped in the entire upper Cumberland River basin. At most, further restrictive measures might be necessary in those watersheds that presently contain the best populations. This would represent only a small number of watersheds. If these restrictions significantly impacted particular coal mine operators, these operators, the Governor of Kentucky, or the Office of Surface Mining could request an Endangered Species Act exemption for coal mining impacts to the blackside dace through a formal process set up by section 7(g) of the Act.

Question 2: Although agriculture, human development, and logging do not fall under the type of permitting and strict regulation that mining does, is there potential under the Act to extend regulation into these areas? *Response:* Section 7 of the Act, under which surface mining permits are reviewed for potential impacts to threatened and endangered species, addresses only Federal actions. Agriculture, human development, and logging on private lands where there are no Federal funds or permits do not come under section 7 jurisdiction. There is no authority in the Act to regulate such private activities.

Question 3: What is the affected area and what would be protected if the species is listed? *Response:* The affected area would include only those particular streams in the Cumberland River watershed where the species is known to exist. As noted above, the protection required for these habitats would be adherence to existing laws and regulations. Human activities in these streams could continue under these regulations.

Question 4: At the present time, Knox County streams are not protected; but if a stream is later found to contain the fish, does its status automatically change? *Response:* If a population is found in a new stream, that population would receive protection under the Act, and section 7 would apply to any Federal activities in the area which may affect the species.

Question 5: What is critical habitat? *Response:* Critical habitat, if officially designated for an endangered or threatened species, delineates that portion of the species' geographical range which contains physical or biological features essential for its conservation and which is judged to need special management considerations. Section 7 of the Act applies to all listed species regardless of whether critical habitat is designated or not. Critical habitat simply serves to highlight to Federal agencies the need for special care to avoid jeopardizing a threatened or endangered species. Critical habitat, like the listing of a species, does not affect State, local, or private actions unless there is a Federal involvement. Critical habitat is not designated if the Service determines that it would not be prudent to do so; such a determination has been made for the blackside dace. As stated in the proposed rule, the species is restricted to short reaches of small streams, and is very vulnerable to vandalism. Detailed maps as required by the Act for the designation of critical habitat would draw attention to these sites and further threaten the species.

Question 6: What happens later if it becomes prudent and critical habitat is designated? *Response:* As noted above, the Service has decided it is not prudent to designate critical habitat. Although in rare cases the Service has designated critical habitat after a species has been listed, we believe it would be a serious threat to the dace to ever designate its critical habitat. No such designation is expected in the future for this species.

Question 7: What is the intent of the Endangered Species Act? *Response:* For native fish and wildlife the intent of the Act is to prevent the extinction of species, to provide for the recovery of threatened and endangered species to the point where they no longer require the Act's protection, and to conserve the ecosystems upon which these species depend.

Question 8: Would designation of the dace as a threatened species result in its introduction into other streams and extend the protected areas? *Response:* If the dace is listed, as part of the recovery effort for this species the Service would likely give strong consideration to reintroducing it into historic habitat. This would be done in the context of preparing a recovery plan for the species, a process which includes agency review. The Act provides that such reintroductions can be designated as experimental populations. If so designated, these new populations are not necessarily provided with the Act's full protection, in order to foster acceptance of the reintroductions by other agencies and the public.

Question 9: Do regulations and control increase as the species declines? *Response:* Provisions of the Act regarding permits to take threatened species are less stringent than permitting requirements for endangered species. However, section 7 of the Act, which requires that Federal agencies ensure that their actions are not likely to jeopardize a federally listed species, treats threatened and endangered species the same.

Question 10: Does ultimate protection mean hands off? *Response:* If the species were to decline significantly due to the loss of existing populations, the concern for its survival would increase proportionately, but this still would not mean that all Federal activities in the watershed would jeopardize the species and should be restricted. For example, the smoky madtom (a small catfish) presently exists only in the Cherokee National Forest, Tennessee, in 6.5 miles of one stream. Various activities, including logging, still occur in this watershed without harm to the fish.

Question 11: How far can regulation go? If agriculture becomes a major threat, can farmers be told they can no longer plow their fields? *Response:* The Act does not provide the authority to regulate how private landowners farm (or otherwise manage) their lands. Other federally protected aquatic species are found in association with farm lands and farming practices have not been altered. The Service might, however, undertake an educational effort to

encourage farming practices beneficial to the blackside dace.

Question 12: Could coal mining, oil and gas drilling, and road construction be curtailed or stopped in affected areas? *Response:* It is unlikely that any of these activities could be or would be curtailed or stopped because of this listing. When the Service consults with Federal agencies regarding activities that may affect a listed species, we review all options, alternatives, modifications, and conservation measures which would allow the project to go forward to meet its objectives without jeopardizing the species' continued existence. The Service conducts thousands of consultations each year, and in nearly all cases the project objectives are met and the species are simultaneously protected. In most cases, we have found that impacts to endangered and threatened species can be eliminated or minimized with relatively minor modifications to proposed projects. The consultation process begins early in the project planning stages, while options are still available and generally before modifications become expensive. We emphasize that the purpose of the Act is not to absolutely prohibit any particular kind of activity, nor to set aside any areas as inviolate sanctuaries, but rather to ensure the continued survival and eventual recovery of the species in coexistence with human activities. Section 7 of the Act prohibits only those Federal activities which are likely to "jeopardize the continued existence of the species."

The U.S. Forest Service (USFS), Daniel Boone National Forest, provided information on the fish's distribution on USFS lands. It also expressed concern that listing would (1) have a significant effect on USFS ownership consolidation efforts and that it would need to emphasize acquisition in watersheds supporting blackside dace, (2) increase USFS requirements for program coordination, and (3) constrain USFS management efficiency because of the lack of knowledge on the species' habitat requirements. The Service concurs that listing will have some impact on USFS operations and management practices. However, as the species on USFS lands is known from only 10 small watersheds representing only a small fraction of the lands within the Daniel Boone National Forest, the Service does not believe that the listing will have a significant impact on USFS operations. The Service has also been in close contact with the USFS concerning future potential conflicts involving the species, and through our section 7 consultation and coordination efforts, we will work toward minimizing any negative impacts on USFS operations as we work toward the species' recovery. Concerning the lack of specific knowledge of the species' life history requirements, listing will increase the opportunities of obtaining funding to conduct blackside dace research.

The USFS Regional office further clarified the USFS position, commenting that it supported the listing and felt that, because of the potential threats to the species, listing would increase the prospects of recovery. The office also stated that it looked forward to working with the Service to develop management guidelines and strategies for recovery of the species.

The Tennessee Valley Authority (TVA) stated that it would support the species' listing if the Service was confident that (1) the species is not present in many other streams, (2) current populations are not outliers of more substantial populations, and (3) the species does not continue to inhabit streams receiving pollution and sediment from active or abandoned coal mines. The Service is confident that TVA's condition numbers 1 and 2 are true. Concerning TVA's position number 3, the Service agrees that the blackside dace does still survive in some streams that receive limited pollution and sediment from active or abandoned coal mines. However, data show that many streams that have received high levels of coal-related pollutants and sediment no longer support the species, and most of the streams that are impacted by coal mining and that still contain the species support only marginal populations. Therefore, the Service does not agree with TVA's conclusion that listing is unjustified if the species can withstand any degree of pollution and siltation from coal mining.

The U.S. Office of Surface Mining did not take a position for or against listing, but did state, in reference to interagency coordination measures already in place, that "We are confident that the habitat of the blackside dace will be preserved, to the extent related to mining, through this existing mechanism." The Service concurs that, through the present section 7 consultation process and by strict enforcement of existing OSM regulations, the species can coexist with coal mining activities.

The National Park Service, which manages lands containing one of the best populations, supported the listing and stated that "we look forward to working closely with you [the Service] to preserve the species." The Service appreciates the Park Service's commitment and will continue to assist in efforts to secure the species' future.

The Kentucky Department of Surface Mining Reclamation and Enforcement concurred that the species was in danger of extirpation, and further stated that "It is vital that degradation of streams within the upper Cumberland River drainage be avoided to ensure the continued existence of the blackside dace." The Department also referenced the outcome of a meeting among State and Federal natural resource agency representatives and the Service which concluded that: "In most cases coal mining in watersheds with known populations of *Phoxinus* can be accomplished without further endangering the species as long as (1) permits are conditioned to protect the immediate stream environment, (2) strict silt control measures are required, and (3) the permit conditions are adequately enforced."

The Service agrees that these measures should be sufficient in most cases to protect the blackside dace.

Support for listing the blackside dace as a threatened species was received from the Kentucky Nature Preserves Commission, Tennessee Wildlife Resources Agency, Tennessee Department of Conservation, and three private citizens. Two of the private citizens supporting the listing also provided information on potential threats to the species from coal-mined land reclamation and highway construction projects. This information may be pertinent to section 7 consultations involving such projects.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the blackside dace should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the blackside dace (*Phoxinus cumberlandensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As the blackside dace was not discovered until 1975 and relatively few historic fish collection records exist for the upper Cumberland River basin, the extent of the species'

historic range and the number of populations that may have been lost are not known. However, based on available data, it can be concluded that the species' total distribution and the size of the extant population has been substantially diminished. Starnes (1981) sampled 168 upper Cumberland River basin streams and reported the fish from only 27 streams. He concluded, based on the physical habitat requirements, that the fish could have been eliminated from at least 52 other waters before the fish's existence was known. O'Bara (1985) surveyed 193 upper Cumberland River basin sites and reported the species present in 30 streams and extirpated from 10. Most of the 30 extant populations are impacted by siltation or some other factor that seriously limits the population's size and vigor. As a result of limiting factors, O'Bara (1985) estimated that the fish now inhabits a total of about 14 stream miles in the 30 streams, and he considered only 9 streams (about 8 stream miles) to contain healthy populations. Only three populations inhabited more than 1 stream mile, and some were limited to just a few hundred yards and were represented by the collection of only one fish (O'Bara 1985).

The upper Cumberland River basin is rich in coal reserves and forested lands, and development of these natural resources with associated road and bridge construction has been extensive and can be expected to continue. The most frequently cited threat (O'Bara 1985) was problems related to coal mining, followed in order of threat by logging, road construction, agriculture, human development, and natural low flows. Only one of the streams described by O'Bara (1985) was not threatened by some factor. Unless the needs of the species are considered so that the impacts from these and other threats can be minimized, the loss of blackside dace populations will continue.

For proper evaluation of these threats, it should be noted that the Service has issued a no-jeopardy biological opinion under section 7 of the Endangered Species Act for the State of Kentucky's and the Federal Office of Surface Mining's coal mine regulation program. Although no final determination could be made until the blackside dace is listed and a consultation undertaken, the Service has no evidence that mining activities conducted in accordance with State and Federal regulations are a threat to the species. Rather, past unregulated activities have contributed to the decline of the blackside dace, and current activities not in compliance with appropriate regulations are a threat to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no history of this factor being a problem for the blackside dace. However, because interest in the species is expected to be generated by the listing process, the Service is concerned that this problem may arise in the future. To help minimize this threat, the Service has not proposed critical habitat as this action requires delineation of the species' specific habitats (see "Critical Habitat" section of this rule).

C. *Disease or predation.* There is no evidence of threats to this species from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* Both the State of Tennessee and the State of Kentucky prohibit taking this fish for scientific purposes without a State collecting permit. Federal listing would provide additional protection by requiring Federal permits for taking the fish and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species. However, there are no regulations covering agricultural activities which adversely impact stream habitat.

E. *Other natural or manmade factors affecting its continued existence.* The southern redbelly dace (*Phoxinus erythrogaster*) is not native to the upper Cumberland River basin but is now present in many basin streams. Starnes and Starnes (1981) suggested that this fish "may have displaced the blackside dace to some degree in some of those streams that are less upland in character." They found that the redbelly dace had become established in areas where the water and habitat quality had been altered to create warmer and more turbid conditions. However, they stated that the blackside dace seemed able to persist in the better quality habitats.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the blackside dace (*Phoxinus cumberlandensis*) as a threatened species. Although specific historic records are lacking, available data from habitat evaluations indicate that this fish once likely inhabited many small cool-water streams throughout much of the upper Cumberland River basin. However, the species is now known to exist in only about 14 stream miles in 30 separate streams. The many factors that brought the species to this condition are still threatening it. Because of the number of populations in existence, it is unlikely the species will become extinct in the foreseeable future. Therefore, endangered species status is not appropriate. The reasons for not proposing critical habitat are discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Although take of the blackside dace is presently not known to be a problem, the species could be vulnerable to this threat. The fish inhabits very small (7 to 15 feet wide) streams, occupies only short stream segments (most less than 1 mile), exists in small numbers in these stream reaches, and is known from only nine healthy populations. Most of the inhabited stream reaches are also easily accessible by road. Because of potential and perceived conflicts with coal mining activities, substantial notoriety may develop from this final rule and subsequent Federal actions. Therefore, in light of these factors, the Service believes that publishing maps and text detailing the location of the blackside dace's specific habitat and constituent elements of that habitat, as required for any critical habitat designation, would increase the species' vulnerability to illegal taking and/or vandalism, further threaten the species, and increase the law enforcement problem. All appropriate local, State, and Federal agencies and governmental officials will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard (see below). Therefore, it would not be prudent to designate critical habitat for the blackside dace at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and

individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and were recently revised at 51 FR 19926 (June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could impact the blackside dace and its habitat include, but are not limited to, the following: issuance of permits for surface mining, abandoned mine land reclamation, road and bridge construction, and timber management on Federal lands. It has been the goal and the experience of the Service, however, that nearly all section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Richard G. Biggins, Asheville Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
*	*	*	*	*	*		
Dace, blackside	Phoxinus cumberlandensis	U.S.A. (TN, KY)	NA	T	273	NA	NA
*	*	*	*	*	*		

Dated: May 27, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-13327 Filed 6-11-87; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Lysimachia asperulaefolia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Lysimachia asperulaefolia* (rough-leaved loosestrife), a perennial herb limited to nine populations in North Carolina, to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. *Lysimachia asperulaefolia* is endangered by suppression of fire, drainage activities associated with silviculture and agriculture, and residential and industrial development. This action will implement Federal protection provided by the Act for *Lysimachia asperulaefolia.*

DATES: The effective date of this rule is July 13, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321; FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The taxonomic history of *Lysimachia asperulaefolia* (rough-leaved loosestrife) was summarized and clarified by Ray (1956) as follows: *Lysimachia asperulaefolia* was described as a new species by Jean Louis Marie Poiret in 1814. The material upon which he based this description was collected from North Carolina, but was mistakenly attributed to an Egyptian collection. In 1817, Stephen Elliott published a description of conspecific material collected by Herbemont near Columbia, South Carolina, naming it *Lysimachia herbemonti.* The only other synonym for this species was *Trydinia herbemonti,* used by E.G. Steudel in his 1841 edition of *Nomenclator botanicus* (Ray 1956).

The slender stems of this perennial herb grow from a rhizome and reach heights of 3 to 6 decimeters (1 to 2 feet). Whorls, usually of three to four leaves, encircle the stem at intervals beneath the showy yellow flowers. Flowering occurs from mid-May through June, with fruits present from July through October (Kral 1983, Radford *et al.* 1968). *Lysimachia asperulaefolia* is easily distinguished from the one other similar southeastern species of *Lysimachia, Lysimachia loomisii* Torrey, by its broader, glandular leaves and much larger flowers (Kral 1983).

Lysimachia asperulaefolia is a species endemic to the coastal plain and sandhills of North and South Carolina. It currently is known from nine locations in North Carolina and is believed extirpated from South Carolina. This species generally occurs in the ecotones or edges between longleaf pine uplands and pond pine pocosins [areas of dense shrub and vine growth usually on a wet, peaty, poorly drained soil (Barry 1980)], on moist to seasonally saturated sands and on shallow organic soils overlaying sand. The plant has also been found to occur on deep peat in the low shrub community of large Carolina bays [shallow, elliptical, poorly drained depressions of unknown origin (Mathews *et al.* 1980)]. The grass-shrub ecotone, where *Lysimachia asperulaefolia* is found, is fire-maintained, as are the adjacent plant communities (longleaf pine-scrub oak, savannah, flatwoods, and pocosin). Suppression of naturally occurring fire in these ecotones results in shrubs increasing in density and height and expanding to eliminate the open edges required by *Lysimachia asperulaefolia.* Drainage of these moist depressions in preparation for silvicultural or agricultural activities has also contributed to the decline of the species. Fire suppression, drainage, and, to a lesser extent, residential and industrial development have altered and eliminated habitat for this species and continue to be the most significant threats to the species' continued existence (Carter 1985; Kral 1983).

Although intensive searches have been conducted in numerous areas of suitable habitat, a total of only 19 populations of *Lysimachia asperulaefolia* have been reported in North and South Carolina. Nine of these (all in North Carolina) remain in existence. The following is a summary of the most current information for this species:

South Carolina: According to Rayner (1985), *Lysimachia asperulaefolia* was collected at Columbia, Richland County, around 1817. Extensive development has occurred in this area and neither the habitat nor the species can now be found. Another site was recorded for the species in 1857 near Society Hill, Darlington County. At this location, the habitat currently remains essentially intact, but has not been allowed to burn for many years. Although these locations and other areas of suitable habitat were searched extensively by Rayner in 1984 and 1985, *Lysimachia asperulaefolia* was not found (Rayner 1985).

North Carolina: Lysimachia asperulaefolia has been reported from 17 sites in North Carolina. The species has been extirpated at eight of these localities. Three populations in Brunswick County, and one population each in Pender, Cumberland, Beaufort, Pamlico, and Onslow Counties, have succumbed to drainage associated with agricultural and silvicultural activities and residential development, as well as fire suppression (Carter 1985; J. Moore, North Carolina Natural Heritage Program, personal communication, 1985). A late-1800's record, from near Statesville in Iredell County, is now believed to have been a misidentification (R. Sutter, North Carolina Plant Protection Program, personal communication, 1985; J. Moore, personal communication, 1985). The distribution of the nine extant populations by county is as follows:

Two populations occur in Carteret County. One population occurs on U.S. Forest Service land. In 1983, a 200-acre tract of the Croatan National Forest, including part of the population of *Lysimachia asperulaefolia,* was designated for a county landfill site.

Some of the plants which existed on the edge of the proposed landfill were removed from the area. None of the transplanted individuals appear to have survived. Fortunately, some plants remain in a small area unimpacted by the landfill and appear to be doing well. The other colony in this population has experienced a 40 percent decline in numbers of stems since 1980. Silvicultural site preparation of this area was followed by a short-term increase in the number of plants, after which the population declined steadily to fewer than had been found originally. A ditch put through the site for unknown purposes resulted in substantial drying of the habitat and has undoubtedly contributed to the decline of this colony (J. Moore, pers. comm. 1985; Carter 1985; J. Kraus, North Carolina Maritime Museum, pers. comm. 1986). The second population is on land administered by the U.S. Forest Service, and partly in private ownership. The privately owned portion of this population is on land that is currently for sale and being considered for municipal development (J. Moore, pers. comm. 1985). The entire population is potentially threatened by drainage and other intensive timber management activities, as well as by development.

Two populations occur in Scotland County. Both of these populations are located on land owned by the U.S. Department of Defense that is leased to and managed by the North Carolina Wildlife Resources Commission as part of the Sandhills Gamelands. The first population consists of two very small colonies, covering a total area of less than 10 square meters (12 square yards). The plants here are rapidly being eliminated by shrub encroachment due to fire exclusion; conversion of uplands to pine plantation is also a threat at this site (Carter 1985). The second population is relatively large, but fire suppression has resulted in shrub encroachment; plants here are not thriving or reproducing well (Carter 1985).

Another population is located on the border of Cumberland and Bladen Counties. The population consists of two small colonies which cover a combined total area of less than 6 square meters (7.2 square yards). One colony is on land owned by the North Carolina Department of Natural Resources and Community Development, while the other is on land that is privately owned. The entire population is endangered by fire suppression (Carter 1985, F. Annand, North Carolina Nature Conservancy, pers. comm. 1985).

Two populations occur in Brunswick County. One population exists on land owned by The Nature Conservancy. It is being actively managed with prescribed fire, and is one of the most vigorous populations. However, intensive studies conducted on this population indicate that there is a high turnover in individual stems from year to year for reasons that are currently unknown (Sutter, pers. comm. 1985). The second population is located on land owned by the U.S. Department of Defense, Sunny Point Military Ocean Terminal. This population has benefited from a recently begun program of prescribed burning. However, drainage and conversion of pocosins to pine plantation is currently ongoing in other areas of the terminal and could eventually threaten the species here (Carter 1985).

One population occurs in Pender County on land owned in part by the North Carolina Wildlife Resources Commission and The Nature Conservancy. One private owner retains a small portion of this tract. This population is very small in terms of numbers and area covered, and is in serious need of fire. The remaining plants are not thriving or reproducing well due to severe shrub encroachment (Carter 1985, F. Annand, pers. comm. 1985).

The ninth population is located in Hoke County on land owned by the U.S. Department of Defense, Fort Bragg Military Reservation. This population is relatively vigorous (Carter 1985); however, it is endangered by fire suppression or long-rotation burning (greater than three years), timber harvesting activities, and possibly mechanized military training activities.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Lysimachia asperulaefolia* was included in that notice as a category 1 species. Category 1 species are those for which the Service presently has sufficient information on hand to support the biological appropriateness of their being listed as endangered or threatened species. A revision of the 1980 notice that maintained *Lysimachia asperulaefolia* in category 1 was published on September 27, 1985 (50 FR 39526).

All plant taxa included in the 1980 notice, 1983 supplement, and the 1985 notice are treated as being under petition. Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Service to make findings on pending petitions within 12-months of their receipt. On October 13, 1983, October 12, 1984, and October 11, 1985, the Service found that listing *Lysimachia asperulaefolia* was warranted, and that although proposal of other higher priority species had precluded its proposal, expeditious progress was being made to add other species to the list. The April 10, 1986, proposal of *Lysimachia asperulaefolia* to be endangered constituted the next 12-month finding for this species.

Summary of Comments and Recommendations

In the April 10, 1986, proposed rule (51 FR 12451) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Fayetteville Observer Times*, *Wilmington Star-News*, and *New Bern Sun Journal* on May 5, 1986, April 30, 1986, and May 5, 1986, respectively.

Eleven comments were received. Of these, eight respondents expressed support for the proposal, including the North Carolina Department of Agriculture, the U.S. Forest Service, the North Carolina Natural Heritage Program, the North Carolina Wildlife Resources Commission, the North Carolina Department of Natural Resources and Community Development, and the North Carolina and South Carolina offices of The Nature Conservancy. The U.S. Forest Service requested assistance in identifying necessary management activities; such assistance was provided during an onsite meeting on the Croatan National Forest. Three comments were received which offered no new information and did not state a position on the proposal. One of these latter three respondents, the Department of the Army, Military Ocean Terminal, Sunny Point, requested information which has been provided on specific locations of populations on that base.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Lysimachia asperulaefolia* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined

to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lysimachia asperulaefolia* Poiret (rough-leaved loosestrife) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Lysimachia asperulaefolia* has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, over 50 percent of the known populations have been extirpated, largely due to drainage and conversion of the habitat for silvicultural and agricultural purposes. Residential and industrial development has eliminated some habitat directly, and altered water regimes in adjacent areas to the point where the species can no longer survive. Fire suppression is a serious problem for this species and will be discussed in detail under factor "E" below. Of the ten populations that have been extirpated, four were eliminated by drainage and subsequent conversion to pine plantation or other intensive silvicultural practices, three disappeared due to fire suppression, two were eliminated by residential or industrial development, and one was lost when the area was drained and converted to agricultural use. At least seven of the remaining nine populations are currently threatened by habitat alteration. In addition to the major threats listed above, those populations on military installations are potentially threatened by mechanized military training activities. Although this has not been a documented problem for this species thus far, some of the small, fragile pocosins could easily be destroyed by heavy, tracked vehicles such as tanks. Nonetheless, populations probably persist on military bases, where they have not survived on adjacent privately owned land, because of the Defense Department's prescribed burning programs and periodic fires that are incidental to military training (J. Carter, North Carolina State University, pers. comm. 1985). Activities associated with intensive timber management on publicly owned land, such as timber harvesting, road building, and drainage, if done in a manner not consistent with the protection of *Lysimachia asperulaefolia* populations, could adversely affect the species, as has been the case on private lands in the past.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Lysimachia asperulaefolia* is not currently a significant component of the commercial trade in native plants; however, with its showy flowers, the species has potential for horticultural use, and publicity could generate an increased demand.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Lysimachia asperulaefolia* is afforded legal protection in North Carolina by North Carolina General Statutes, §§ 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provides for protection from intrastate trade (without a permit) and for monitoring and mangement of State-listed species and prohibits taking of protected plants without written permission of the landowners. *Lysimachia asperulaefolia* is listed in North Carolina as endangered. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat, such as disruption of drainage patterns and water tables, or exclusion of fire. The species is recognized in South Carolina as endangered and of national concern by the South Carolina Advisory Committee on Rare, Threatened, and Endangered Plants in South Carolina; however, this State offers no official protection. Section 404 of the Clean Water Act could potentially provide some protection for the habitat of *Lysimachia asperulaefolia;* however, many of the sites where it occurs may not meet the wetlands criteria. The Endangered Species Act would provide additional protection and encouragement of active management for *Lysimachia asperulaefolia.*

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this proposed rule, many of the remaining populations are small in numbers of individual stems and in terms of area covered by the plants. In addition, the rhizomatous nature of the species indicates that there are many fewer individual plants in existence than stem counts would indicate, with as many as 50 or more stems arising from a single rhizome or plant (R. Sutter, pers. comm. 1985). The lower genetic variability in this species makes it more important to maintain as much habitat and as many of the remaining colonies as possible. In addition, intensive studies have revealed that there is a high turnover in individual stems from year to year; for instance, of 50 individuals marked in 1983 and subsequently monitored, only 8 remained by 1985 (R. Sutter, pers. comm. 1985). Although the species seems to have high seed viability and good seed set, in 1985 less than 3 percent of the plants in all populations flowered (Carter 1985, R. Sutter, pers. comm. 1985, J. Moore, pers. comm. 1985, Moloney 1985). Much remains unknown about the demographics and reproductive requirements of this species. Fire is essential to maintaining the grass-shrub ecotone where *Lysimachia asperulaefolia* occurs. Without periodic fire, this ecotone is gradually overtaken and eliminated by the shrubs of the adjacent pocosins. As the shrubs increase in height and density, they overtop the *Lysimachia asperulaefolia,* which is shade-intolerant. The current distribution of this species is ample evidence of its dependence on fire. Of the nine remaining populations, seven are completely on publicly owned lands or lands owned by The Nature Conservancy that are actively managed with prescribed fire or exposed to naturally occurring periodic fires. The two sites which are partially in private ownership are either exposed to periodic fire or adjacent to areas which are regularly burned. Populations in areas which have not been recently burned tend not to be thriving or reproducing.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lysimachia asperulaefolia* as endangered. With more than 50 percent of the species' populations having already been eliminated and only nine remaining in existence, it warrants protection under the Act. Endangered status is considered appropriate because of the imminent and serious threats facing most populations. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Lysimachia asperulaefolia* at this time. With its showy flowers, the species has potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in collecting pressures on the species. Although removal and reduction to possession of endangered plants from lands under Federal jurisdiction are prohibited by the Endangered Species

Act, such provisions are difficult to enforce. Publication of critical habitat descriptions would make *Lysimachia asperulaefolia* more vulnerable and would increase enforcement problems for the U.S. Forest Service and the Department of Defense. The populations on private lands would be vulnerable to collection. Increased visits to population locations stimulated by critical habitat designation could therefore adversely affect the species. The Federal and State agencies and landowners involved in managing the habitat of this species have been informed of the plant's locations and of the importance of protection; therefore, no additional notification benefits would accrue from designating critical habitat. Protection of the species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collection are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of an endangered or threatened species or to destroy or adversely modify its critical habitat. Generally, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and the U.S. Department of Defense have jurisdiction over portions of this species' habitat. Federal activities that could impact *Lysimachia asperulaefolia* and its habitat in the future include, but are not limited to, the following: silvicultural activities, including timber harvesting and conversion of sites to pine plantations by means of drainage and mechanical site preparation; mechanized military training operations; recreational development; drainage alterations; road construction; and implementation of timber harvest portions of forest management plans. The Service will work with the involved agencies to secure protection and proper management of *Lysimachia asperulaefolia* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61 and 17.62 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Lysimachia asperulaefolia* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Ms. Nora Murdock, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Primulaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
PRIMULACEAE—Primrose family:						
Lysimachia asperulaefolia	Rough-leaved loosestrife	U.S.A. (NC, SC)	E	274	NA	NA
*	*	*	*	*		

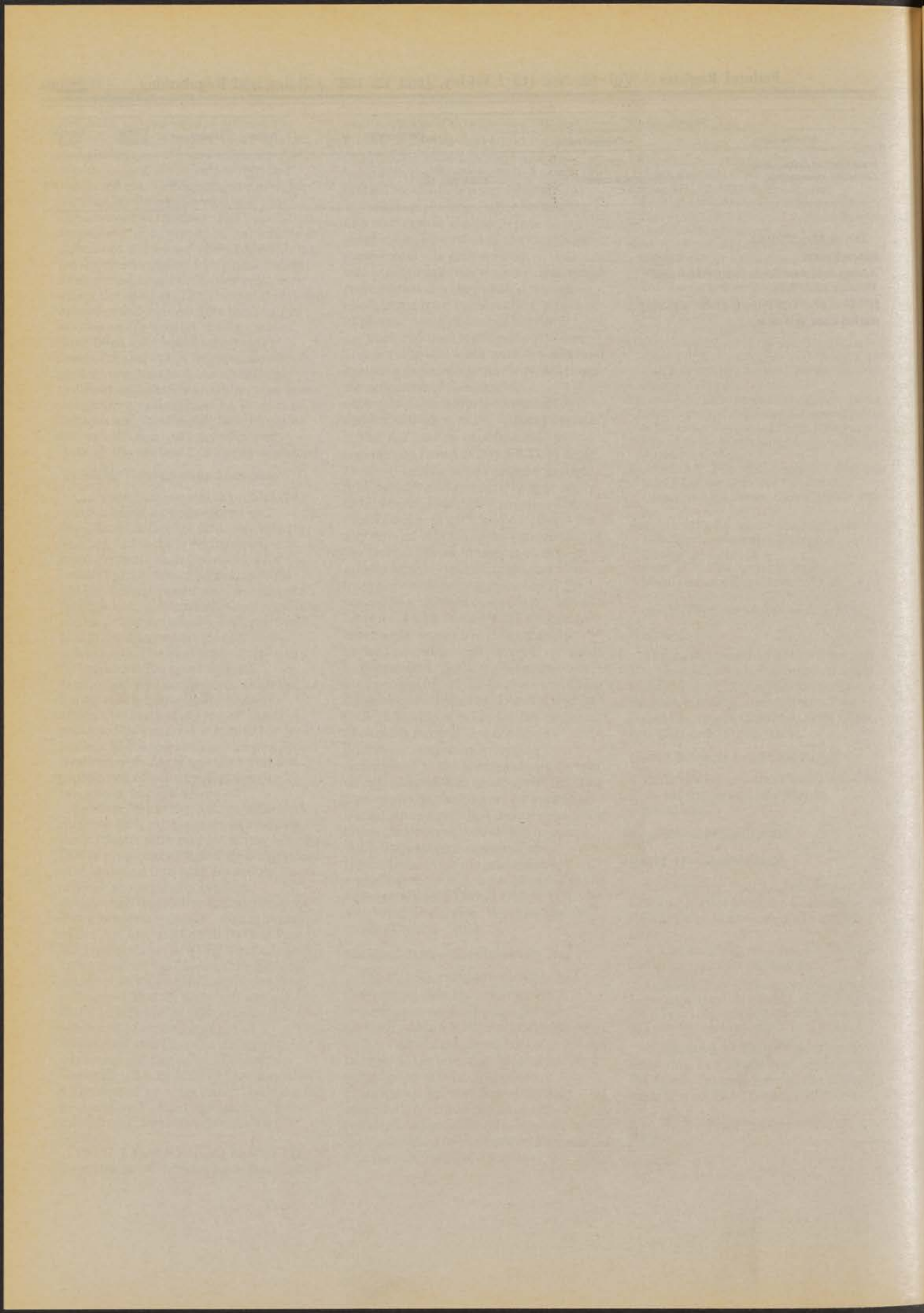
Dated: May 27, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-13328 Filed 6-11-87; 8:45 am]

BILLING CODE 4310-55-M



federal register

Friday
June 12, 1987

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 1820 et al.
Oil and Gas Leasing, Geothermal Resources Leasing; Clarifying Amendments; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1820, 3000, 3040, 3100, 3110, 3120, 3130, 3150, 3160, 3180, 3200, 3210, 3220, 3240, 3250, and 3260

[AA-620-87-4111-01]

Oil and Gas Leasing, Geothermal Resources Leasing; Clarifying Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would make changes to the existing regulations that will clarify questions raised in the administration of the oil and gas leasing program since the publication of the new regulations for 43 CFR Groups 3000 and 3100 in the **Federal Register** of July 22, 1983. It also would make changes in the regulations in 43 CFR Group 3200. Other changes that would be made include: Elimination of the future interest supplemental agreement and rental and royalty payments now required prior to the vesting of title of the mineral interest(s) in the United States for future interest leases for both oil and gas and geothermal resources. The proposed rulemaking would make a simultaneous oil and gas lease application an offer to lease and, therefore, binding upon a qualified participant selected in the automated random selection process, thus allowing the Bureau of Land Management to issue the lease. This change would also eliminate the $75 processing fee for unacceptable filings. In addition, the proposed rulemaking would follow the provisions of section 3112.6-1 of the existing regulations and permit execution of the lease application only by the offeror or his/her duly authorized attorney-in-fact.

DATE: Commments should be submitted by August 11, 1987. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Main Interior Bldg., Room 5555, 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653-2190,
or
Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would make clarifying amendments and changes resulting from the Bureau of Land Management's experience under the Minerals Management and Oil and Gas Leasing regulations, 43 CFR Groups 3000 and 3100, that were published in the **Federal Register** on July 22, 1983 (48 FR 33648). The proposed rulemaking would also make changes to the Geothermal Resource Leasing regulations, 43 CFR Group 3200, that will clarify and streamline leasing procedures. Included are several corrections and editorial changes. The changes are discussed below.

Part 1820 would be amended to provide an exception to the requirement for a public drawing for simultaneously filed documents where the selection process is accomplished by computer. The Bureau of Land Management's experience shows that the use of the computer in the random selection of the successful applicant for a parcel in certain noncompetitive oil and gas leasing programs does not lend itself to a "public drawing" because there is no observable activity. Although the computer selection process would not be open viewing, Bureau staff is available to describe the computer process to anyone who is interested.

The proposed rulemaking would revise the definition of the term "public domain lands" in § 3000.0-5(g) to make it consistent with the definition of that term in the other regulations in subchapter C. In addition, the definitions of the terms "party in interest" and "interest" in §§ 3000.0-5 (k) and (1) would be revised by the proposed rulemaking. The definition of the term "interest" would be expanded to include carried interests, net profit interests and fiduciary obligations, including security interests, which entitle the creditor to a present or future interest in a lease, or other types of agreements whereby a party agrees, or has a duty, to transfer an interest in a lease or prospective lease. This change would clarify the existing Department of the Interior interpretation of what constitutes an interest in a lease. A portion of the existing definition of the term "interest" also would be moved to § 3112.2-1 of the existing regulations to clarify and identify factors especially relevant to participation in the simultaneous oil and gas leasing program by parties who presently or prospectively will have an advantage or benefit in a simultaneous lease. This change would assist in the efforts of the Department to prevent fraudulent activity. This change would continue the requirement for identification of all parties in interest to a simultaneous oil and gas lease on the lease offer or an accompanying sheet because no person or entity can hold, own or control an interest of any kind in more than a single simultaneous offer for a specific parcel.

A new § 3000.8 would be added by the proposed rulemaking which would provide that the management of reserved mineral estates in patented lands would be accomplished under the regulations in Groups 3000 and 3100. This amendment, and an identical amendment to Group 3200, would clarify procedures under which the Secretary of the Interior manages leasable and salable minerals in such lands.

This proposed rulemaking would move the existing regulations in Part 3040 which pertain to onshore oil and gas geophysical exploration to Part 3150. This placement recognizes that the requirements and responsibilities for geophysical exploration activities are more closely related to oil and gas development and operations.

Sections 3100.0-3 (a) and (b) would be amended by the proposed rulemaking to close to leasing all units of the National Park System that are not otherwise specifically opened to leasing by law. Although, from time to time limited leasing has occurred in certain units of the System with strict controls placed on development, as a general principal, the Department of the Interior views oil and gas leasing within units of the National Park System as being inconsistent with the primary goals and management objectives of that System. Accordingly, the proposed rulemaking would close all units of the National Park System, except those where Congress has specifically authorized leasing under the mineral leasing laws. The public is advised that this same provision will be incorporated in other parts of title 43 dealing with the leasing of Federally-owned minerals as they are amended in the future.

The proposed rulemaking would amend § 3100.0-3(e) of the existing regulations to bring its provisions into agreement with the regulations of the General Services Administration on the subject of leasing of minerals in lands under its jurisdiction.

The definitions of the terms in §§ 3100.0-5 (a), (d), (e), (f) and (j) would be amended by this proposed rulemaking. The amendments include the delegation of paragraphs (e) and (f), the addition of a new paragraph (e) and

the needed redesignation of the remaining paragraphs. The changes in the definitions are needed to conform these terms to amendments made by this proposed rulemaking concerning assignments and transfers in Subpart 3106. In addition, § 3100.0–5(j) would be amended by the proposed rulemaking to remove the phrase "drilling or" and by removing the reference to the term of a lease in the National Petroleum Reserve—Alaska. The amendment to paragraph (j) would provide the definition intended by law and the one that was in use prior to the July 1983 final rulemaking, in which the "primary term" for such leases included all periods in the life of the lease prior to its extension by reason of production of oil and gas in paying quantities. A further change to paragraph (j) would remove all reference in Part 3100 to the term of a lease in the National Petroleum Reserve—Alaska and would remove any chance of conflict with § 3130.4–2. The requirements for the primary term of a National Petroleum Reserve—Alaska lease more appropriately are addressed in Part 3130.

The proposed rulemaking would amend § 3100.3–1 to clarify those lands which must be leased competitively by including a citation to Part 3120.

Section 3100.4–3 would be amended by the proposed rulemaking to reduce the paperwork burden imposed on the public by removing the need for duplicate statements of option holdings, since a single statement of such holdings submitted twice a year will meet the statutory requirement.

The proposed rulemaking would revise §§ 3101.1 through 3101.1–2 and add a new § 3101.1–3. The changes would clarify the authority of the Bureau of Land Management to control environmental impacts on leaseholds. The changes also would require that if public review was to be a prerequisite for waiver of a lease stipulation, the stipulation would so state. Finally, the changes would allow information notices to be attached to a lease. The information contained in such notices might pertain to administrative matters or be helpful to lessees in preparing an acceptable plan of operations following lease issuance. Information notices could not be a basis for denial of lease operations. Because information notices would not establish any requirements in excess of those that could be imposed under the terms and conditions of the standard lease form, lessee acknowledgement of such notices would not be a prerequisite to lease issuance.

Section 3101.2–1(b) would be amended by the proposed rulemaking to eliminate the gap in the boundary between the leasing districts in Alaska contained in the existing regulations.

The proposed rulemaking would revise § 3101.2–3 to make it clear that lease offers, overriding royalties and payments out of production are not included when computing accountable acreage.

Section 3102.2 would be amended to clarify that the statutorily permissible interest an alien can hold in an onshore Federal oil and gas lease is derived solely through stock interest or ownership in a firm incorporated under the laws of the United States or a State or Territory thereof. This change is intended to eliminate confusion as to whether an alien can hold an interest in an oil and gas lease other than through stock ownership, such as in a limited partnership. The section also would make it clear that should the Secretary of the Interior deem any country nonreciprocal under section 1 of the Mineral Leasing Act (30 U.S.C. 181), that country would appear on a listing available from any Bureau of Land Management State office. Other Bureau field offices would not have such a listing available. Presently, there are no non-reciprocal countries, so there is no list.

The proposed rulemaking would amend § 3102.4 to clarify several requirements. In accordance with the the provisions of section 30a of the Mineral Leasing Act, all three copies of a lease transfer, whether by assignment or sublease, must be manually executed by the transfereor. However, only one original instrument needs to be executed by the transferee for a request for the approval of a transfer. In addition, only an original instrument needs to be manually executed for offers, competitive bids and applications made under Parts 3100, 3110 and 3120.

The proposed rulemaking would further change the section to clarify that when the signatory is not a member of the organization that constitutes the present or potential lessee, the relationship of the signatory to the offeror must be designated. This change, which also would be made in § 3122.2–1(c), would make the regulations consistent with the recent decision in *ANR Production Company* v. *Watt, et al.* (No C83–375–K, D Wyo., January 11, 1984)), which held that a simultaneous oil and gas lease application filed on behalf of a corporation, association or partnership that does not designate the relationship of the signatory to the applicant cannot be rejected, provided that the signatory is a member of the organization that constitutes the applicant (e.g., officer, associate or partner), and not merely an outside agent rendering services to the applicant. Verification of the signatory's relationship may be required, however.

Another amendment made by the proposed rulemaking to § 3102.4 would eliminate the provision for referencing a qualifications number for a simultaneous oil and gas lease offer. A qualifications auditing procedure has been implemented through the publication of a **Federal Register** notice on May 30, 1985 (50 FR 23080), to verify compliance with the statutory requirements. Selective audits of lessees will be conducted in accordance with he commitment addressed in the final rulemaking published in the **Federal Register** on February 26, 1982 (47 FR 8544), to monitor Federal lease acreage limitations, applicable foreign investment restrictions concerning nonreciprocal countries, and the existence of corporate or agent relationships.

The proposed rulemaking would amend § 3102.5 to provide that submission of a competitive bid also constitutes certification of compliance with the regulations and the statute, and compliance would be expanded to address the requirements of section 2(a)(2)(A) of the Mineral Leasing Act of 1920. The section also would be clarified regarding the statutory requirements for compliance by any party. In order to comply with the statutory requirements of the Act, the proposed rulemaking would require a corporation or publicly held association, including a publicly held partnership, to certify that no more than 10 percent of the instruments of ownership or control were held by aliens. Further clarification would be made in this section by making reference to §§ 3102.6 through 3102.6–4 concerning the requirements for documents signed by an attorney-in-fact or agent. The new section would retain the requirement that only an offeror or his/her duly authorized attorney-in-fact can execute a simultaneous oil and gas lease offer. The proposed rulemaking would move this existing requirement from § 3112.6–1 to this section. The continuation of the limitation on the execution of simultaneous lease offers only by the potential lessee or his/her qualified attorney-in-fact and the changing of the simultaneous leasing process to a one-step procedure is another effort by the Bureau of Land Management to ensure that those participating in the simultaneous leasing program are more directly involved and informed about the parcel(s) they are offering to lease. These sections also would specify that where an agent represents an offeror or lessee in actions

involving the leasing program other than the simultaneous leasing program, the agent agreement must show that the agent is authorized to execute and file lease documents on behalf of the potential lessee as well as all statements of interest and holdings of the potential lessee.

Section 3103.1–2(a)(2) of the proposed rulemaking would provide the address of the Minerals Management Service where annual lease rental remittances are to be sent.

The titles of §§ 3103.2–1 and 3103.2–2 would be revised by the proposed rulemaking to differentiate between advance and annual rental requirements. In addition, §§ 3103.2–2 and 3103.2–1 would be amended to provide that an annual rental payment due on or before the anniversary date which is made to the designated Minerals Management Service office may be postmarked on the next day that the office is open for business if the office is closed on the anniversary date. This amendment would be similar to the provisions of § 1821.2–2(d) which allows a person to make payment after the anniversary date if the office is closed on the anniversary date. Such payments postmarked on the next day the office is open to the public would be deemed timely filed. This proposed change should lessen the number of oil and gas leases terminated by operation of law due to late payment of the annual rental. In connection with this provision, the existing regulations recognize timely postmarking of the payment envelope as timely payment of rental so that the lease does not terminate. The proposed rulemaking also would make this change in the appropriate sections of the existing regulations covering geothermal resource leasing. The Interior Board of Land Appeals has stated its conclusion that the postmark provision contained in the existing regulations is contrary to the language of 30 U.S.C. 188(b), which requires a lessee "to pay rental on or before the anniversary date." (*Melvin P. Clarke*, 90 IBLA 95 (1985); *William F. Bransome*, 81 IBLA 235 (1984)). The Board has no authority to change or declare invalid a properly promulgated regulation (e.g., *Robert R. Perry*, 87 IBLA 380 (1985)). The Bureau of Land Management is of the opinion that the statute authorizes the interpretation contained in the regulation, and will continue, enforcement of this provision. In support of the Bureau's opinion, the Congress did not define what was meant by the phrase "to pay rental." Congress gave the Secretary of the Interior authority to issue all needed regulations and to do all things necessary to carry out the purposes of the Mineral Leasing Act (30 U.S.C. 189). In 1983, the Bureau, through the issuance of a regulation that complied with the rulemaking process, defined the phrase to include the timely transmittal of the payment to the proper Bureau office and receipt of the payment by that office within 20 days of the anniversary date as being timely payment of the rental. This change was designated to avoid the harsh result of lease termination, to remove uncertainty over lease status and to prevent unnecessary paperwork connected with lease reinstatement. In a virtually identical statutory situation, also involving loss of a property interest upon failure to meet a deadline, the Supreme Court approved the provisions of 43 U.S.C. 1744, which the Bureau incorporated into the regulations by accepting a postmark date as timely filing of a mining claim recordation (*United States* v. *Locke*, 471 U.S. 84, 105 S.Ct. 1785, 1797 n. 14 (1985)). The statute discussed in the *Locke* decision requires a mining claimant to file a recordation of that claim before a certain date if the claim is to be given validity; this is similar to the requirement of the Mineral Leasing Act that rental on a lease must be paid on or before a certain date.

The proposed rulemaking also would amend the second sentence of § 3103.2–2 to reference § 3103.4–2(d) in order to accommodate circumstances of suspension of operations and production and to continue to provide for proper credit on the next rental or royalty due where rentals and creditable against royalties and are paid in advance. There has been some confusion on this point because there is no longer a provision in the regulations for prorated rentals for a portion of a lease year.

As a result of the current economic situation in the oil industry, the Department of the Interior is carefully reviewing the existing rental requirements in § 3103.2–2 which increased the annual rental for each acre or fraction thereof to $3 beginning with the sixth year for simultaneous leases issued under Subpart 3112 (See the **Federal Register** of January 20, 1982 (47 FR 2864)).

The annual rental for simultaneous oil and gas leases was increased from $1 per acre or fraction thereof to $3 per acre or fraction thereof for the sixth through the tenth years of the lease term to promote diligent development. The Bureau of Land Management's review of leases showed that a majority of leases were held for the 10-year term of the lease without any development activity until late in the lease term. The higher rental was established to promote development on the leases at an earlier time. As the 1987 deadline for the increased rental approached, the industry indicated that the change in rental would, in fact, result in an increased relinquishment of lease acreage, rather than increased development. This situation has been brought about in part by the current depressed condition of the oil and gas industry which has reduced the funds available to meet the fixed cost of maintaining leases with a higher rental or to meet development costs. The Department is again studying this question and requests the public to comment on the existing rental structure, giving special attention to the issue of whether the increased rental in the fifth through the tenth lease years leads to increased development or relinquishment of existing leases. The comments will be carefully reviewed to determine what action, if any, should be taken on this issue.

The Department of the Interior is examining the fees charged in connection with the filing of applications in the simultaneous oil and gas leasing program. The Department requests comments from those members of the oil and gas industry who: (1) Previously participated in the simultaneous leasing program who are not currently involved as to why they withdrew from participation; and (2) have decreased the number of applications filed and the reasons for their having filed fewer applications. The Department also requests comments on what action, including a change in the application filing fee, could be taken that might induce these individuals to again participate or increase the level of their participation. All comments will be carefully reviewed to determine what action, if any, should be taken regarding the simultaneous leasing program to induce greater public participation.

Section 3103.2–2(d) would be amended by the proposed rulemaking to clarify that if any portion of a noncompetitive lease is determined to lie within the boundaries of a known geological structure outside of Alaska or a favorable petroleum geological province in Alaska, the entire lease would be subject to an annual rental of $2 per acre or fraction thereof beginning with the lease year following such determination. This change would provide needed consistency between the regulations and the language of the standard lease form addressing rental terms and also make the regulations consistent with decisions of the Interior Board of Land Appeals upholding the increased rental for the entire lease. For

any lease subject to a higher rental rate, such as leases reinstated under §§ 3108.2-3 and 3108.2-4, the lease would continue to be subject to the higher rate.

In addition to some minor corrections that would be made by the proposed rulemaking to § 3103.3-1, a new reference would be added to § 3103.3-1(f) to address the provisions of section 12 of the Act of August 8, 1946 (30 U.S.C. 226c), by providing information on the possible relief from a royalty rate in excess of 12.5 percent which is applicable to a limited number of leases. This provision was not included in the existing regulations because of its limited applicability, but it is being added to the regulations because questions have arisen about this issue.

For competitive leases, the Mineral Leasing Act establishes a royalty of not less than 12.5 percent. Section 3103.3 of the existing regulations provides that the royalty-rate for competitive leases shall escalate from 12.5 percent for leases with an average daily production of less than 50 barrels of oil per well to 25 percent for leases with an average daily production exceeding 400 barrels per well. That same section sets a royalty rate for gas produced from competitive leases which shall escalate from 12.5 percent to 16.7 percent when average daily production exceeds 5 million cubic feet per well. Public comment is requested on the current competitive lease variable royalty rate schedules, as well as the variable royalty rate schedules which are attached to 20-year leases at the time they are renewed or exchanged, in terms of efficient production practice, maximizing resource recovery, collection of maximum royalty and the administrative burden associated with these current schedules. In particular, public comment is requested on:

1. Could alternative royalty rate schedules result in more efficient lease production and/or more development per lease?

2. Do the current variable royalty rate schedules affect maximum recovery?

3. What are the revenue implications of the current royalty schedules in total and, as a result, what, if any, lease production or producing well distortions are implied?

4. How could adoption of an alternative royalty rate system affect the number of leases now actually or prospectively subject to variable royalty rates?

5. What are the general administrative ease and auditability of the current variable royalty rate schedules, and the likelihood of reporting accuracy under a different system? and

6. Should the variable royalty rates be applied to the full production level or only to incremental production?

The proposed rulemaking would amend § 3103.3-3 to clarify that the limitation on overriding royalties includes all interests, payments and arrangements created, including carried interests, net profit interests and other fiduciary interests that constitute a burden on lease operations. This change is consistent with existing Department of the Interior interpretation as to the types of agreements, payments, arrangements or interests that are considered and included in this regulatory provision even though they are not specifically identified in the existing regulations. The section also would be amended by adding language that a request that the Secretary of the Interior approve a suspension of overriding royalties can be filed independently of a request for a waiver, suspension or reduction of rental or royalty permitted by § 3103.4-1. The request for a waiver, suspension or reduction of rental or royalty would have to be accompanied by agreements of reduction from all holders agreeing that their payments from interests in the lease would not exceed one-half of the reduce royalty received by the United States.

The proposed rulemaking would amend § 3103.4-2 which sets out the policy and procedure for the suspension of oil and gas leases. An opinion of the Solicitor (M—36953, 92 I.D. 293 (1985)) provides the following interpretation of the lease suspension provisions contained in sections 39 and 17(f) of the Mineral Leasing Act (30 U.S.C. 209; 226(f)): (1) A suspension of operations and production under section 38 must suspend both operations and production to the extent that the lessee is denied all beneficial use of the lease; and (2) a suspension of operations or of production under section 17(f) will suspend the running of the lease term but will not suspend the payment of minimum royalty. The opinion further notes that section 17(f) contains no standard for the granting of a suspension of operations or of production. The opinion requires a clarification of the existing regulations. Under the proposed change, a suspension of operations or of production would be directed or approved where the lessee, despite the exercise of due care and diligence, is prevented from producing or operating by reason of *force majeure*, i.e., by matters beyond the reasonable control of the lessee. This would include events such as strikes, acts of God and unforeseeable administrative delay which would not quality the lease for a section 39 suspension "in the interest of conservation." For purposes of consistency, this same change would be made to § 3205.3-8 of this proposed rulemaking, which also would consolidate provisions from § 3261.8 of the existing regulations. The proposed rulemaking would continue the requirement in § 3104.1(a) for a bond to be filed prior to commencement of drilling operations and would amend the section to clarify that the bond will cover the terms and conditions of the entire leasehold even when operations or lease interests may be confined to a specific portion of the lease. Although not expressly required by the existing regulations, the Department of the Interior has always viewed a bond as applying to the entire leasehold.

The proposed rulemaking would add language to § 3104.6 and 3106.4 which would require the filing only of the current bond and lease transfer forms approved by the Director or an exact reproduction thereof. All former editions of these forms would be made obsolete and unacceptable for filing. Unacceptable forms would be returned to the applicant and, where applicable, all filing fees also would be returned.

The proposed rulemaking would amend § 3104.7 by adding new language which would place specific requirements on principals who default. This requirement would assure better protection of the public interest in the event of default by requiring that a defaulting principal reimburse the United States for any obligations which are in excess of the bond amount or the lease would be subject to cancellation. The amendment also would allow the authorized officer to establish a bond amount higher than that of the previous bond when the principal posts a new bond. The new language also would make it clar that failure to comply with these requirements will make all of the leases covered by the prior bond subject to cancellation.

Section 3105.2-3, which addresses the requirements for communitization and drilling agreements, would be reorganized by the proposed rulemaking into separate paragraphs for greater clarity. The proposed rulemaking also would add a new paragraph (e) to this section to address a problem that sometimes arises in connection with a request for approval of a voluntary termination of an existing communitization agreement prior to the end of its fixed term or whenever such an agreement automatically expires at the end of its fixed term and a well has not been drilled to the communitized

formation. The Mineral Leasing Act requires that approval of a communitization agreement be in the public interest (30 U.S.C. 226(j)). A communitization agreement is approved on the basis that the public interest will be served by the conduct of those drilling operations which necessitate communitization, regardless of whether the well: (1) Already has been completed for production in the formation to be communitized; (2) is now being drilled to that formation; or (3) is to be drilled to that formation after approval of the communitization agreement. In order to satisfy the public interest requirement, the proposed rulemaking would require the operator of a communitized area to either diligently continue drilling operations to a depth sufficient to test the communitized formation or to commence and diligently prosecute the drilling of a well to the communitized formation. Under the provisions of the proposed rulemaking, if an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement expires automatically at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no extension of the involved Federal lease(s) will be granted. The proposed rulemaking would amend renumbered § 3183.4, § 3183.3-1 of the existing regulations, to make this provision also applicable to unit agreements for unproven areas.

The proposed rulemaking would add a new § 3105.6 which would restore language inadvertently omitted from the July 1983 revision. The language would permit consolidation of leases where there is justification and such consolidation is found to be in the public interest.

The proposed rulemaking would make changes to various provisions of the oil and gas leasing regulations in Subparts 3106 and 3135 and the geothermal leasing regulations in Subpart 3241 as they affect lease transfers. The changes are designed to clarify and to make consistent throughout the regulations the use of the terms "transfer," "assignment" and "sublease."

The proposed rulemaking would amend § 3106.7-1 to clarify the section and to continue the Bureau of Land Management's policy that transfers are approved for administrative purposes only and that approval of a transfer does not provide the legal basis for either party to a transfer to claim that they hold legal or equitable title to a lease. The proposed rulemaking would make similar revisions to §§ 3135.1-1 and 3241.4.

Section 3106.7-2 would be amended by the proposed rulemaking to confirm that both the approved sublessee and the lessee of record are responsible for all lease obligations. This amendment is not a change in existing liabilities among such parties, but is merely a clarification of existing law. In order to be relieved of obligations under a lease, a lessee must assign all of the record title interest in the lease. Retention of any portion of the record title to a lease retains the liabilities of the lease. This same change also is made by the proposed rulemaking to §§ 3135.1-1 and 3241.5.

Currently, the Bureau of Land Management's review of transfers of operating rights (subleases) is extremely time consuming and creates delays in the processing of all transfers. The Department of the Interior has determined that this existing approach and the time consumed are unnecessary and there is no need to continue the practice of closely scrutinizing transfers of operating rights (subleases) unless there is an independent concern about a transferee's qualifications (See Bureau of Land Management Instruction Memorandum No. 86-175, dated December 30, 1985). The Bureau will continue to accept for filing and approval transfers of operating rights (subleases). With the changes made by this proposed rulemaking, the Bureau will continue its existing practice of requiring the Bureau approved form. Submission of the actual operating agreements, however, shall not be made since most of the information in such documents involves specific terms and agreements between the sublessor and the sublessee, and does not affect the contractual agreement between the lessee of record and the United States under the terms and obligations of the lease. Certificates of title are not required by the existing regulations and this proposed rulemaking would not require them.

The Bureau of Land Management will continue to closely monitor the status of the record title to all leases, which is sufficient for lease management purposes because the lessee of record is fully responsible for all lease obligations. The amendments made by the proposed rulemaking in the processing of transfers of operating rights (subleases) also relate to changes in the management of lease operations. A new § 3162.3-1(g) would be added by the proposed rulemaking to state that approval of an Application for Permit to Drill does not warrant that the applicant holds legal or equitable title to the lease(s). The proposed rulemaking, for streamlining purposes, would remove the requirement that the authorized officer determine that the operator is the designated operator, sublessee or lessee and the authorized officer would no longer review the lease files(s) to verify this fact. Under the changes made by the proposed rulemaking, the Bureau's review of an Application for Permit to Drill would be confined to determining that the proposed drilling operations will take place on a valid Federal lease, that the leasehold operations are bonded and imposing such necessary requirements for assuring the technical competency of the drilling plan based on conditions expected to be encountered, safety, protection of surface resources and environmental values, and reclamation of the disturbed areas. If an operator operates with respect to another private party's interest in the lease, this will be a matter of resolution between the parties by what ever means required. The United States will incur no liability for such a dispute. The lessee of record, holder of operating rights and designated operator will be liable to the United States for its royalty interest. Normally, the Bureau need not concern itself with the private rights in the working interest of the lease, so long as there are no grounds for investigation of the qualification of such parties. These procedural changes allowing for limited review by the Bureau of Land Management of a transfer of operating rights (sublease) filed in conjunction with an Application for a Permit to Drill will reduce the delay in processing these actions. The revised system contained in the proposed rulemaking is similar to that currently used by the State of New Mexico, Division of Oil and Gas. The proposed rulemaking also would make similar changes to Part 3260.

No change would be made in the way the Bureau of Land Management handles the filing of transfers of overriding royalty interest and production payments. The filing fee for each transfer of record title and of operating rights (sublease) or transfer of overriding royalty interest and production payment would remain at $25.

The proposed rulemaking would add a new § 3106.4-3 which would permit mass transfers, that is, numerous lease transfers from one entity to another, and would provide an option for the reduction of the paperwork burden for a transferor who transfers all such interests owned in Federal leases to the same transferee. Rather than having to submit three originally executed

instruments of transfer for each lease involved, the change would allow the submission to each affected State Office of one mass filing for all leases being transferred. The change would allow the submission of originally executed copies of the transfer with attached exhibits detailing the leases, interests and lands affected by such a transfer, with one reproduced copy for each lease involved.

Section 3106.5 would be amended by the proposed rulemaking to provide that where 100 percent of record title of the area encompassed in a lease is transferred, no separate complete description of the involved lands is required.

The proposed rulemaking, in addition to making a change of citation in § 3107.1, would amend the section to clarify what is meant by actual drilling operations and the effect of such operations on extension of a lease.

The proposed rulemaking would amend § 3107.4 to reflect that no lease extension will be granted unless the public interest requirement, as discussed in connection with communitization agreements in §3105.2-3(e) and for unit agreements in § 3183.4(b) in this preamble, has been satisfied.

The proposed rulemaking would amend § 3108.1 to require that the record title holder or his/her duly authorized attorney-in-fact may execute a written relinquishment to surrender a lease or any legal subdivision thereof. This clarification would recognize a standard practice already allowed for lease acquisition procedures.

Section 3108.2-1 would be amended by the proposed rulemaking to remove the reference to annual rental payments being made to the proper Bureau of Land Management office. Under the provisions of the Federal Oil and Gas Royalty Management Act and a Memorandum of Understanding between the Bureau and the Minerals Management Service dealing with remittances in connection with mineral leases, which was implemented through final rulemaking changes to Groups 3000, 3100 and 3200, all bonus and rental remittances except the initial payment should be made to the Minerals Management Service.

Section 3108.2-2(a)(3) would be amended by the proposed rulemaking to provide that if a lease becomes productive after its termination but prior to approval of a Class I reinstatement by the authorized officer, evidence of payment to the Minerals Management Service of required royalties on production must be provided to the authorized officer as a condition of approval of the lease reinstatement. Such payment would be in addition to the payment of the required back rental. No increase in the rental or royalty rate is required for a Class I reinstatement.

The proposed rulemaking would move certain language from § 3108.4 to a new § 3108.5 covering a waiver or suspension of lease rights to make it clear that it is not limited to bona fide purchasers, but that any party affected by any proceeding with respect to a violation of the law or regulations may file such a waiver.

The proposed rulemaking would revise § 3110.1-2 to address the issue of the effective date of any noncompetitive future interest lease when the date of vesting of the mineral interest in the United States is not the first day of the month. In such situations, the future interest lease would be issued to be effective on the actual date of vesting of the mineral interests in the United States.

The proposed rulemaking would amend § 3110.2 of the existing regulations which provides that a simultaneous lease offer cannot be withdrawn by an applicant. The amendment would add language allowing a priority applicant to withdraw a simultaneous offer that has been in a suspended status for a period of at least 1 year from the date of posting of the official results in the appropriate Bureau of Land Management State office. The request would be honored when received and the selected applicant's first year's rental would be refunded. This amendment is the result of action by the Department of the Interior in certain cases to suspend action on the issuance of noncompetitive leases, in some instances for as long as 2 years. During the period of suspension, the United States retains the advance rental submitted by the priority applicant, thereby denying the applicant the use of those funds. This amendment would permit the priority applicant to make a decision as to whether to continue to await the issuance of a lease or withdraw the offer and obtain a refund of the first year's rental.

A new § 3110.4 would be added by the proposed rulemaking that would restore language providing for an amendment to a lease which was inadvertently omitted by the July 1983 revision. There is a continuing need for this provision.

Section 3111.1-1(a) would be amended by the proposed rulemaking to provide that noncompetitive future interest lease offers made under § 3111.3 also must be accompanied by a nonrefundable filing fee of $75. The amendment would remove the requirement for the payment of advance rental for such future interest offers, thereby requiring annual rental payments to begin at the time the mineral estate vests in the United States.

The proposed rulemaking would amend § 3111.1-1(b) by adding a new paragraph (2) which would provide that defects in lease offers that require rejection under the existing regulations would be correctable subject, however, to an intervening proper and complete offer for all or part of the same lands. There would be no additional filing fee required for a corrected offer. This change should expedite the leasing of lands where an error exists in the offer which is identified during adjudication of the offer and there is no competing offer for the same lands.

The proposed rulemaking would amend § 3111.1-1(c) to clarify that an offer to lease must be limited to either public domain land minerals or acquired land minerals if it is to be acceptable. If this requirement is not met, it could be corrected under the previously discussed amendment, subject to the offer being rejected if corrective action is not taken by the offeror.

Section 3111.2-1(b) would be amended by the proposed rulemaking to clarify how lands shall be described in an offer in those instances where the lands have not been surveyed under the public land rectangular system.

The proposed rulemaking would change § 3102.2-2(b) by amending language in the existing regulations to clarify what is required in connection with a description for a lease offer for acquired lands.

The proposed rulemaking would revise § 3111.2-2(c) to reduce the land description requirement for acquired lands where the acquiring agency has assigned an acquisition number to the tract sought for leasing. The change would allow the use of tract numbers for such lands in lieu of the legal subdivision or metes and bounds description when the lease offer is for the entire tract, rather than continuing a requirement for both descriptions. The change should lessen the regulatory burden imposed on the public, while at the same time providing a sufficient land description for locating the lands and for meeting the records adjudication needs of the Bureau of Land Management and other surface managing agencies.

Section 3111.3-3 would be revised by the proposed rulemaking to remove a reference to the effective date of a future interest lease and to include language from § 3111.3-4 of the existing regulations providing what action will be taken when the United States owns both a fractional and fractional future

interest in the mineral interests in the same tract. Section 3111.3–4 would be removed, thereby removing all references to a supplemental agreement as well as the requirement for rental and/or royalty payments prior to the vesting of title of the mineral interests in the United States. Section 3111.3–5 would be redesignated and amended to remove all reference to a supplemental agreement. The policy decision of the Department of the Interior to remove the advance payment requirement for future interests should remove any financial reason that might act as a barrier to a voluntary filing of an application to lease a noncompetitive future interest that will vest in the United States and should assist the Bureau of Land Management in identifying such interests. Without such assistance, the Bureau would have to review numerous land records to identify such interests. The change also is intended to decrease disincentives to applying for such future interest leases. A recent review by the Department indicates that charges for rental and royalty prior to the vesting of the mineral interests in the United States may actually encourage trespass after title vests. Any such trespass is facilitated by the fact that control of the lease is exercised under authority granted by the previous owner(s) of the mineral interests. The change made by the proposed rulemaking should remove the monetary basis for such trespass by removing presently imposed costs whose payment is required prior to the vesting of the mineral interests in the United States.

Subpart 3112 would be revised by this proposed rulemaking. The principal change would make a simultaneous filing, properly executed and complete with the required filing fee and advance rental, an offer to lease and binding upon the qualified offeror without further action by said offeror. This change involves, among other necessary revisions, replacing the words "application" and "applicant" with the words "simultaneous lease offer" and "offeror" throughout Subpart 3112. This was the procedure that was followed until 1980 by the Bureau of Land Management. This change should benefit the public by providing quicker and easier issuance of a lease to a particular parcel once a qualified offeror has been identified through the selection process. The only time the potential lessee would be required to sign the lease form would be in the event the authorized officer determines that there is a need to add a stipulation or modification in addition to any stipulation(s) which may have been specified for a particular parcel in the parcel list notice and the lease terms set out in the current lease form approved by the Director. As discussed earlier in this preamble, the requirement that lease offers be executed only by the offeror or his/her attorney-in-fact is being continued, but is being moved to § 3102.6 in the proposed rulemaking. This helps ensure a more informed participating public by requiring a potential lessee to sign the offer form and also eliminates an area where a margin for deceptive practices may exist by requiring an attorney-in-fact to hold a power of attorney limited to signing simultaneous offers and making holdings and qualification statements only on behalf of a sole and exclusive prospective lessee. The power of attorney would not be required to accompany a filing under Subpart 3112; however, the power of attorney may be required for review by the authorized officer as part of the lease issuance process.

The proposed rulemaking would further provide specificity as to all the defects which make a simultaneous filing unacceptable. A simplified process for the return of unacceptable filings would be implemented. This would provide for the return of any remittance submitted with the filing, removing the existing requirement for retaining a $75 processing fee for a defective filing. The proposed rulemaking also contains language that would clarify those actions which require rejection of an offer(s).

The changes made by the proposed rulemaking to Subpart 3112 are intended, in part, to respond to the decision of the Tenth Circuit Court of Appeals in *Conway* v. *Watt*, 717 F.2d 512 (10th Cir. 1982), as limited by *KVK Partnership* v. *Hodel*, 759 F.2d 814 (10th Cir. 1985). In *Conway*, the Court stated that simultaneous applications should not be rejected for trivial or inconsequential reasons and the simultaneous oil and gas leasing regulations are not *per se* grounds for rejection of a simultaneous application if they do not further the statutory purposes of the Mineral Leasing Act. The changes made by the proposed rulemaking should eliminate those simultaneous filing requirements that are not substantive or necessary for the processing of such offers, and thus, all remaining provisions of the simultaneous leasing regulations, as well as those added in the future, are or will be substantive and will further the purposes of the Act. Examples of such changes are the streamlining of the two-step leasing process to a one-step process and the providing of an intermediate protest and appeal process for returned offers deemed unacceptable, which could result in such offers being included in the selection process, or, in the event a selection for that parcel has already occurred, a reselection that includes the returned offers.

A specific change that would be made by the proposed rulemaking to Subpart 3112 would be a change in the definition of the term "person or entity in the business of providing assistance to the participants in the Federal simultaneous oil and gas leasing program." The change is needed because it has come to the attention of the Bureau of Land Management that the definition as it appeared in the July 1983 revision has not been fully understood. The proposed rulemaking would provide language clarifying the original intent of the Bureau in defining the term and would remove ambiguities as to the types of activities that fall within the definition. The proposed rulemaking would further distinguish and clarify the differences in the existing regulations between those persons, entities or enterprises in the business of providing various services to participants in the simultaneous leasing program, such as prepackaged kits to be executed and submitted to the Bureau of Land Management, customized tract selections that the applicant is instructed to use in completing the application, precompleted forms, detailed instructions on completing forms and making selections for a drawing, or other means of assistance for a consideration, from those other persons, entities or enterprises that provide only general subscription services, geological assistance, and general listings of parcels and parcel evaluations from which participants may make their own individual, independent selections.

Section 3112.1–1 would be amended by the proposed rulemaking to add a new paragraph (c) which would provide the Director with the discretionary authority to lease lands not within known geological structures outside of Alaska or a favorable petroleum geological province in Alaska, which had formerly been leased, using over-the-counter leasing procedures when it has been determined that it is in the public interest to so lease. For example, in those States where there is very little activity under the simultaneous leasing program, more industry and public interest might be generated and oil and gas exploration and development more readily attained where the offeror is not

confined to the Bureau's parceling efforts but is free to choose only the specific lands desired, subject to the minimum acreage restrictions for an over-the-counter offer set out in § 3110.1–3. Allowing such lands with low interest to be directly offered over-the-counter would avoid the higher cost and delays in offering them first through the simultaneous process when the likelihood is that there will be little or no public response through filings. Under this proposed rulemaking change, each Bureau of Land Management State Office could identify which lands would be appropriate to reoffer in this manner by reviewing the recent history of simultaneous filings and lease relinquishments and terminations in the subject area together with a review of the drilling activity and/or established wells and patterns of recent geophysical exploration and competitive bidding activity in proximity to the lands. Areas for which very low or no interest is shown based on these criteria would be described either by the old lease number or general land descriptions and notice of their availability for over-the-counter leasing would be published in the **Federal Register.**

The proposed rulemaking would amend § 3112.2–1 to provide that the filing of a simultaneous lease offer on a form approved by the Director, Bureau of Land Management will constitute agreement by the offeror to be bound by the terms and conditions of the standard lease form and any lease stipulations identified in the Notice of Land Available for Oil and Gas Simultaneous Offer. This means that a qualified offeror who has properly completed an offer, signed it and submitted all required fees and rental for a parcel, and who is selected as the successful priority winner, will be issued a lease, if the authorized officer decides to issue a lease, without any further action on the offeror's part. The proposed rulemaking also would make it clear that the name of only one entity, whether it be a person, corporation, association, partnership or municipality, can appear as the offeror, with all other parties in interest, including the names of all members of associations or partnerships, being disclosed elsewhere on the form or in a separate document accompanying the offer at the time of its subittal. All applicants should be aware of the change in the definition of the term "party in interest" that would be made by this proposed rulemaking and the requirements concerning "interest" that the proposed rulemaking would move to this section.

Section 3112.2–1 would also be amended to eliminate the requirement that a participant in the simultaneous oil and gas leasing program supply his/her social security or Bureau of Land Management assigned number, or for corporations and other entities to supply their Internal Revenue Service number or taxpayer number. This change would provide the Bureau with the flexibility to adopt new procedures and remove any opportunity for the problem which presently arises under the existing regulations when there is no match between the given number and the participant, or in those instances where no name is supplied but an identification number is given. The proposed rulemaking would require the offeror to be clearly identified by both a full name and address on each simultaneous lease offer and also would require that the instructions on the form be followed, which may specify the use of an identification number.

The requirement regarding the revealing of filing assistance contained in § 3112.2–4 would be removed by the proposed rulemaking. This information would no longer be required because of a change made elsewhere in this proposed rulemaking eliminating the application but retaining the requirement that an offer be executed only by the potential lessee or his/her qualified attorney-in-fact.

Section 3112.3 would revised by the proposed rulemaking to address the question of what constitutes an unacceptable simultaneous filing. The proposed rulemaking clarifies that an appeal of the return of a form determined to be unacceptable by the authorized officer will not impede the selection process and subsequent lease issuance by the authorized officer if such action is concurred in by the duly selected offeror. The proposed rulemaking also addresses those situations requiring rejection of a simultaneous offer.

Section 3112.4 would be amended by the proposed rulemaking to clarify the selection process and to set forth when a reselection is appropriate and when relisting of a parcel for simultaneous offer would be appropriate.

The proposed rulemaking would amend § 3112.4–2 by removing the inequity in the existing regulations where a filing has been omitted from the selection process and no reselection is instituted because a lease has already issued as a result of the original selection. The proposed rulemaking would provide for a reselection in this instance, with notification to the lessee of the required reselection. This reselection process would be subject to the bona fide purchaser provisions of § 3108.4.

Section 3112.5–1 would be retitled by the proposed rulemaking to emphasize the effect of classification of lands as a known geological structure. The selection also would be amended to specify that lands found to be within a favorable petroleum geological province in Alaska could be leased only competitively.

Section 3112.6 would be amended to remove procedures that pertain to processing the offer under the existing requirements. This change to a one-step lease offer procedure would eliminate the need for the second-step, that of forwarding the lease agreement to the qualified applicant for signature prior to lease issuance.

Section 3112.7 would be amended by the proposed rulemaking to clarify that over-the-counter offers for lands not leased as parcels when offered under the simultaneous leasing program cannot be accepted prior to the first day of the month following the posting of the results of the simultaneous selection process.

The proposed rulemaking would amend § 3120.2–2 by adding a provision requiring that the effective date of competitive future interest leases issued in accordance with § 3120.8 would be the date the mineral interests vest in the United States.

Section 3120.2–4(a) would be amended by the proposed rulemaking to remove the requirement that a separate statement of certification must accompany each sealed bid. The requirement for certification is met when the bidder signs the competitive bid form approved by the Director, Bureau of Land Management.

Section 3120.3 would be amended to provide that no filing fee is required to request that a parcel be offered for competitive lease sale.

The proposed rulemaking would renumber § 3120.5 as § 3120.6, revising that section and adding new §§ 3120.5, 3120.5–1 and 3120.5–2. The changes made by the proposed rulemaking would clarify the competitive sale and lease award provisions. The amendments include the establishment of a procedure for resolving a tie of the high bids for an offered parcel. Another change would provide that upon rejection, nonproprietary parcel evaluation information would be available for review, but that proprietary information used in a parcel evaluation would not be available for public review. The proposed rulemaking also would add a specific provision for the refund of the

bonus bid deposit in the event a bid is found inadequate.

In response to a recommendation made in a General Accounting Office Report regarding the timeliness of processing and depositing competitive lease bid revenues, the proposed rulemaking would amend these sections to decrease the period allowed for return of an executed lease form from 30 to 15 days. The General Accounting Office reported that the United States Treasury suffered a considerable loss of interest revenues as a result of the longer 30-day timeframe presently allowed for a successful bidder to complete the lease and associated actions prior to lease issuance. A final change made by the proposed rulemaking to these sections would allow a holder, or holders acting as a group, of the present operating rights in an offered future interest parcel to obtain a future interest lease by exceeding the highest acceptable bid submitted for the parcel when such holder(s) of the present operating rights does not submit the highest acceptable bid at a competitive sale. This provision is designed to protect the future interest of the United States by encouraging orderly development of the oil and gas interests by present owners of operating rights.

Section 3120.8–1 would be amended by the proposed rulemaking to set out the specific information needed in an application to make future interest lands available for competitive lease sale. This change should make it easier for the public to participate in this program during the period before title to such mineral interests vests in the United States.

Section 3133.1(c) would be amended by the proposed rulemaking to clarify that during any lease year in which discovery of oil or gas is made on the lease, rental payments would not be credited toward the royalties due from production, and rentals would not be required during any year of production.

The proposed rulemaking would amend § 3134.1, Bonding, to allow National Petroleum Reserve—Alaska bond coverage for exploration and leases to be included by a rider to a nationwide bond in an amount sufficient to bring the total bond amount into conformance with requirements for the National Petroleum Reserve—Alaska-wide coverage, in lieu of the presently required separate exploration and lease bonds limited to covering the Reserve only.

The proposed rulemaking also would make changes in Subpart 3135 concerning lease transfers of record title or of operating rights (subleases) for leases in the National Petroleum Reserve—Alaska to be consistent with changes that would be made by this proposed rulemaking in Subpart 3106 which are discussed earlier in this preamble.

The proposed rulemaking would redesignate Subpart 3045 of the existing regulations as Subpart 3150 and would include a section covering geophysical exploration on unleased lands under the jurisdiction of the Department of Defense. The change is consistent with a Memorandum of Understanding between the Department of Defense and the Department of the Interior.

Section 3151.1 of the proposed rulemaking, § 3045.2–1 of the existing regulations, would specify that a geophysical operator would not have to wait more than 5 working days after filing a Notice of Intent to Conduct Oil and Gas Exploration Operations before commencing operations. This 5-day period would be used by the authorized officer to review the Notice of Intent and, if necessary, conduct a joint field inspection. The proposed rulemaking would make requirements specified by the authorized officer binding on the operator. The authorized officer's authority to prohibit exploration on certain lands also is more clearly stated.

As part of the decisionmaking process on revising the existing Notice of Intent provisions, consideration was given to creating a system requiring an exploration permit. A permit system had been recommended by the Office of the Inspector General for the Department of the Interior. The present Notice of Intent procedure has been efficient and effective. The need to create a new permitting system has not been sufficiently demonstrated to warrant a change at this time.

Section 3153.1 of the proposed rulemaking would specify that an oil and gas geophysical exploration permit shall include those terms and conditions required by a military agency that might request the Bureau of Land Management to process an application for and issue a permit for oil and gas geophysical exploration operations on lands under its jurisdiction.

The proposed rulemaking would renumber §§ 3183.3–1, 3183.4, 3183.5 and 3183.6 of the existing regulations as § 3183.4 through 3183.7, respectively; would subdivide the language of § 3183.4 of the existing regulations into paragraphs and add a new paragraph (b) that would establish the public interest requirement for approved unit agreements for unproven areas, similar to that discussed in § 3105.2–3(e) in this preamble. The proposed rulemaking also would amend the Certification-Determination of the model unit agreement contained in paragraph A of § 3186.1 to include the public interest requirement.

Section 3200.0–5 would be amended by the proposed rulemaking to clarify and add some needed definitions. The section also would be amended by removing the terms "geothermal lease" and "Supervisor" in paragraphs (b) and (g) which are no longer needed and by the removal of the criteria for a known geothermal resource area in paragraph (k) which would be relocated in a new § 3200.1 by this proposed rulemaking.

The proposed rulemaking would remove §§ 3200.0–6 and 3200.0–7 which relate to preleasing procedures and cross references to other regulations because these sections are repetitive of other statutory and regulatory requirements and are no longer needed.

Section 3201.1–1 would be amended by the proposed rulemaking to add a statement that the Secretary of the Interior has the discretion to issue a lease when it is deemed to be in the public interest.

Section 3202.2 would be amended by the proposed rulemaking to provide that submission of a competitive bid constitutes certification of compliance with the statutory and regulatory requirements specified for qualifications to hold a lease when the bidder signs the competitive bid form approved by the Director, Bureau of Land Management.

Section 3202.2–2 would be removed by the proposed rulemaking and would eliminate burdensome requirements with respect to guardians and trustees that are repetitious of the qualifications requirements contained in § 3202.2–1(c) of the existing regulations.

The proposed rulemaking would renumber section § 3202.2–3 as § 3202.2–2 and revise it to provide that an attorney-in-fact or agent may execute and submit a lease application, competitive bid or lease transfer.

Section 3202.2–4 would be removed by the proposed rulemaking to reflect the policy of the Department of the Interior that keeping current qualifications statements on file is no longer required. This policy, which reduces the regulatory burden imposed on the public, was adopted for oil and gas leasing operations by the final rulemaking of February 26, 1982, and was extended to the geothermal leasing program by the final rulemaking of June 1, 1983 (48 FR 24368), with this section inadvertently left in the regulations. These changes mean that all present and future potential lessees must certify that they are qualified to hold a lease

and are in compliance with the law and the regulations when they submit an application, offer, competitive bid or lease transfer.

Section 3202.2-5 would be redesignated as § 3202.2-3 and amended by the proposed rulemaking or reflect the policy of the Department of the Interior of no longer requiring all parties in interest to submit evidence of their qualifications when they submit an application or offer. The amendment also would add a provision giving the authorized officer authority to request evidence of qualifications any time it is deemed necessary. Likewise, the proposed rulemaking would renumber § 3202.2-6 as § 3202.2-4 and remove the requirement for submission of evidence of qualifications.

The proposed rulemaking would revise § 3203.1-1, Dating of Leases, to bring it into conformance with other requirements of the existing regulations that a noncompetitive or competitive geothermal resources lease is not considered issued until signed by the authorized officer. This change does not establish a new policy or requirement, but would merely state in this section of the regulations the current practice which is consistent with the requirements and procedures for oil and gas leasing. A situation has arisen where an applicant for a noncompetitive geothermal resources lease has contested whether the authorized officer's execution of the lease form is necessary in order for a lease to issue. The change would avoid similar allegations in any other cases of this nature.

The proposed rulemaking would remove from § 3203.2 and elsewhere throughout group 3200 all reference to 43 CFR 3230, dealing with conversion rights. This language is no longer applicable because the time to assert those rights ended 180 days after the effective date of the Geothermal Steam Act of 1970.

Subpart 3205 would be retitled by the proposed rulemaking to remove the reference to service charges and insert the word "fees" since the language in § 3205.1-2 correctly uses the term "filing fees". Section 3205.2 also would be amended to use the term "filing fees" for the charges that are required for noncompetitive lease applications and lease transfers. This change will provide consistency with the terminology used in group 3100 and other regulations.

Section 3205.3-1 would be removed by the proposed rulemaking to provide that rental will not be required for future interest lease applications prior to the vesting of the mineral interests in the United States. As addressed earlier in this preamble with respect to oil and gas future interest leases, the policy of the Department of the Interior to eliminate the requirement for any rental and royalty payments prior to the vesting date of such mineral interests should facilitate the voluntary filing of future interest lease applications for such lands, reduce the likelihood of trespass and assist the Bureau of Land Management in identifying mineral interests that vest in the United States.

Section 3205.3-2 would be amended to provide that all annual rental payments must be made to the designated Minerals Management Service office. This change will make this section consistent with earlier changes made in group 3200 regarding the payment of rentals. Sections 3205.3-2, 3244.2-1 and 3244.2-2(a) would be amended to provide that when the annual rental payment is due on a day the designated Service office is not open, payments postmarked on the next official working day will be considered timely filed. This change is similar to one made in group 3100 and discussed earlier in this preamble.

Sections 3205.3-7 and 32305.3-8 would be amended by the proposed rulemaking to eliminate the need for a request for a waiver, suspension or reduction of rental or royalty or an application for suspension of operations or production to be filed in triplicate. One copy of such document is sufficient for use by the Bureau of Land Management.

The proposed rulemaking would make a number of changes to Subpart 3206. Separate bonds for protection of surface owners would no longer be required. As is currently required for oil and gas leases, lease bonds would be required prior to drilling rather than prior to entry as required in the existing regulations. A designated operator would be allowed to furnish a lease bond in lieu of the lessee. Section 3206.3-2 would be amended to remove reference to the approval of operating agreements by the Department of the Interior since a transfer of operating rights (sublease) would be required to be submitted on a Bureau of Land Management approved form in accordance with Subpart 3241, as amended by this proposed rulemaking. All of these changes would make the requirements for geothermal resources leasing consistent with those in the oil and gas leasing regulations. Finally, the proposed rulemaking would renumber several of the sections.

The proposed rulemaking would eliminate from §§ 3207.2-3(c) and 3207.3-2(c) the future interest interim agreement required for geothermal resources future interest leases, consistent with the proposed amendment for competitive and noncompetitive oil and gas future interests leases discussed earlier in this preamble.

The proposed rulemaking would modify the provisions of Subpart 3209 to also make the provisions applicable to exploration operations conducted by a lessee on a leasehold. Such exploration operations are also presently addessed in § 3264.4 of the existing regulations which would be removed in its entirety. The changes that would be made to Subpart 3209 remove the second sentence of § 3209.1(a), as well as adding language to § 3209.4-1(b) that would allow a lessee to use a lease bond in lieu of a separate exploration bond.

Section 3210.2-1 would be revised by the proposed rulemaking to clarify its provisions and to make them compatible with the provisions of the oil and gas leasing regulations. Exact copies of both sides of the official form reproduced on one sheet of paper would be acceptable for filling as long as the signature thereon is made holographically in ink.

Sections 3220.2 and 3220.3 would be amended by the proposed rulemaking to make them consistent with the competitive oil and gas lease sale notice and detailed statement requirements. With this amendment, notice of a competitive geothermal lease sale would have to be published once a week for three consecutive weeks, rather than for four consecutive weeks, and would consist of brief information concerning the time, date and place of sale, a general description of the lands being offered and information as to where to obtain a detailed statement providing the precise description and terms and conditions of the leases to be offered, including rental and royalty rates, bidding requirements, required forms and other helpful information.

Section 3220.4, concerning bidding requirements, would be amended by the proposed rulemaking to delete the provisions requiring submission of proof of qualifications with each bid. However, the authorized officer would retain the discretion to request such information when it is determined necessary. This section also would be amended by the proposed rulemaking to remove the provision that allows payment of bonus bids in two equal installments. In most cases, the bonus bids offered in connection with leasing of geothermal resources have been so small that deferral of payment has not been meaningful. If, in making a competitive offering of geothermal resources, the authorized officer finds that deferral of bonus bid payments would be a significant incentive to

bidders, the change made by the proposed rulemaking would permit such deferral to be specified in the notice of lease sale.

The proposed rulemaking would amend § 3220.5 by deleting the 30-day restriction on review and acceptance of the highest bid for a lease. The removal of this provision recognizes the current policy of the Bureau of Land Management to utilize a postsale review which incorporates information about the market into tract evaluation preceding final bid acceptance or rejection. The proposed rulemaking also would amend the section to clarify when the one-fifth bonus bid would be forfeited and would provide that the successful bidder pay the balance of the bonus bid, first-year's rental and a proportionate share of the notice of lease sale publication costs within 15 days of receipt of notification. The change is consistent with other changes made by this proposed rulemaking in response to the General Accounting Office Report on competitive bid revenues.

Section 3241.2–1 would be amended by the proposed rulemaking to change the term "service charge" to "filing fee" with respect to the payment required for each lease transfer filed as discussed earlier in this preamble. The proposed rulemaking also would make necessary changes throughout Subpart 3241 covering transfers of record title and of operating rights (subleases) to be consistent with the changes made in Subpart 3106 by this proposed rulemaking and discussed in connection with that subpart earlier in this preamble. Additionally, § 3241.2–3 would be redesignated as § 3241.2–2 and the proposed rulemaking would remove all reference to operating agreements and information requiring submission of qualifications statements. This qualifications requirement is in conflict with the final rulemaking of June 1, 1983, which allows the authorized officer to request evidence of qualifications when it is deemed necessary. The proposed rulemaking would redesignate § 3241.2–4 as § 3241.2–3 and would require a transfer of record title and operating rights (sublease) to be made on a form approved by the Director, Bureau of Land Management, or exact reproductions thereof. This change would reduce the amount of information required by the existing regulations, thus speeding and simplifying the approval process for lease transfers. The approved form required for transfers of operating rights (subleases) for geothermal leases would be obtained from the Bureau.

The proposed rulemaking would amend § 3244.1(a) to delete the provision that all written relinquishment statements be filed in triplicate. One copy is sufficient for action by the Bureau of Land Management. The section also would be amended to allow either a record title holder or the holder's attorney-in-fact to file such documents. This amendment would give official sanction to a standard practice which also is commonly allowed for lease acquisition.

The proposed rulemaking would amend § 3244.2–2(a) to make it consistent with the amendments that were made to §§ 3205.1–1 and 3205.1–2 by the final rulemaking that was published in the **Federal Register** of March 27, 1984 (49 FR 11636), specifying that the Minerals Management Service is the proper office for the remittance of annual rental payments. The amendment to § 3244.2–2(a) would provide that the designated Service office will send a Notice of Deficiency to a lessee in cases where there is a nominal deficiency in rental payment, and payment of the full balance must be returned timely to the designated Service office. The adoption of this procedure is in accordance with the establishment of the Bonus and Rental Accounting Support System of the Service.

Section 3250.1–2 would be amended to delete duplicative language respecting who may hold geothermal licenses, and to delete the requirements relating to a showing of qualifications. The authorized officer would be given the authority to request a statement of qualifications when it is deemed necessary.

The principal authors of this proposed rulemaking are Valliere Cacy, Mary Linda Ponticelli, Donna Webb, Gregory Shoop, Mona Schermerhorn, Karl Duscher and Lois Mason, all of the Division of Fluid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitue a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The proposed rulemaking will not have an adverse effect on investment, competition, employment, productivity or the ability of U.S. firms to compete with foreign enterprises. The changes will affect all businesses, large and small equally. In addition, the changes should simplify and clarify the existing regulations, reducing the regulatory burden on the public.

The information collection requirements contained in this proposed rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0034, 1004–0038, 1004–0065, 1004–0067, 1004–0074, 1004–0134, 1004–0135, 1004–0136, 1004–0137, 1004–0145 and 1004–0132.

List of Subjects

43 CFR Part 1820

Administrative practice and procedure, Alaska, Archives and records, Public lands.

43 CFR Part 3000

Public lands—classification, Public lands—mineral resources.

43 CFR Part 3040

Oil and gas exploration, Public lands—mineral resources.

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3110

Administrative practice and procedure, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3120

Administrative practice and procedure, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3150

Oil and gas exploration, Public lands—mineral resources.

43 CFR Part 3160

Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting requirements.

43 CFR Part 3180

Government contracts, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3210

Geothermal energy, Public lands—mineral resources.

43 CFR Part 3220

Geothermal energy, Public lands—mineral resources.

43 CFR Part 3240

Geothermal energy, Mineral royalties, Public lands—mineral resources, Water resources.

43 CFR Part 3250

Electric power, Geothermal energy, Public lands—mineral resources.

43 CFR Part 3260

Environmental protection, Geothermal energy, Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), it is proposed to amend: Part 1820, Group 1800, Subchapter A; Parts 3000, 3040, Group 3000, Parts 3100, 3110, 3120, 3130, 3150, 3160, 3180, Group 3100, and Parts 3200, 3210, 3220, 3240, 3250, 3260, Group 3200, Subchapter C; Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 1820—[AMENDED]

1. The authority citation for Part 1820 continues to read;

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

§ 1821.2-3 [Amended]

2. Section 1821.2–3(b) is amended by removing the period at the end of the section and adding the phrase ", except for drawings for the Simultaneous Oil and Gas Program conducted under the provisions of Subpart 3112 of this title which are established by a computerized random selection, and priorities for filings under the provisions of Subpart 3111 of this title for openings of previously withdrawn lands in Alaska which also are established by a computerized random selection."

PART 3000—[AMENDED]

3. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriations Act of 1952 (31 U.S.C 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3000.0-5 [Amended]

4. Section 3000.0–5 is amended by:

A. Revising paragraph (g) to read:

"(g) 'Public domain lands' means lands, including mineral estates, which never let the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws and other lands specifically identified by the Congress as part of the public domain.

B. Revising paragraph (k) to read:

"(k) 'Party in interest' means, except in Subpart 3112 of this title, a party who is or will be vested with any interest under the lease as defined in paragraph (1) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest."; and

C. Revising paragraph (l) to read:

"(l) 'Interest' means ownership in a lease or prospective lease of all or a portion of the record title, working interest, operating rights, overriding royalty, payments out of production, carried interests, net profit share or similar instrument for participation in the benefit derived from a lease. An 'interest' may be created by direct or indirect ownership, including options, fiduciary obligations, security interests which entitle the creditor to a present or future interest, or other agreements by which one party agrees, or has a duty, to transfer an 'interest' to another party. An 'interest' may also be established by an agreement, plan, scheme or arrangement in existence at the time of submission of an application, offer, competitive bid or request for approval of a transfer of record title or of operating rights (sublease), which results in the transfer of an 'interest' to a party not identified as holding an 'interest' in the application, offer, competitive bid or lease. 'Interest' does not mean stock ownership, stockholding or stock control in an application, offer, competitive bid or lease, except for purposes of acreage limitations in § 3101.2 of this title and qualifications of lessees in Subpart 3102 of this title."

5. A new § 3000.8 is added to read:

§ 3000.8 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provide that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of the use of such minerals shall be accomplished under the regulations of groups 3000 and 3100 of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

PART 3040—[REMOVED]

6. Part 3040 is removed in its entirety.

PART 3100—[AMENDED]

7. The authority citation for Part 3100 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–

359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Act of May 21, 1930 (30 U.S.C. 301-306), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41) and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

§3100.0-3 [Amended]

8. Section 3100.0-3 is amended by:

A. Revising paragraph (a)(2)(i) to read:

"(i) Units of the National Park System, including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as provided in paragraph (g)(4) of this section;";

B. Revising paragraph (b)(2)(i) to read:

"(i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;"; and

C. Amending paragraph (e) by inserting after the phrase "excess to" the phrase "or surplus by".

§ 3100.0-5 [Amended]

9. Section 3100.0-5 is amended by:

A. Amending paragraph (a) by revising the second sentence thereof to read: "The operator may be the lessee, holder of rights acquired by an approved transfer of operating rights (sublease) or designated operator.";

B. Amending paragraph (d) by removing the last sentence thereof in its entirety;

C. Revising paragraph (e) to read:

"(e) 'Transfer' means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: 'Assignment' which means a transfer of all or a portion of the lessee's record title interest in a lease; and 'sublease' which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States."

D. Removing paragraph (f) in its entirety;

E. Redesignating paragraphs (g) through (l) as paragraphs (f) through (k), respectively; and

F. Amending newly designated paragraph (i), formerly paragraph (j), by removing from paragraph (i)(1) the phrase "drilling or" and by removing from paragraph (i)(2) the last sentence thereof.

§ 3100.2-2 [Amended]

10. Section 3100.2-2 is amended by removing from the last sentence thereof the citation "30 CFR 221.21" and replacing it with the citation "§ 3162.2(a) of this title."

§ 3100.3-1 [Amended]

11. Section 3100.3-1 is amended by revising the last sentence thereof to read: "All other lands, except those lands set forth in Part 3120 of this title, shall be leased noncompetitively, if at all, to the first qualified applicant."

§ 3100.4-1 [Amended]

12. Section 3100.4-1(b) is amended by removing from where it appears in the opening paragraph the phrase "notice or option" and replacing it with the phrase "notice of option".

§ 3100.4-3 [Amended]

13. Section 3100.4-3 is amended by removing from where it appears in the introductory paragraph the phrase "duplicate statements" and replacing it with the phrase "a statement" and by removing paragraphs (a) through (e) in their entirety.

14. Sections 3101.1-1 and 3101.1-2 are revised to read:

§ 3101.1-1 Lease form.

A lease shall be issued only on the form approved by the Director.

§ 3101.1-2 Surface use rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed reasonable and consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

15. A new § 3101.1-3 is added to read:

§ 3101.1-3 Stipulations and information notices.

The authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. A stipulation shall be subject to waiver only if the authorized officer determines that the factors leading to its use have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. In addition, if the authorized officer determines that a stipulation involves an issue of major concern to the public, waiver of such stipulation shall be made subject to appropriate public review. In such cases, the stipulation shall define the level of appropriate public review required before such stipulation may be waived. A lessee shall be made aware of or required to indicate acceptance of stipulations prior to the issuance of a lease. The authorized officer also may attach information notices to a lease at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations. It is not necessary that a lessee be made aware of information notices prior to the issuance of a lease.

§ 3101.2-1 [Amended]

16. Section 3101.2-1(b) is amended by removing from the second sentence thereof all after the word "Alaska" and replacing it with the phrase "begins at the northeast corner of the Tetlin National Wildlife Refuge as established on December 2, 1980 (16 U.S.C. 668dd note), at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63°9'38" north latitude, 143°20'52" west longitude), then westerly along the left limit of the Tanana River to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth."

§ 3101.2-3 [Amended]

17. Section 3101.2-3 is amended by adding at the end thereof a new sentence to read:

"Acreage subject to offers to lease, overriding royalties and payments out of production shall not be included in computing accountable acreage."

§ 3101.3-2 [Amended]

18. Section 3101.3-2 is amended by removing from where it appears the word "noncompetitive".

§ 3102.1 [Amended]

19. Section 3102.1 is amended by removing from where it appears at the beginning of the section the word "Leases" and replacing it with the phrase "leases or interests therein".

20. Section 3102.2 is revised to read:

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.

§ 3102.3 [Amended]

21. Section 3102.3 is amended by adding a new sentence at the end thereof to read: "Such legal guardians or trustees shall be citizens of the United States or otherwise meet the provisions of § 3102.1 of this title."

22. Section 3102.4 is revised to read:

§ 3102.4 Signature.

(a) The original of an offer, application or competitive bid shall be holographically (manually) signed in ink and dated by the present or potential lessee or by anyone authorized in accordance with § 3102.6 of this title to sign on behalf of the present or potential lessee, except that simultaneous offer forms filed under Subpart 3112 of this title shall only be signed by the offeror or his/her qualified attorney-in-fact. The failure to date a non-competitive offer signature shall not make such an offer unacceptable.

(b) A transfer of record title or of operating rights (subleases), as required by section 30(a) of the act, shall be holographically (manually) signed and dated in triplicate by the transferor, or anyone authorized to sign on behalf of the transferor.

(c) A request for approval of a transfer executed by the transferee to the benefit of the transferor, as provided in § 3102.4(b) of this title, shall be submitted in triplicate original; however, a transferee, or anyone authorized to sign on his/her behalf, shall be required to holographically (manually) sign and date only 1 original request for approval of a transfer.

(d) Documents signed by any party other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship. Simultaneous lease offers filed under Subpart 3112 of this title shall be signed only by the potential lessee or his/her qualified attorney-in-fact. For documents filed on behalf of a corporation, association or partnership, any third party signatory that is not a member of the organization that constitutes the present or potential lessee shall describe his/her relationship to the present or potential lessee. A signatory who is a member of the organization that constitutes the present or potential lessee (e.g., officer of a corporation, partner of a partnership, etc.) may be requested by the authorized officer to clarify his/her relationship, when the relationship is not shown on the documents filed.

(e) Submission of a qualification number does not meet the requirements of paragraph (d) of this section or of § 3112.2-1(c) of this title.

(f) Machine or stamped signatures shall not be used.

23. Section 3102.5 is revised and §§ 3102.5-1, 3102.5-2 and 3102.5-3 are added to read:

§ 3102.5 Compliance, certification of compliance and evidence.

§ 3102.5-1 Compliance.

The act requires that all parties, including corporations, and all members of associations, including partnerships of all types, who actually or potentially own, hold or control an interest in a lease or prospective lease shall, without exception, be qualified. Compliance means that the lessee, potential lessee and all such parties (as defined in § 3000.0-5(k)) are:

(a) Citizens of the United States or qualified alien stockholders in a domestic corporation (See § 3102.2);

(b) In compliance with the Federal acreage limitations (See § 3101.2);

(c) Not minors (See § 3102-3).

(d) Not participants in any agreement, scheme, plan or arrangement prohibited in relation to simultaneous oil and gas leasing (See § 3112.3(g)); and

(e) Except for an assignment or transfer under section 3106 of this title, in compliance with section 2(a)(2)(A) of the act, in which case the signature on an offer or lease constitutes evidence of compliance. A least issued to any entity in violation of this paragraph (e) shall be subject to the cancellation provisions of § 3108.3 of this title. The term 'entity' is defined at § 3400.0-5(rr) of this title.

§ 3102.5-2 Certification of compliance.

Any party(s) seeking to obtain an interest in a lease shall certify it is in compliance with the act as set forth in § 3102.5-1 of this title. A party(s) that is a corporation or publicly traded association, including a publicly traded partnership, shall certify that constituent members of the corporation, association or partnership holding or controlling more than 10 percent of the instruments of ownership of the corporation, association or partnership are in compliance with the act.

§ 3102.5-3 Evidence.

Submission of an offer, application, competitive bid or request for approval of a transfer of record title or of operating rights (sublease) constitutes certification of compliance. Documents may be submitted by an attorney-in-fact where the provisions of § 3102.6-2 of this title are met or by an agent where the provisions of § 3102.6-3 of this title are met. The authorized officer may demand at any time from any party holding or seeking to hold an interest in a lease further evidence of compliance and qualification. Failure to comply with the demand of the authorized officer shall result in rejection or cancellation of any interest.

24. New §§ 3102.6, 3102.6-1, 3102.6-2, 3102.6-3, and 3102.6-4 are added to read:

§ 3102.6 Attorney-in-fact/agent.

§ 3102.6-1 Authorization.

An attorney-in-fact qualified under § 3102.6-2 of this title may sign an offer, application, competitive bid, transfer of record title or of operating rights (sublease), request for approval of a transfer or any other leasing action. An agent qualified under § 3102.6-3 of this title may sign any leasing action, except he/she shall not sign a simultaneous lease offer field under subpart 3112 of this title or a competitive bid filed under subpart 3120 of this title.

§ 3102.6-2 Qualification of attorney-in-fact.

A person qualifies as an attorney-in-fact for the purposes of Group 3100 of this title if the power of attorney:

(a) Expressly provides that the attorney-in-fact is using the power of attorney shall act only on behalf of the principal when taking any of the actions described in § 3102.6-1 of this title on the principal's behalf to the exclusion of the attorney-in-fact and all other persons; and

(b) Expressly authorizes the attorney-in-fact to execute documents on behalf of principal; and

(c) Binds the principal to representations made on his/her behalf by the attorney-in-fact under the power of attorney and waives any and all defenses which may be available to contest, negate or disaffirm the actions of the attorney-in-fact under such power of attorney.

§ 3102.6-3 Qualification of agent.

A person qualifies as an agent for the purposes of Group 3100 of this title if the agent agreement:

(a) Expressly provides authority for the agent to execute and file lease documents as provided in § 3102.6-1 of this title on behalf of the potential lessee; and

(b) Expressly provides authority to execute all statements of interests and holdings and other statements required by the act of the regulations on behalf of the potential lessee; and

(c) Binds the potential lessee to representation on his/her behalf and waives any and all defenses to contest, disaffirm or negate the actions taken by the agent under the agreement.

§ 3102.6-4 Document submission.

In order to verify compliance with this section, a copy of the power of attorney or of an agency agreement shall be submitted upon demand to the authorized officer in accordance with the provisions of § 3102.5-3 of this title.

§ 3103.1-2 [Amended]

25. Section 3103.1-2 is amended by:

A. Amending paragraph (a)(1) by removing from where it appears the phrase "applications for approval of an instrument of" and replacing it with the phrase "requests for approval of a"; and

B. Amending paragraph (a)(2) by adding at the end thereof a sentence to read: "The address for the Service office designated for receiving rental payments is: Minerals Management Service, Royalty Management Program/BRASS, Box 5640, Denver, Colorado 80217."

§ 3103.2-1 [Amended]

26. Section 3103.2-1 is amended by:

A. Revising the title to read:

§ 3103.2-1 Advance rental requirements.

B. Amending paragraph (b) by removing where it appears the word "application" and replacing it with the phrase "simultaneous lease offer".

27. Section 3103.2-2 introductory text and paragraphs (a) through (i) are revised to read:

§ 3103.2-2 Annual rental payments.

Rentals shall be paid on or before the anniversary date. A full year's rental shall be submitted even when less than a full year remains in the lease term, except as provided in § 3103.4-2(d) of this title. Failure to make timely payment shall cause a lease to terminate automatically by operation of law. If the designated Service office is not open on the anniversary date, payment received or postmarked on the next day the designated Service office is open to the public shall be deemed to be timely filed. Payments made to an improper BLM or Service office shall be returned and shall not be forwarded to the designated Service office. Rental shall be payable at the following rates:

(a) An annual rental of $1 per acre or fraction thereof for each of the first 5 lease years and an annual rental of $3 per acre or fraction thereof for each remaining lease year for leases issued under subpart 3112 of this title;

(b) An annual rental of $1 per acre or fraction thereof for leases issued under subpart 3111 of this title;

(c) An annual rental of $2 per acre or fraction thereof for competitive leases;

(d) If subsequent to lease issuance, all or part of a noncompetitive leasehold is determined to be within a known geological structure outside of Alaska, or a favorable petroleum geological province in Alaska, annual rental of the entire lease shall be $2 per acre or fraction thereof beginning with the first lease year after the expiration of a 30-day notice to the lessee of such determination;

(e) An annual rental of $2 per acre or fraction thereof for exchange or renewal leases issued on or after August 22, 1983;

(f) An annual rental of $1 per acre or fraction thereof for noncompetitive leases issued in any other way subsequent to the effective date of this regulation;

(g) Rental shall not be due on acreage for which royalty or minimum royalty is being paid;

(h) The annual rental for leases issued prior to the effective date of this regulation is that established in the lease;

(i) On lands within a noncompetitive lease committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental described for the respective lease in this section shall apply to the acreage not within a participating area;

§ 3103.3-1 [Amended]

28. Section 3103.3-1 is amended by:

A. Amending paragraph (b) by removing from where it appears the citation "30 CFR 221, 'Oil and Gas Operating Regulations.' " and replacing it with the citation "30 CFR Part 206."; and

B. Amending paragraphs (c) and (d) by removing from where it appears the word "Secretary" and replacing it with the phrase "Director, Minerals Management Service"; and

C. Adding a new paragraph (f) to read:

"(f) Upon application, certain leases shall be entitled to a royalty rate limitation of 12½ percent under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c)."

29. Section 3103.3-3 is revised to read:

§ 3103.3-3 Limitation on overriding royalties, payments out of production and similar interests and arrangements.

An agreement creating overriding royalties, carried interests, net profit interests, payments out of production or such similar payments, arrangements or interests of oil or gas which, when added to overriding royalties, carried interests, net profit interests, payments out of production or such similar payments, arrangements or interests previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent may be suspended by the Secretary at any time upon a determination that the excess constitutes a burden on lease operations to the extent that proper and timely development may be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused. A request to the Secretary for a suspension of any agreement creating payments, interests or arrangments under this section may be made independently of a waiver, suspension or reduction applied for under § 3103.4 of this title. An application for a waiver, suspension or reduction of royalty under § 3103.4-1 of this title shall include agreements of the holders of a reduction of all royalties or such similar payments that may accrue from interests or arrangements created from the lease-hold to an aggregate not in excess of one-half of the royalties, as may be approved for reduction by the authorized officer, due to the United States. The limitations in this section

shall apply separately to any zone or portion of a lease segregated for computing royalty due the United States.

§ 3103.4-1 [Amended]

30. Section 3103.4-1 is amended by:

A. Amending paragraph (b)(1) by removing from where it appears the phrase "in triplicate" and by removing from where it appears in the second sentence thereof the phrase "the proper BLM office name, the name of the record title holder and operator or sub-lessee," and replacing it with the phrase "the name of the record title holder(s), operator(s) or sublessee(s),"; and

B. Amending paragraph (c) by removing from where it appears in the second sentence the phrase "royalties or payments out of production" and replacing it with the phrase "overriding royalties, carried interests, net profit interests, payment out of production or such similar interests, arrangements or payment created" and by removing from where it appears in the third sentence the word "royalties" and replacing it with the phrase "royalties or such similar payments that may accrue from interests or arrangements created".

31. Section 3103.4-2 is revised to read:

§ 3103.4-2 Suspension of operations and/or production.

(a) A suspension of operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations or a suspension of production may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of any suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of operations and production becomes effective, or if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

§ 3104.1 [Amended]

32. Section 3104.1(a) is amended by removing from the end thereof the phrase "bond as described in this subpart." and replacing it with the phrase "bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart."

§ 3104.3 [Amended]

33. Section 3104.3(b) is amended by removing from the end thereof the phrase "or operations nationwide." and replacing it with the phrase "and operations nationwide."

34. Section 3104.6 is revised to read:

§ 3104.6 Where filed and number of copies.

All bonds shall be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. Any earlier editions of the current form are obsolete and unacceptable for filing. For purposes of §§ 3104.2 and 3104.3 of this title, bonds or bond riders shall be filed in the Bureau State office having jurisdiction of the lease or operations covered by the bond or rider. Nationwide bonds may be filed in any Bureau State office (See § 1821.2-1). A replacement bond or rider to a nationwide bond shall be filed in the same Bureau State office as was the original nationwide bond.

§ 3104.7 [Amended]

35. Section 3104.7 is amended by:

A. Revising paragraph (b) to read:

"(b) After default, where the obligation in default equals or is less than the face amount of the surety or personal bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer, within 6 months after notice or such shorter period of time as may be set by the authorized officer. In lieu thereof, the principal may within that time file separate or substitute bonds for each lease covered by the deficient bond(s). Failure to comply with these requirements shall subject all leases covered by the deficient bond(s) to cancellation."; and

B. Adding a new paragraph (c) to read:

"(c) After default, where the obligation incurred exceeds the face amount of the surety or personal bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the surety or personal bond(s) and shall post a new bond in the amount previously held or in such larger amount as determined by the authorized officer, within 6 months after notice or such shorter period of time as may be set by the authorized officer. Failure to comply with these requirements shall subject all leases covered by the previous bond(s) to cancellation."

36. Section 3105.2-3 is revised to read:

§ 3105.2-3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be effective as to the involved Federal lease(s) only if approved by the authorized officer.

(b) A communitization agreement filed with the authorized officer for approval after the Federal lease(s) that is the subject of the agreement was due to

expire may be approved only if it is filed before the Bureau has given notice to the public that the subject lands are available for lease. No communitization agreement shall be approved with respect to lands which have been subsequently leased to a different lessee. The original agreement need not be on the form required for approval by the Bureau, but may be any agreement between the lessee(s) and operator(s), such as an operating agreement, evidencing the intent of the parties to combine, and having the effect of combining, their leases or interests for operational purposes.

(c) If the agreement that combined such leases or interests is other than a formal communitization agreement acceptable for filing and approval as such, the parties shall submit such an agreement in proper form, which, if submitted and approved, shall be effective as of the date of the earlier agreement between the parties that combined their leases or interests or as of the date of the onset of production from the communitized formation, whichever is earlier.

(d) Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is force pooled by State order after the date of first sale, then the effective date of the agreement may be the effective date of the order. Execution by, or on behalf of, all necessary parties to a communitization agreement covering a Federal lease shall precede the expiration of that lease in order to confer the benefits of the agreement upon it. Generally, a lessee should file a communitization agreement for approval by the authorized officer as soon as the agreement has been signed by, or on behalf of, all necessary parties.

(e) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extension under § 3107.4 of this title.

37. A new section 3105.6 is added to read:

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved by the authorized officer if it is determined that there is sufficient justification and it is in the public interest. Each application for consolidation of leases shall be considered on its own merits. Leases to different lessees for different terms, rental and royalty rates, and those containing provisions required by law that cannot be reconciled, shall not be consolidated. The effective date of a consolidated lease shall be that of the oldest lease involved in the consolidation.

38. Subpart 3106 is revised to read:

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

Sec.

3106.1 Transfers, general.
3106.2 Qualifications of transferees.
3106.3 Filing fees.
3106.4 Forms.
3106.4–1 Transfers of record title and of operating rights (subleases).
3106.4–2 Transfers of other interests, including royalty interests and production payments.
3106.4–3 Mass transfers.
3106.5 Description of lands.
3106.6 Bonds.
3106.6–1 Lessee's general lease bond.
3106.6–2 Operator's bond.
3106.6–3 Statewide/nationwide bond.
3106.7 Approval of transfer.
3106.7–1 Failure to qualify.
3106.7–2 Continuing responsibility.
3106.7–3 Lease account status.
3106.7–4 Effective date of transfer.
3106.7–5 Effect of transfer.
3106.8 Other types of transfers.
3106.8–1 Heirs and devisees.
3106.8–2 Change of name.
3106.8–3 Corporate merger.

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit or of part of a legal subdivision shall be disapproved unless the necessity of the assignment is established and it is determined that such assignment is in the best interest of the United States. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. Transfers filed after the 90th day may be approved provided the transferor and transferee state to the proper BLM office that the transfer is still in force and provided that no intervening transfer(s) involving all or part of the interest(s) being transferred has been filed for approval. A transfer of production payments or overriding royalty or other similar payments, arrangements or interests shall be filed in the proper BLM office but shall not require approval.

(b) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease. No agreement or option to transfer a simultaneous oil and gas lease or interest therein shall be made or given prior to the issuance date of the lease or 60 days from the date of posting of selection, whichever comes first. The existence of such a prior agreement or option shall result in disapproval of the subsequent transfer.

§ 3106.2 Qualifications of transferees.

Transferees shall comply with the provisions of Subpart 3102 of this title and post any bond that may be required.

§ 3106.3 Filing fees.

Each transfer of record title or of operating rights (sublease) for each lease, when filed, shall be accompanied by a nonrefundable filing fee of $25. Each transfer of royalty interest, payment out of production or similar payment, arrangement or interest shall be accompanied by a nonrefundable filing fee of $25 for each such transfer for each lease. A transfer not accompanied by the required filing fee shall not be accepted and shall be returned.

§ 3106.4 Forms.

§ 3106.4-1 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an operating right (sublease) shall be filed with the proper BLM office on a current form approved by the Director or exact reproductions of the front and back of such form. Any earlier editions of the form are deemed obsolete and shall be unacceptable for filing. A separate form for each transfer, in triplicate, originally executed shall be filed for each lease

out of which a transfer is made. Only 1 originally executed copy of a transferee's request for approval for each transfer shall be required. Copies of documents other than a form approved by the Director shall not be submitted. However, reference(s) to other documents may be made on the submitted form.

§ 3106.4-2 Transfers of other interests, including royalty interests and production payments.

(a) Each transfer of interest other than record title or operating rights (sublease), such as overriding royalty interest or payment out of production created or reserved in a lease in conjunction with a transfer of record title or of operating rights (sublease) shall be shown for each lease on the required form when filed. A description of each such interest shall be provided on the form.

(b) Each transfer of interest other than record title or operating rights (sublease), such as overriding royalty interest or payment out of production created or reserved in a lease independently of a transfer of record title or of operating rights (sublease), if not filed on the official form, shall be described and shall include the transferee's originally executed statement as to his/her qualifictions under Subpart 3102 of this title and the transferee's statement that all such other royalty interests created are subject to the suspension provision in § 3103.3-3 of this title. A single originally executed copy of each transfer of other interests for each lease shall be filed with the proper BLM office.

§ 3106.4-3 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of §§ 3106.4-1 and 3106.4-2 of this title when a transferor transfers all interests of any type owned in a large number of Federal leases to the same transferee.

(b) Three originally executed copies of the mass transfer shall be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer shall be on a current form approved by the Director or an exact reproduction of both sides thereof, with an exhibit attached to each copy listing the following for each lease:

(1) The serial number;

(2) The type and percent of interest being conveyed; and

(3) A description of the lands and the depths or formations affected by the transfer in accordance with § 3106.5 of this title.

(c) One reproduced copy of the form required by paragraph (b) of this section shall be filed with the proper BLM office for each lease involved in the mass transfer. A copy of the exhibit for each lease may be limited to line items pertaining to individual leases as long as that line item includes the information required by paragraph (b) of this section.

(d) A nonrefundable filing fee for each such interest transferred for each lease, in accordance with the provisions of § 3106.3 of this title, shall accompany a mass transfer.

§ 3106.5 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease or in the manner required by § 3111.2 of this title, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

§ 3106.6 Bonds.

§ 3106.6-1 Lessee's general lease bond.

Where a general lease or drilling bond is maintained by the lessee of record in connection with a particular lease, the transferee of a record title interest in such lease shall furnish either a proper bond or consent of the surety under the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such consent.

§ 3106.6-2 Operator's bond.

Where there is a transfer of operating rights (sublease) and coverage was provided under an operator's bond, the sublessee shall furnish an appropriate replacement bond.

§ 3106.6-3 Statewide/nationwide bond.

If the transferee is maintaining a statewide on nationwide bond, no individual lease bond shall be required, but the amount of the bond may be increased to an amount determined by the authorized officer.

§ 3106.7 Approval of transfer.

§ 3106.7-1 Failure to qualify.

No transfer of record title or of operating rights (sublease) shall be approved if the transferee or any other parties in interest are not qualified to hold the transferred interest(s), or if the bond, should one be required, is insufficient. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3106.7-2 Continuing responsibility.

Until a transfer of record title or of operating rights (sublease) is approved, the transferor and surety shall continue to be responsible for the performance of all obligations under the lease. If a transfer of record title is not approved, the obligation of the transferor and surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary. When a transfer of operating rights (sublease) is approved, both the sublessee and the lessee of record are responsible for all lease obligations.

§ 3106.7-3 Lease account status.

A transfer of record title or of operating rights (sublease) in a producing lease shall not be approved unless the lease account is in good standing.

§ 3106.7-4 Effective date of transfer.

The signature of the authorized officer on the official form shall constitute approval of the transfer of record title or of operating rights (sublease) which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

§ 3106.7-5 Effect of transfer.

A transfer of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. A transfer of an undivided record title interest or a transfer of operating rights (sublease) shall not segregate the transferred and retained portions into separate leases.

§ 3106.8 Other types of transfers.

§ 3106.8-1 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title. No filing fee is required.

(b) Any ownership or interest otherwise forbidden by the regulations in this group which may be acquired by

descent, will, judgement or decree may be held for a period not to exceed 2 years after its acquisition. Any such forbidden ownership or interest held for a period of more than 2 years after acquisition shall be subject to cancellation.

§ 3106.8-2 Change of name.

A change of name of a lessee shall be reported to the proper BLM office. No filing fee is required. The notice of name change shall be submitted in writing and be accompanied by a list of the serial numbers of the leases affected by the name change. If a bond(s) has been furnished, change of name may be made by a rider to the original bond or by a replacement bond.

§ 3106.8-3 Corporate merger.

Where a corporate merger affects leases situated in a State where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease interest is required. A notification of the merger shall be furnished with a list, by serial number, of all lease interests affected. No filing fee is required.

§ 3107.1 [Amended]

39. Section 3107.1 is amended by removing from where it appears in the first sentence thereof the phrase "of this title or 30 CFR 226.12," and replacing it with the phrase "and § 3186.1 of this title," and by removing the last sentence thereof and replacing it with the sentences: "Actual drilling operations shall be conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement or plan, it shall be taken to a depth sufficient to penetrate at least 1 formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it shall be taken to a depth sufficient to penetrate at least 1 new and deeper formation recognized in the area as potentially productive of oil or gas.

§ 3107.2-2 [Amended]

40. Section 3107.2-2 is amended by adding immediately after the phrase "because of production" where it appears the phrase "in paying quantities".

41. Section 3107.2-3 is amended by revising the title to read: "§ 3107.2-3 Leases capable of production."

§ 3107.4 [Amended]

42. Section 3107.4 is amended by adding at the end thereof the sentence: "No lease shall be extended if the public interest requirement for an approved cooperative or unit plan or a communitization agreement has not been satisfied."

§ 3107.6 [Amended]

43. Section 3107.6 is amended by removing from where it appears in the introductory paragraph the citation "§ 3108.2-1" and replacing it with the citation "§ 3108.2".

§ 3108.1 [Amended]

44. Section 3108.1 is amended by adding in the first sentence immediately after the phrase "record title holder" the phrase ", or the holder's duly authorized attorney-in-fact as provided in § 3102.6 of this title,".

§ 3108.2-1 [Amended]

45. Section 3108.2-1 is amended by:

A. Revising paragraph (a) to read: "(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the designated Service office on or before the anniversary date of such lease. However, a remittance which is postmarked by the U.S. Postal Service, common carrier or its equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated office is closed on the anniversary date, is postmarked on the next day the Service office is open to the public, and is received in the designated Service office no later than 20 days after such anniversary date shall be considered as timely filed."; and

B. Amending paragraph (b) by removing from where it appears in the first sentence the phrase "stated in the bill," and replacing it with the phrase "stated in a bill rendered by the designated Service office,", by revising the third sentence thereof to read "The designated Service officer shall send a Notice of Deficiency to the lessee." and by removing from where it appears at the end of the fourth sentence the phrase "the proper BLM office or the Service, as appropriate." and replacing it with the phrase "the designated Service office."

§ 3108.2-2 [Amended]

46. Section 3108.2-2(a)(3) is amended by adding at the end thereof the sentence "If a terminated lease becomes productive prior to the time the lease is reinstated, all required royalty that has accrued shall be paid to the Service, with proof of payment submitted to the authorized officer as a condition of the approval of a lease reinstatement."

§ 3108.2-4 [Amended]

47. Section 3108.2-4(a) is amended by removing from where it appears in the first sentence thereof the word "validy" and replacing it with the word "validly".

§ 3108.4 [Amended]

48. Section 3108.4 is amended by removing the last sentence thereof in its entirety.

49. A new § 3108.5 is added to read:

§ 3108.5 Waiver or suspenison of lease rights.

If, during any proceeding with respect to a violation of any provisions of the regulations in Groups 3000 and 3100 of this title or the act, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments or rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

50. Section 3109.1-2 is revised to read:

§ 3109.1-2 Application.

No approved form is required for an application to lease lands in a right-of-way. Applications shall be filed in the proper BLM office. Such applications shall be filed by the owner of the right-of-way or by his/her transferee and be accompanied by a nonrefundable filing fee of $75, and if filed by a transferee, by a duly executed transfer of the right to lease. The application shall detail the facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee; the development of oil or gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way. A description by meets and bounds of the right-of-way is not required but each legal subdivision through which a portion of the right-of-way desired to be leased extends shall be described.

PART 3110—[AMENDED]

51. The authority citation for Part 3110 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired

Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), unless otherwise noted.

52. Section 3110.1–2 is revised to read:

§ 3110.1–2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Noncompetitive leases, except future interest leases issued under § 3111.3 of this title, shall be effective as of the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Future interest leases issued under § 3111.3 of this title shall be effective as of the date the minéral interests vest in the United States.

§ 3110.1–3 [Amended]

53. Section 3110.1–3(a) is amended by adding at the end thereof a new sentence to read: "Where an offer exceeds the minimum 640-acre provisions of this paragraph, the offer may include less than all available lands in any given section."

§ 3110.2 [Amended]

54. Section 3110.2 is amended by removing from where it appears in the last sentence thereof the phrase "application or" and by removing the period at the end of the last sentence and adding the phrase ", except when the Department has suspended action on an offer for a period of at least 1 year from the date of posting of the official results in the appropriate BLM State office, the selected offeror may file a request, in writing, for the withdrawal of the offer, which request shall be granted and the selected offeror's first-year's rental shall be refunded."

55. A new § 3110.4 is added to read:

§ 3110.4 Amendment to lease.

(a) If any of the lands described in the lease offer are open to oil and gas filing when the offer is filed but are omitted from the lease for any reason and thereafter become available for leasing to the offeror, the original lease shall be amended to include the omitted lands unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the offer with respect to such lands or the offeror elects to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease, which statement shall be accompanied by a new offer on the required form executed pursuant to Part 3110 of this title describing the remaining lands in the original offer. The new offer shall have the same priority as the old offer. No new filing fee is required with the new offer. The rental payment held in connection with the original offer shall be applied to the new offer. The rental and the term of the lease for the lands added by an amendment shall be the same as if the lands had been included in the original lease when it was issued. If a separate lease is issued, it shall be dated in accordance with § 3110.1–2 of this title.

(b) If the lands are included in a known geological structure outside of Alaska or a favorable petroleum geological province in Alaska prior to the time the authorized officer signs the amendment or separate lease, the lands shall be leased only by competitive leasing in accordance with part 3120 of this title.

§ 3111.1–1 [Amended]

56. Section 3111.1–1 is amended by:

A. Amending paragraph (a) by adding immediately after the fourth sentence a new sentence to read: "A noncompetitive offer to lease for a future interest applied for under § 3111.3 of this title shall be accompanied by a nonrefundable filing fee of $75.";

B. Amending paragraph (b) by redesignating the existing paragraph as paragraph (b)(1) and adding a new paragraph (b)(2) to read:

"(2) Where a correction(s) to an offer is made, whether at the option of the offeror or at the request of the authorized officer, priority of the offer shall be established at the time the filing is correct and complete. Priority of the offer, prior to the time the corrected offer is filed, may be defeated by an intervening offer to the extent of any conflicting lands in such offers, except as provided under §§ 3103.2–1(a) and 3110.1–3(c) of this title.";

C. Revising paragraph (c) to read:

"(c) An offer shall be limited to either public domain minerals or acquired lands minerals, subject to the provisions for corrections under paragraph (b)(2) of this section."; and

D. Amending paragraph (g) by removing the comma from where it appears after the word "name".

§ 3111.2–1 [Amended]

57. Section 3111.2–1(b) is amended by removing from where it appears the phrase "in cardinal directions except where the boundaries of the land are in irregular form,".

§ 3111.2–2 [Amended]

58. Section 3111.2–2(b) is amended by amending the second sentence thereof by removing all after the phrase "United States" and replacing it with the phrase "that portion of the boundary of the offer not coinciding with the description in the deed or other document of conveyance by which the United States acquired title to the lands shall be described by courses and distances between successive angle points tying by courses and distances into the description in such deed or other document of conveyance."

§ 3111.2–2 [Amended]

59. Section 3111.2–2(c) is amended by removing all after the phrase "otherwise required by" and replacing it with the phrase "paragraphs (a) and (b) of this section where the desired lands constitute less than the entire tract acquired by the United States, and shall be required in lieu of the description otherwise required by paragraphs (a) and (b) of this section where the desired lands constitute the entire tract acquired by the United States."

60. Section 3111.3–1(c) is revised to read:

§ 3111.3–1 Availability.

* * * * *

(c) An offer may be filed at any time prior to the date of vesting in the United States of the present possessory interest in the minerals. Any future interest offer pending at the time the future mineral interest vests in the United States shall be considered for issuance, retaining priority as of the date of filing, and thereafter only offers for present interest shall be considered.

61. Section 3111.3–2 is revised to read:

§ 3111.3–2 Form of offer.

(a) There is no required form for an offer to lease a future interest. The offer shall, to the extent applicable, conform to and include the terms of the noncompetitive lease forms currently in use and shall also be accompanied by a nonrefundable filing fee of $75 and by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease, sublease or contract, the offer shall also be accompanied by a copy of such lease, sublease or contract. In lieu of an abstract, a certification of title may be furnished provided that the State in which the lands are located authorizes abstracting and title companies to certify as to title to lands.

(b) If the offer is submitted by any other party in interest, the offeror shall set forth on the lease or on a separate accompanying sheet, the names of all other parties who, as mineral fee owner, lessee or operator holding such rights, own or hold any interest in the present operating rights and/or interest in the offer or lease. A statement signed by both the offeror and the other parties in interest, setting forth both the nature of any oral understanding between them, and a copy of any written agreement between them shall be filed with the proper BLM office prior to the issuance of the lease offer. Such statement and/or agreement shall include or be accompanied by a statement signed by all parties setting forth the nature and extent of their respective interest.

(c) A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

62. Section 3111.3-3 is revised to read:

§ 3111.3-3 Future and fractional future interest.

Where the United States owns both a present fractional interest and a future fractional interest in the minerals in the same tract, the lease, when issued, shall cover both the present and future interests in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. The lease for the future fractional interest, when such interest vests in the United States, shall have the same primary term and anniversary date as the present fractional interest lease.

§ 3111.3-4 [Removed]

63. Section 3111.3-4 is removed in its entirety.

§ 3111.3-5 [Redesignated as § 3111.3-4]

64. Section 3111.3-5 is redesignated as § 3111.3-4 and is amended by removing from where it appears in the second sentence thereof the phrase "and supplemental agreement".

65. Section 3112.0-5 is revised to read:

§ 3112.0-5 Definitions.

As used in this subpart, the term "person or entity in the business of providing assistance to the participants in the Federal simultaneous oil and gas leasing program" means those persons or entities which, for consideration, either partially or wholly prepare offers or indicate which specific parcels should constitute the selection(s) on behalf of another; prepare or provide filing materials, kits or packets; contract or agree to supply others with custom selections for a specific or limited number of parcels; formulate, prepare partially or totally, file or otherwise complete offer forms, or make payments on behalf of others; in any way guarantee or warrant to another the value of parcels or the success in obtaining a lease; or have a contract or agreement with a participant to purchase or receive any type of transfer of any lease or interest therein obtained through the program upon the occurrence of a contingency. All other persons or entities which provide only general geological assistance are excluded from this definition. Also excluded are subscription services or newsletters which publish or provide only a general listing of parcel evaluations and which do not perform any of the activities set forth in this section.

§ 3112.1-1 [Amended]

66. Section 3112.1-1 is amended by:

A. Amending paragraph (b) by removing from where it appears the word "application" and replacing it with the phrase "lease offer"; and

B. Adding a new paragraph (c) to read:

"(c) Upon a determination by the authorized officer that the public interest would best be served by making the lands covered by this subsection available for over-the-counter leasing, such lands may be made available for over-the-counter offers under Subpart 3111 of this title. Before making such lands available over-the-counter, a notice shall be published in the **Federal Register** at least 30 days in advance of such availability, setting forth a general description of the lands and their location and the proper BLM office address for filing offers."

§ 3112.1-2 [Amended]

67. Section 3112.1-2 is amended by removing from where it appears in the last sentence the phrase "lease applications" and replacing it with the phrase "simultaneous lease offers".

§ 3112.1-3 [Amended]

68. Section 3112.1-3 is amended by removing from where it appears in the first sentence the word "applications" and replacing it with the phrase "simultaneous lease offers".

69. Section 3112.2 is revised to read:

§ 3112.2 How to file a simultaneous lease offer.

70. Section 3112.2-1 is revised to read:

§ 3112.2-1 Simultaneous lease offer.

(a) An offer to lease under this subpart consists of a simultaneous offer on the form approved by the Director, completed, holographically (manually) signed in ink and filed together with the required filing fee and the first year's advance rental in full, in accordance with the instructions printed on the form and the regulations in this subpart. Any lease issued under the regulations in this subpart shall be issued, if at all, to the offeror who is determined through the selection procedures under § 3112.4-1 of this title to have priority and who is qualified to hold a lease under the act and the regulations in this title. Any offer filed signifies agreement by the offeror to be bound by the terms and conditions of the standard lease form in use at the time of lease issuance and to those stipulations which are set forth in the Notice of Land Available for Oil and Gas Simultaneous Offer. No affirming signature by the offeror shall be required for lease issuance unless additional stipulations or other modifications to the lease offer are deemed necessary by the authorized officer after posting of the notice.

(b) The offer shall include the offeror's name and personal or business address, as well as the name(s) of all parties in interest to the lease offer. A party in interest is anyone with any claim or any prospective future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived, or which may accrue, in any manner from the lease based upon, or pursuant to any agreement or understanding existing at the time when the simultaneous offer is filed. The name of only one citizen, association or partnership, corporation or municipality shall appear as the offeror, with all other parties in interest, including members of an association or partnership, disclosed as provided in § 3112.2-3 of this title. All communications relating to leasing shall be sent to the address shown on the form and it shall constitute the offeror's address of record. The address of any person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system shall not be used.

(c) The offer shall be signed and dated in accordance with §§ 3102.4 and 3102.6 of this title. If signed by someone other than the offeror, the offer shall show the relationship of the signatory to the offeror. For offers filed on behalf of a corporation, association or partnership, where the signatory is a member of the organization that constitutes the present or potential lessee, the signatory is not required to designate his/her relationship to the offeror, but such

relationship may be subject to verification by the authorized officer. If an attorney-in-fact signs an offer on behalf of the potential lessee, the power of attorney is not required to accompany the offer when filed but may be required for verification by the authorized officer prior to lease issuance.

(d) The parcel applied for shall be identified by the parcel number, including the location prefix, as shown on the posted notice.

(e) No person or entity shall hold, own or control an interest in more than 1 simultaneous lease offer for a particular parcel. For purposes of prohibiting multiple offerings on a parcel any holding, control or ownership of an interest in a simultaneous lease offer shall be included, except holding, ownership or control of less than 10 percent of the stock in a corporation which is a simultaneous offeror.

(f) A separate, properly completed and signed simultaneous lease offer for lands posted in each State office which posts a notice of available parcels shall be filed within the filing period in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, at the address shown on the posted notice. An offer shall be unacceptable or rejectable if it has not been completed: (1) In accordance with the instructions on the form; and (2) in accordance with the other requirements of subpart 3112 of this title.

71. Section 3112.2–2 is revised to read:

§ 3112.2-2 Filing fees and first-year rentals.

Each simultaneous lease offer form shall, when filed, be accompanied by a single remittance. The remittance shall consist of an amount sufficient to cover for each parcel included on the form a nonrefundable filing fee of $75 and the first-year's rental payment. Failure to submit either a separate remittance with each form or an amount sufficient to cover all the parcels on each form, or both, shall cause the entire filing to be deemed unacceptable.

72. Section 3112.2–3 is revised to read:

§ 3112.2-3 Qualifications.

The offeror's signature on the simultaneous lease offer form shall be a certification that the offeror and all parties with an interest in an offer are in compliance with the requirements of subpart 3102 of this title. The offeror shall set forth on the form, or on a separate accompanying sheet, the names of all parties, including all members of associations or partnerships, who hold an interest (See § 3112.2–1(b) of this title) in the offer, or the lease, if issued. Submission of a qualifications file number shall not meet this requirement.

§ 3112.2-4 [Removed]

73. Section 3112.2–4 is removed in its entirety.

74. Section 3112.3 is revised to read:

§ 3112.3 Unacceptable and rejectable offers.

(a) Any simultaneous lease offer(s) shall be unacceptable for filing and a copy of the form returned with the remittance(s) refunded where the offer(s) is received:

(1) Not on the approval form; or

(2) Not timely filed in the proper BLM office; or

(3) With no signature in the space provided for the signature; or

(4) With an indication of either multiple location prefixes, a prefix other than the authorized prefix, or no prefix; or

(5) With no name and/or address; or

(6) For a nonexistent parcel(s) selection or no parcel selection; or

(7) In a condition or prepared in a manner that prevents its automated processing; or

(8) With insufficient filing fees and advance rental payments and the remittance is submitted other than as a single remittance for all offers on the form or the remittance does not meet the requirements of § 3103.1–1 of this title.

(b) A simultaneous lease offer included in the selection process and then found defective for any of the reasons set forth in paragraph (a) of this section shall be unacceptable just as though the defect had been detected prior to the selection process.

(c) An appeal of the return of an unacceptable form shall not delay the selection process, and the authorized officer, with the concurrence of the duly selected offeror, may issue a lease during the pendency of the appeal.

(d) A simultaneous lease offer received without any remittance for filing fee and advance rental shall be unacceptable and may not be returned.

(e) The filing fee(s) and advance rental(s) shall be returned for any simultaneous lease offer for a parcel(s) removed from the notice of availability posted by the Bureau.

(f) A simultaneous lease offer shall be rejected by decision of the authorized officer, with a right of appeal under part 4 of this title, when:

(1) The offeror violates 18 U.S.C. 1001; or

(2) The offeror fails to disclose all parties in interest, including all members of an association or partnership (See § 3112.2–1(b)); or

(3) The offer is signed by an attorney-in-fact that does not meet the requirements of § 3102.6–2 of this title; or

(4) The offeror is not qualified to hold a lease under § 3102 of this title; or

(5) The offeror holds lease acreage in excess of that authorized under § 3101.2 of this title; or

(6) The offeror is a party to any agreement, scheme, plan or arrangement prohibited under paragraph (h) of this section.

(g) Any agreement, scheme, plan or arrangement entered into prior to selection, which gives any party(s) more than a single opportunity of successfully obtaining a lease on a specific parcel is prohibited. Any simultaneous lease offer made in accordance with such agreement, scheme, plan or arrangement shall be rejected, including, but not limited to, the following:

(1) Any agreement, scheme, plan or arrangement which obligates the offeror to transfer any interest in the lease, if issued, to a third party; or which gives the third party a right of first refusal for the lease, if issued; or which obligates the offeror to use the services of the third party when transferring any interest in the lease, if issued, if such agreement, scheme, plan or arrangement exists between the third party and 2 or more offerors for the same parcel or if the third party files for the same parcel as the offeror;

(2) Any agreement, scheme, plan or arrangement between "any person or entity in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program", as that term is defined in § 3112.0–5 of this title, and any potential transferee whereby such person or entity will seek to induce a transfer of any lease or interest therein;

(3) Filings by members of an association or partnership, or by officers of a corporation, under any agreement, scheme, plan or arrangement whereby the association, partnership or corporation has an interest in more than a single filing for a single parcel; or

(4) Separate filings by a trustee or guardian in its own behalf and on behalf of 1 or more beneficiaries on the same parcel or, separate filings by a trustee or guardian on behalf of 2 or more beneficiaries on the same parcel or, separate filings by the grantor or person with the power of revocation of a revocable trust and the trust.

75. Sections 3112.4, 3112.4–1 and 3112.4–2 are revised to read:

§ 3112.4 First qualified offeror.

§ 3112.4-1 Selection procedures.

(a) One simultaneous lease offer filing shall be randomly selected for each numbered parcel by a computerized process, with a reselection process occurring where:

(1) The filing selected is unacceptable under § 3112.3(a) of this title, in which case a reselection shall take place from the remaining filings; or

(2) The offeror for the selected filing is duly qualified but the offer fails to mature into a lease, in which case the parcel shall be relisted under Subpart 3112 of this title; or

(3) The filing selected is rejected under § 3112.3(f) of this title, then a reselection shall take place from the remaining filings only at such time as the decision by the authorized officer rejecting the offer becomes final.

(b) The results of the selection process shall be posted in the proper BLM office.

(c) All unsuccessful offerors shall be notified in writing and/or by return of a copy of the form.

(d) Successful offerors shall be notified in accordance with § 3112.6 of this title.

§ 3112.4-2 Omitted offer selection procedures.

Where it is found that a properly filed offer was omitted from the selection process, a new selection shall be held. An omitted offer may not be withdrawn by the offeror. The new selection shall consist of the omitted offer(s) and a number of blank offers equal to the number of offers included in the original selection, with the selection conducted in the same manner as the original selection. If an omitted offer is not selected, the result of the original selection shall stand.

(a) Where an omitted offer is selected, it shall displace the offer selected in the original selection.

(b) Where a lease has been issued for a parcel prior to the discovery of an omitted offer, notification of the reselection requirement shall be served on the lessee holding the lease subject to cancellation.

76. Sections 3112.5, 3112.5-1, 3112.5-2 and 3112.5-3 are revised to read:

§ 3112.5 Adjudication.

§ 3112.5-1 Rejection of offer.

An offer shall be rejected when any of the conditions in § 3112.3(f) of this title occur.

§ 3112.5-2 Rejection due to known geological structure classification.

If, prior to the time a noncompetitive lease is issued, all or part of the lands in the offer are found to be within a known geological structure of a producing oil and gas field outside of Alaska or a favorable petroleum geological province in Alaska, the offer shall be rejected in whole or in part as to such lands.

§ 3112.5-3 Cancellation of a simultaneous lease.

In the event a lease has been issued on the basis of an offer which should have been deemed unacceptable or rejected, or if any interest in any lease is owned or controlled directly or indirectly in violation of any of the provisions of the act or the regulations in this title, action shall be taken by the authorized officer to void the interest or cancel the lease as provided under § 3108.3(b) of this title, unless the rights of a bona fide purchaser as provided under § 3108.4 of this title intervene. The United States may take action to void the interest or to cancel the lease regardless of whether information showing the offer was unacceptable or rejectable is obtained or was available before or after the lease was issued.

77. Section 3112.6 is revised to read:

§ 3112.6 Lease issuance and transfer restrictions.

(a) The signature of the authorized officer on the lease shall constitute the acceptance of the simultaneous lease offer and the issuance of the lease by the United States.

(b) Where a simultaneous lease offer has been submitted by an attorney-in-fact, a copy of the power of attorney shall be submitted when requested by the authorized officer for review pursuant to §§ 3102.5 and 3102.6 of this title, as part of the lease issuance process.

(c) No agreement or option to transfer a simultaneous lease offer or any interest therein shall be made except as provided under § 3106.1(b) of this title.

78. Section 3112.7 is revised to read:

§ 3112.7 Availability of unleased simultaneous parcels.

Lands shall be available for leasing under subpart 3111 of this title where, during the filing period under this subpart, no offers are received for a parcel, provided the lands are not determined to be within a known geological structure outside of Alaska or a favorable petroleum geological province in Alaska. Those lands where no simultaneous offers are received shall become available for the filing of over-the-counter offers under subpart 3111 of this title on the first day of the month following the posting of the selection results in the appropriate Bureau State office. Where 1 or more acceptable offers are received for a specific parcel and no lease issues, the lands shall be subject to leasing only in accordance with this subpart.

PART 3120—[AMENDED]

79. The authority citation for part 3120 continues to read:

Authority: the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

80. Section 3120.2-2 is revised to read:

§ 3120.2-2 Dating of leases.

All competitive leases shall be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.8 of this title, shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest shall be effective as of the date the mineral interests vest in the United States.

§ 3120.2-4 [Amended]

81. Section 3120.2-4(a) is revised to read:

"(a) Execution and submission of a bid as prescribed in the detailed statement of lease sale constitutes certification of compliance with subpart 3102 of this title."

§ 3120.3 [Amended]

82. Section 3120.3 is amended by adding after the first sentence thereof a new sentence to read: "No filing fee is required for requests or nominations for parcels to be offered for competitive sale."

§ 3120.4-1 [Amended]

83. Section 3120.4-1 is amended by revising the last sentence thereof to read: "Remittances for competitive bids shall be submitted as required in the detailed statement of sale notice."

§ 3120.6 [Removed]

84. Section 3120.6 is removed in its entirety.

85. Section 3120.5 is redesignated as § 3120.6 and is revised to read:

§ 3120.6 Award of lease.

(a) The lease shall be awarded to the qualified bidder submitting the highest acceptable bid, except as provided in paragraph (c) of this section. Copies of the lease form approved by the Director shall be sent to the successful bidder who shall, within 15 days of receipt of notice, sign and return the lease form together with payment of the balance of the bonus bid, the first-year's rental and the bidder's proportionate share of the notice of lease sale publication costs.

(b) If the holder, or holders acting as a group, of the present operating rights in a parcel with future mineral interest does not submit the highest acceptable bid at a lease sale, the authorized officer may give such a party, if he/she offered a bid on the parcel, an opportunity to exceed the highest acceptable bid submitted for the parcel. Failure to take the opportunity to exceed the highest acceptable bid for the offered parcel within the time allowed shall be considered a waiver of all claims to the competitive future interest lease, and the lease shall be awarded to the qualified bidder submitting the highest acceptable bid in accordance with paragraph (a) of this section.

(c) The high bid shall be rejected for failure of the successful bidder to execute the lease forms and return the balance of the bonus bid, or otherwise comply with the award notice, and the one-fifth bonus deposit which accompanied the bid shall be forfeited.

86. New § § 3120.5, 3120.5-1 and 3120.5-2 are added to read:

§ 3120.5 Bids.

§ 3120.5-1 Bid opening.

All bids shall be opened at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. Withdrawal of a bid prior to the specified time shall be permitted. In the event of a tie of highest bids, the tying bidders shall be allowed to submit, within 10 days of notice, additional sealed bids. The additional bids shall include any additional amount necessary to bring the total amount tendered to one-fifth of the bonus bid.

§ 3120.5-2 Rejection of inadequate bids.

(a) High bids determined by the authorized officer to be inadequate shall be rejected. The determined pre-sale estimate of value and parcel evaluation shall be made available for review, except that information used in the evaluation determined to be proprietary by the authorized officer shall not be available for review.

(b) The right to reject any and all bids is reserved by the Secretary. If the high bid is rejected under paragraph (a) of this section or is determined by the authorized officer as not in compliance with the requirements set out in the detailed statement, the bonus bid deposit submitted with the bid shall be refunded.

87. Section 3120.8 is revised to read:

§ 3120.8 Future interest.

88. Section 3120.8-1 is revised to read:

§ 3120.8-1 Application to make lands available for competitive sale.

(a) There is no required form for requesting that a parcel(s) in which the United States holds a future interest be offered for competitive lease. A request or nomination of a parcel(s) for competitive sale shall be submitted in writing to the proper BLM office and shall be accompanied by the following:

(1) The name and address of the requesting party;

(2) The name and address of the present mineral fee owner(s);

(3) The name and address of the present operator(s), if applicable;

(4) The date of vesting of the rights to the lands in the United States;

(5) A proper legal description of the lands in accordance with § 3111.2-2 of this title;

(6) Detailed facts of the development of oil and gas in the lands, to include first production information; and

(7) Copies of any contract(s) or agreement(s) for development of oil and gas currently in effect for the lands.

(b) The competitive lease sale for such future interest shall be conducted in the same manner as prescribed in this subpart for any competitive lease sale.

§ 3120.8-2 [Removed]

89. Section 3120.8-2 is removed in its entirety.

§ 3120.8-3 [Redesignated as § 3120.8-2]

90. Section 3120.8-3 is redesignated as § 3120.8-2 and is amended by revising the second sentence to read "Such agreements shall be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well."

PART 3130—[AMENDED]

91. The authority citation for Part 3130 continues to read:

Authority: The Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), 42 U.S.C. 6504 et seq., 43 U.S.C. 1701 et seq.

§ 3133.1 [Amended]

92. Section 3133.1(c) is amended by removing the phrase "in any year" and replacing it with the phrase "in any year prior to discovery of oil or gas on the lease".

§ 3134.1 [Amended]

93. Section 3134.1 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "corporate surety bond" and replacing it with the phrase "surety or personal bond" and by removing the period at the end of the section and adding the phrase ", or maintains or furnishes a nationwide bond as set forth in § 3104.3(b) of this title and furnishes a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases held within NPR-A.";

B. Amending paragraph (b) by adding after the figure "$300,000" where it appears in the first sentence thereof the phrase ", or a nationwide bond as provided in § 3104.3(b) of this title with a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases within NPR-A," and by removing from where it appears in the parenthetical phrase the phrase "operating agreements" and replacing it with the phrase "transfer of operating rights (sublease)";

C. Amending paragraph (c) by removing the phrase "$100,000 lease bond or a $300,000 NPR-A-wide";

D. Revising paragraph (d) to read:

"(d) A new bond in the amount previously held or a larger amount as determined by the authorized officer shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu thereof, separate or substitute bonds for each lease covered by the prior bond may be filed. Failure to comply with these requirements shall subject all leases covered by the defaulted bond to cancellation. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee when such lessee is not a party to the bond."; and

E. Revising paragraph (e) to read:

"(e) Except as provided in this subpart, the bonds required for NPR-A leases are in addition to any other bonds the successful bidder may have filed or be required to file under § § 3104.2, 3104.3(a) and 3154.1 and subparts 3206 and 3209 of this title."

§ 3134.1-2 [Amended]

94. Section 3134.1-2 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read:

"(b) The holders of any oil and gas lease bond for a lease on the NPR-A shall be permitted to obtain a rider to include the coverage of oil and gas geophysical operations within the boundaries of NPR-A."

95. The title of Subpart 3135 is revised to read:

Subpart 3135—Transfers, Extensions and Consolidations

96. Section 3135.1 is revised to read:

§ 3135.1 Transfers and extensions, general.

97. Section 3135.1-1 is amended by:

A. Revising the title to read:

§ 3135.1-1 Transfers.

B. Amending paragraph (a) by removing from where it appears the word "assign" and replacing it with the word "transfer";

C. Amending paragraph (b) by removing from where it appears the word "assignment" and replacing it with the word "transfer";

D. Amending paragraph (c) by removing from where it appears the word "assignor" and replacing it with the word "transferor" and by removing from where it appears at the end of the paragraph the word "assignment" and replacing it with the word "transfer";

E. Amending paragraph (d) by removing from where it appears the word "assignee" and replacing it with the word "transferee"; and

F. Adding new paragraphs (e) and (f) to read:

"(e) Where a lease is subleased, both the approved sublessee and the lessee of record shall be liable for all lease obligations.

"(f) Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease."

§ 3135.1-2 [Amended]

98. Section 3135.1-2 is amended by:

A. Amending paragraph (b) by removing from where it appears therein the word "assignment" and replacing it with the word "transfer"; and

B. Revising paragraph (c) to read:

"(c) Where a transfer of record title creates separate leases, a bond shall be furnished covering the transferred lands in the amount prescribed in § 3134.1 of this title. Where a transfer does not create separate leases, the transferee, if the transfer so provides and the surety consents, may become co-principal on the bond with the transferor."

99. Section 3135.1-3 is revised to read:

§ 3135.1-3 Separate filing for transfers.

A separate instrument of transfer shall be filed for each lease on a form approved by the Director or an exact reproduction of the front and back of such form. Any earlier editions of the current form are deemed obsolete and are unacceptable for filing. When transfers to the same person, association or corporation, involving more than 1 lease are filed at the same time for approval, 1 request for approval and 1 showing as to the qualifications of the transferee shall be sufficient.

100. Section 3135.1-4 is amended by:

A. Revising the title to read:

§ 3135.1-4 Affect of transfer of a tract.

B. Amending paragraph (a) by removing from where it appears in the first sentence the phrase "an assignment" and replacing it with the phrase "a transfer", by removing from where it appears in the first sentence the word "assigned" and replacing it with the word "transferred" and by removing from where it appears at the beginning of the second sentence the word "Assignment" and replacing it with the word "Transfers".

101. A new Part 3150 is added to read:

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

Sec.
3150.0-1 Purpose.
3150.0-3 Authority.
3150.0-5 Definitions.
3150.1 Suspension, revocation or cancellation.

Subpart 3151—Exploration Outside of Alaska

Sec.
3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.
3151.2 Notice of completion of operations.

Subpart 3152—Exploration in Alaska

Sec.
3152.1 Application for oil and gas geophysical exploration permit.
3152.2 Action on application.
3152.3 Renewal of exploration permit.
3152.4 Relinquishment of exploration permit.
3152.5 Modification of exploration permit.
3152.6 Collection and submission of data.
3152.7 Completion of operations.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

Sec.
3153.1 Geophysical permit requirements.

Subpart 3154—Bond Requirements

Sec.
3154.1 Types of bonds.
3154.2 Additional bonding.
3154.3 Bond cancellation or termination of liability.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

§ 3150.0-1 Purpose.

The purpose of this part is to establish procedures for conducting oil and gas geophysical exploration operations on unleased public lands and on all leased lands. The procedures in this part do not apply to: (a) Unleased lands, the surface of which is under the jurisdiction of an agency other than the Bureau of Land Management, unless requested by such agency; (b) casual use; or (c) operations conducted in accordance with section 1002 of the Alaska National Interest Lands Conservation Act.

§ 3150.0-3 Authority.

The Mineral Leasing Act of 1920, as amended and supplemented, (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

§ 3150.0-5 Definitions.

As used in this part, the term:

(a) "Oil and gas geophysical exploration" means any activity relating to the search for evidence of oil and gas which requires physical presence upon the lands and which may result in damage to the lands or the resources located thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails and cross-country transit of vehicles over such lands. It does not include core drilling for subsurface geologic

information or drilling for oil and gas; these activities shall be authorized only by the issuance of an oil and gas lease and the approval of an Application for a Permit to Drill. The regulations in this part, however, are not intended to prevent drilling operations necessary for placing explosive charges, where permissible, for seismic exploration. Casual use is not affected by this paragraph.

(b) "Public lands" means any lands and interest in lands owned by the United States, within the several States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except:

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts and Eskimos.

(c) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicular movement except over established roads and trails are casual use.

§ 3150.1 Suspension, revocation or cancellation.

Oil and gas geophysical exploration permits may be cancelled and the authorization to conduct exploration under a Notice of Intent to Conduct Oil and Gas Exploration Operations may be revoked on a case-by-case basis by the authorized officer, after notice, and upon a final administrative finding of a violation of any term or condition of the instrument. With respect to notices of intent which do not require specific approval from the authorized officer, compliance with the procedures in this part will constitute authorization for a party to conduct geophysical exploration operations. However the authorized officer may, based on land use planning documents, determine that the lands described in a notice of intent are not subject to such authorization and are not available for geophysical exploration. The authorized officer may order an immediate suspension of activities authorized under a permit or other use authorization prior to a hearing or final administrative finding if it is determined that such is necessary to protect health or safety or the environment.

Subpart 3151—Exploration Outside of Alaska

§ 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

Any person desiring to conduct oil and gas geophysical exploration on either unleased public lands or leased lands outside of the State of Alaska shall file a Notice of Intent to Conduct Oil and Gas Exploration Operations, referred to herein as a notice of intent. The notice of intent shall be filed with the District Manager of the proper BLM office on the form approved by the Director. The operator shall not commence operations for a period of 5 working days following the date of the filing of a notice of intent unless notified by the authorized officer that operations may commence sooner. The operator shall within that time, or such other time as may be convenient for the operator, participate in a field inspection if requested by the authorized officer. Signing of the notice of intent by the operator shall signify agreement to comply with the terms and conditions contained therein and in this part, and with all practices and procedures specified at any time by the authorized officer.

§ 3151.2 Notice of completion of operations.

Upon completion of exploration, there shall be filed with the District Manager a Notice of Completion of Oil and Gas Exploration Operations. Within 30 days after this filing, the authorized officer shall notify the party who conducted the operations whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary, specifying the nature and extent of actions to be taken by the operator.

Subpart 3152—Exploration in Alaska

§ 3152.1 Application for oil and gas geophysical exploration permit.

Any person wishing to conduct oil and gas geophysical exploration operations in Alaska on unleased public lands or leased lands shall complete an application for an oil and gas geophysical exploration permit. The application shall contain the following information:

(a) The applicant's name and address;

(b) The operator's name and address;

(c) The contractor's name and address;

(d) A description of lands covered by the application of township and range, including a map or overlays showing the lands to be entered and affected;

(e) The period of time when operations will be conducted; and

(f) A plan for conducting the exploration operations.

The application shall be submitted, along with a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a lease hold by or on behalf of the lessee), to the District Manager of the proper BLM office.

§ 3152.2 Action on application.

(a) The authorized officer shall review each application and approve or disapprove it within 90 calendar days, unless compliance with statutory requirements such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) delays this action. The applicant shall be notified promptly in writing of any such delay.

(b) The authorized officer shall include in each geophysical exploration permit special terms and conditions needed to protect the natural land surface, other mineral resources and nonmineral resources. Geophysical permits within National Petroleum Reserve—Alaska shall contain such conditions, restrictions and prohibitions as the authorized officer deems necessary or appropriate to mitigate reasonable adverse effects upon the surface resources of the Reserve and to satisfy the requirement of section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504) (See part 3130 for special stipulations relating to the National Petroleum Reserve—Alaska).

(c) An exploration permit shall become effective on the date specified by the authorized officer and shall expire 1 year thereafter.

(d) For public lands, as defined in this part, subject to section 1008 of the Alaska National Interest Lands Conservation Act, exploration shall be authorized only upon a determination that such activities can be conducted in a manner which is consistent with the purposes for which the affected area is managed under applicable law.

§ 3152.3 Renewal of exploration permit.

Upon application by the permittee and payment of a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a leasehold by or on behalf of the lessee), an exploration permit may be renewed by the authorized officer for a period not to exceed 1 year.

§ 3152.4 Relinquishment of exploration permit.

Subject to the continued obligations of the permittee and the surety to comply with the terms and conditions of the

exploration permit and the regulations, the permittee may relinquish an exploration permit for all or any portion of the lands covered by it. Such relinquishment shall be filed with the District Manager of the proper BLM office.

§ 3152.5 Modification of exploration permit.

(a) A permittee may request, and the authorized officer may approve a modification of an exploration permit.

(b) The authorized officer may, after consultation with the permittee, require modifications he/she determines necessary to the exploration permit.

§ 3152.6 Collection and submission of data.

(a) The permittee shall submit to the Bureau all data and information obtained in carrying out the exploration plan.

(b) The Bureau shall not release such data and information and any processed, analyzed and interpreted material until such time as disclosure would not adversely affect, in the opinion of the authorized officer, the competitive position of the permittee.

§ 3152.7 Completion of operations.

(a) The permittee shall submit to the authorized officer a completion report within 30 days of completion of all operations under the permit. The completion report shall contain the following:

(1) A description of all work performed;

(2) Charts, maps or plats depicting the areas and blocks in which the exploration was conducted and specifically identifying the lines of geophysical traverses and any roads constructed;

(3) The dates on which the actual exploration was conducted;

(4) Such other information about the exploration operations as may be specified by the authorized officer in the permit; and

(5) A statement that all terms and conditions have been complied with or that corrective measures shall be taken to rehabilitate the lands or other resources.

(b) Within 90 days after the authorized officer receives a completion report from the permittee that exploration has been completed or after the expiration of the permit, whichever occurs first, the authorized officer shall notify the permittee of the specific nature and extent of any additional measures required to rectify any damage to the lands and resources.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

§ 3153.1 Geophysical permit requirements.

Except in unusual circumstances, permits for geophysical exploration on unleased lands under the jurisdiction of the Department of Defense shall be issued by the appropriate agency of that Department. In the event an agency of the Department of Defense refers an application for exploration to the Bureau for issuance, the provisions of Subpart 3152 of this title shall apply. Geophysical exploration on lands under the jurisdiction of the Department of Defense shall be authorized only with the consent of, and subject to such terms and conditions as may be required by, the Department of Defense.

Subpart 3154—Bond Requirements

§ 3154.1 Types of bonds.

Prior to each planned exploration, the party(s) filing the notice of intent or application for a permit shall file with the authorized officer a bond as described in § 3104.1 of this title in the amount of at least $5,000, conditioned upon full and faithful compliance with the terms and conditions of this subpart and the notice of intent, permit or lease. In lieu thereof, the party(s) may file a statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State or a nationwide bond in the amount of $50,000 covering all oil and gas exploration operations in the nation. Holders of individual, statewide or nationwide oil and gas lease bonds shall be permitted to obtain a rider to include oil and gas exploration operations under this part. Holders of nationwide or any National Petroleum Reserve—Alaska oil and gas lease bonds shall be permitted to obtain a rider to include the coverage of oil and gas exploration within the National Petroleum Reserve—Alaska under Subpart 3152 of this title.

§ 3154.2 Additional bonding.

The authorized officer may increase the amount of any bond that is required or any outstanding bond under this subpart when he/she determines additional coverage is needed to ensure protection of the lands and other resources.

§ 3154.3 Bond cancellation or termination of liability.

The authorized officer shall not consent to the cancellation of the bond or the termination of liability unless and until all of the terms and conditions of the notice of intent, permit or lease have been met. Should the authorized officer fail to notify the party within 30 days (for a notice of intent) or within 90 days (for a permit) of the filing of a notice of completion of the need for additional action by the operator to rehabilitate the lands, liability for that particular exploration operation shall automatically terminate.

PART 3160—[AMENDED]

102. The authority citation for part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Act of March 3, 1909, as amended (25 U.S.C. 369); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); the Department of the Interior Appropriations Act for Fiscal Year 1981 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

103. Section 3160.0–5 is revised to read:

§ 3160.0–5 Definitions.

As used in this part, the term:

(a) "Authorized representative" means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation or contract.

(b) "Avoidably lost" means the venting or flaring of produced gas without the prior authorization, approval, ratification of acceptance of the authorized officer and the loss of produced oil or gas when the authorized officer determines that such loss occurred as a result of: (1) Negligence on the part of the lessee; or (2) the failure of the lessee to take all reasonable measures to prevent and/or control the loss; or (3) the failure of the lessee to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the authorized officer; or (4) any combination of the foregoing.

(c) "Federal lands" means all lands and interests in lands owned by the United States which are subject to the

mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

(d) "Fresh water" means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or aquatic life, unless otherwise specified in applicable notices or orders.

(e) "Lease" means any contract, profit-share arrangement, joint ventue or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of or removal of oil or gas.

(f) "Lease site" means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized under a lease.

(g) "Lessee" means the party authorized by or through a lease or an approved transfer thereof, to explore for, develop and produce oil and gas on the lease in accordance with the lease terms and conditions, stipulations, orders, permits, regulations and law. For convenience of reference throughout this part, the term lessee also refers to and includes the holders of approved operating rights and designated operators.

(h) "Lessor" means the party to a lease who holds legal or beneficial title to the mineral estate in the leased lands.

(i) "Maximum ultimate economic recovery" means the recovery of oil and gas from leased lands which a prudent operator could be expected to make from that field or reservoir given existing knowledge of reservior and other pertinent facts and utilizing common industry practices for primary, secondary of tertiary recovery operations.

(j) "Notice of lessees and operators (NTL)" means a written notice issued by the authorized officer. NTL's implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance.

(k) "Onshore oil and gas order" means a formal numbered order issued by the Director that implements the regulations in this part.

(l) "Operator" means the party that has control or management of operations on the leased lands or a portion thereof. The operator may be the lessee, the holder of approved operating rights or the designated operator.

(m) "Paying well' means a well that is capable of producing oil or gas of sufficient value to exceed direct operating costs and the costs of lease rentals or minimum royalty.

(n) "Person" means any individual, firm, corporation, association, partnership, consortium or joint venture.

(o) "Production in paying quantities" means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

(p) "Superintendent" means the superintendent of an Indian Agency, or other officer authorized to act in matters of record and law with respect to oil and gas leases on restricted Indian lands.

(q) "Waste of oil or gas" means any act or failure to act by the lessee that is not sanctioned by the authorized officer as necessary for proper development and production and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas.

§ 3161.2 [Amended]

104. Section 3161.2 is amended by removing from where it appears the phrase "that the operator is authorized to conduct such operations,".

§ 3162.3-1 [Amended]

105. Section 3162.3-1 is amended by adding a new paragraph (g) to read:

"(g) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations."

PART 3180—[AMENDED]

106. The authority citation for Part 3180 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181, 189, 226(e), 226(j)).

§§ 3183.3-1, 3183.4, 3183.5 and 3183.6 [Redesignated as §§ 3183.4, 3183.5, 3183.6 and 3183.7 respectively]

107. Sections 3183.3-1, 3183.4, 3183.5 and 3183.6 are redesignated as §§ 3183.4, 3183.5, 3183.6 and 3183.7, respectively.

108. Section 3183.4, previously § 3183.3-1, is revised to read:

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (See § 3186.1 of this title for example). No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

(b) The public interest requirement of an approved unit agreement for unproven areas shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement. If an application is received for voluntary termination of a unit agreement for an unproven area during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extensions under § 3104.4 of this title.

(c) Any modification of an approved agreement shall require the prior approval of the authorized officer.

§ 3186.1 [Amended]

109. Section 3186.1 is amended by amending the portion entitled "Certification-Determination" by adding at the end of paragraph A a sentence to read: "This approval shall become invalid if the public interest requirement under § 3183.4(b) of this title is not met."

PART 3200—[AMENDED]

110. The authority citation for Part 3200 is revised to read:

Authority: the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

§ 3200.0-5 [Amended]

11. Section 3200.0-5 is amended by:

A. Revising paragraph (b) to read:

"(b) 'Secretary' means the Secretary of the Interior.";

B. Revising paragraph (e) to read:

"(e) 'Sole party in interest' means a party who is or will be vested with any interest under the lease as defined in paragraph (f) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest. Any party with any claim or any prospective future claim to an advantage or benefit from a lease, and with any participation or any defined or undefined share in any increments, issues or profits which may be derived or which may accrue in any manner from the lease based on or pursuant to any agreement or understanding existing at the time the application, offer or

competitive bid is filed, shall constitute a party in interest in such lease. No one is, or shall be deemed a sole party in interest in a lease in which any other party has any interest in the lease."

C. Revising paragraph (f) to read:

"(f) "Interest" means any interest whatever in a geothermal lease, including, but not limited to: (1) A record title interest; (2) a working interest; (3) an operating right; (4) an overriding royalty interest or other similar fiduciary payments or arrangements; or (5) options or any agreement covering such interest. 'Interest' does not include stock ownership, stockholding or stock control in a lease application or offer or in a bid, except for purposes of acreage limitations in § 3201.2 of this title and qualifications of leases in Subpart 3202 of this title.

D. Revising paragraph (g) to read:

"(g) "Director" means the Director of the Bureau of Land Management.";

E. Amending paragraph (k), by removing paragraphs (k)(1) through (k)(3) in their entirety; and

F. Adding new paragraph (m) through (s) to read:

"(m "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3200.

"(n) 'Proper BLM office means the Bureau' of Land Management office having jurisdiction over the lands subject to the regulations in Group 3200.

"(o) 'Anniversary date' means the same day and month in succeeding years as that on which the lease became effective.

"(p) 'Surface managing agency' means any Federal agency outside of the Department of the Interior which has jurisdiction over the surface overlying Federally-owned minerals.

"(q) 'Bureau' means the Bureau of Land Management.

"(r) 'Service' means the Minerals Management Service.

"(s) 'Transfer' means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: 'assignment' which means a transfer of all or a portion of the lessee's record title interest in a leasee; and 'sublease' which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States."

§ 3200.0-6 and 3200.0-7 [Removed]

112. Section 3200.0-6 and 3200.0-7 are removed in their entirety.

§ 3200.0-8 [Redesignated as § 3200.0-6]

113. Section 3200.0-8 is redesignated as § 3200.0-6 and paragraph (a) thereof is amended by removing the third sentence thereof in its entirety and by removing from the end thereof the word "chapter" and replacing it with the word "title".

114. A new § 3200.1 is added to read:

§ 3200.1 Competitive and noncompetitive leasing areas.

The authorized officer shall determine the boundaries of known geothermal resource areas. All lands within such boundaries shall only be leased competitively to the highest qualified bidder in accordance with Part 3220 of this title. All other lands shall be leased noncompetitively, if at all, to the first qualified offeror in accordance with Part 3210 of this title.

(a) In determining whether the geology of an area is of such a nature that the area should be designated as a KGRA, the authorized officer shall use such geologic and technical evidence as he/she deems appropriate, including the following:

(1) The existence of siliceous sinter and natural geysers;

(2) The temperature of fumaroles, thermal springs and mud volcanoes;

(3) The SiO_2 content of spring water;

(4) The Na/K ratio in spring waters or hot-water systems;

(5) The existence of volcanoes and calderas of late Tertiary or Quaternary age;

(6) Conductive heat flows and geothermal gradient;

(7) The porosity and the permeability of a potential reservoir;

(8) The results of electrical resistivity surveys;

(9) The results of magnetic, gravity and airborne infrared geophysical surveys; and

(10) The information obtained through other geophysical methods, such as microseismic, seismic ground noise, electromagnetic and telluric surveys if such methods prove to have significant use in evaluation.

(b) For purposes of KGRA classification, a "discovery" or "discoveries" shall be considered to be any well deemed by the authorized officer to be capable of producing geothermal resources in commercial quantities. Where the geological structure is not known, "nearby" shall be considered to be 5 miles or less from any such discovery. Lands nearby a discovery shall be classified as KGRA unless it is determined that the lands are on a different geological structure from the discovery. Where the authorized officer has determined the extent of a structure on which a discovery has been made, all lands in that structural area contributing geothermal resources to that discovery shall be deemed a KGRA regardless of the distance from the discovery.

(c) "Competitive interest" shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by the application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one-half of the lands subject to the first application are covered by an other single application filed during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this paragraph.

115. A new § 3200.2 is added to read:

§ 3200.2 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provided that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of use of such minerals shall be accomplished under the regulations of Group 3200 of this title. Such mineral estate include, but are not limited to, those that have been or will be reserved under the authorities of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management of 1976 43 U.S.C. 1701 et seq.).

§ 3201.1-1 [Amended]

116. Section 3201.1-1 is amended by:

A. Adding a new paragraph (a) to read:

"(a) The Secretary may issue a geothermal lease when he/she determines such issuance would be in the public interest."; and

B. The existing paragraph of the section is designated as paragraph (b) by inserting the figure "(b)" at the beginning of the paragraph, and the figures (a), (b), and (c) are changed to (1), (2), and (3).

§ 3201.1-2 [Amended]

117. Section 3201.1-2(b)(2) is amended by removing from where it appears the word "chapter" and replacing it with the word "title".

§ 3201.1-4 [Amended]

118. Section 3201.1-4 is amended by removing the phrase "Federal Power Commission" from the title and the place it appears in the body of the section and replacing it with the phrase "Federal Energy Regulatory Commission".

§ 3202.2 [Amended]

119. Section 3202.2 is amended by revising the first sentence of the section to read: "Submission of an executed lease application or offer, competitive bid or request for approval of a transfer of record title or of operating rights (sublease) constitutes certification of compliance with the regulations of this group and the Act."

§ 3202.2-2 [Removed]

120. Section 3202.2-2 is removed in its entirety.

121. Section 3202.2-3 is redesignated as § 3202.2-2 and revised to read:

§ 3202.2-2 Attorney-in-fact/agent.

An attorney-in-fact or an agent may execute and file an application, offer, competitive bid or transfer of record title or of operating rights (sublease), request for approval of a transfer or other leasing action.

§ 3202.2-4 [Removed]

122. Section 3202.2-4 is removed in its entirety.

§ 3202.2-5 [Redesignated as § 3202.2-3]

123. Section 3202.2-5 is redesignated as § 3202.2-3 and is amended by removing the last two sentences thereof and replacing them with the sentence to read: "All interested parties may be required to furnish evidence of their qualifications upon the written request of the authorized officer."

§ 3202.2-6 [Redesignated as § 3202.2-4]

124. Section 3202.2-6 is redesignated as § 3202.2-4 and is amended by removing in its entirety all language following the first two sentences of the section.

125. Section 3203.1-1 is revised to read:

§ 3203.1-1 Dating of leases.

All geothermal leases shall be considered issued when signed by the authorized officer. Geothermal leases, except future interest leases issued under Subpart 3207 of this title, shall be effective as to the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. A renewal lease shall be dated from the termination of the original lease.

§ 3203.1-4 [Amended]

126. Section 3203.1-4 is amended by removing from where it appears in paragraph (d) the citation "30 CFR 270.17" and replacing it with the citation "§ 3261.8 of this title".

§ 3203.2 [Amended]

127. Section 3203.2 is amended by:

A. Amending paragraph (b) by removing from where it appears at the end of the second sentence the phrase ", or as provided for in Part 3230 of this chapter with respect to 'conversion rights' "; and

B. Amending paragraph (d) by removing from where is appears in the first sentence thereof the word "will" and replacing it with the word "shall", by removing from where it appears in the first sentence thereof the word "chapter" and replacing it with the word "title" and by removing from where it appears in the third sentence thereof the word "will" and replacing it with the word "shall".

§ 3203.3 [Amended)

128. Section 3203.3 is amended by removing from where it appears the citation "§ 3203.2" and replacing it with the phrase "§ 3203.2 of this title".

§ 3203.5 [Amended]

129. Section 3203.5 is amended by removing from the two places where it appears the word "supervisor" and replacing it with the phrase "authorized officer".

§ 3203.6 [Amended]

130. Section 3203.6 is amended by removing from where it appears in the introductory paragraph and paragraph (a) the word "chapter" and replacing it with the word "title", by removing from where it appears in paragraph (a) the citation "43 CFR 3264.4" and replacing it with the citation "§ 3264.4 of this title", by removing from where it appears in paragraph (b) the citation "43 CFR 3262.4" and replacing it with the citation "§ 3262.4 of this title" and by removing from where it appears in paragraph (b) the citation "43 CFR 3262.4-2" and replacing it with the citation "§ 3262.4-2 of this title".

§ 3203.8 [Amended]

131. Section 3203.8 is amended by removing from the two places it appears the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears at the end of paragraph (b) the citation "43 CFR Part 3260" and replacing it with the citation "§ 3262.3 of this title".

132. The title of Subpart 3205 is revised to read:

Subpart 3205—Fees, Rentals and Royalties

§ 3205.1-2 [Amended]

133. Section 3205.1-2(a)(1) is amended by removing from where it appears the phrase "all first-year rentals" and replacing it with the phrase "all first-year advance rentals".

134. Section 3205.2 is revised to read:

§ 3205.2 Filing fees.

(a) No filing fee is required for competitive lease applications.

(b) Applications for noncompetitive leases, including future interest leases, shall be accompanied by a nonrefundable filing fee of $75 for each application.

(c) Applications for approval of a transfer of a lease or any interest therein shall be accompanied by a nonrefundable filing fee of $50 for each separate request for a transfer.

(d) No filing fee is required for requests or nominations for parcels to be offered for competitive sale.

§ 3205.3-1 [Amended]

135. Section 3205.3-1 is amended by revising the first sentence thereof to read: "Each application shall be accompanied by payment of the first-year's advance rental of $1 per acre or fraction thereof based on the total acreage included in the application, except that no advance rental payment is required with an application for a future interest.", by removing where it appears in the second sentence thereof the phrase "first-year's rental" and replacing it with the phrase "first-year's advance rental" and by removing from where it appears in the last sentence thereof the phrase "of the application" and replacing it with the phrase "or the application".

§ 3205.3-2 [Amended]

136. Section 3205.3-2 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "proper BLM office" and

replacing it with the phrase "designated Service office" and by removing from where it appears the word "chapter" and replacing it with the word "title";

B. Amending paragraph (c) by removing from where it appears the word "chapter" and replacing it with the word "title"; and

C. Revising paragraph (d) to read:

"(d) If the payment is due on a day in which the designated Service office is closed, payment received or postmarked on the next official working day shall be deemed to be timely filed."

§ 3205.3-7 [Amended]

137. Section 3205.3-7(b) is amended by revising the introductory paragraph to read:

"(b) An application hereunder shall be filed with the authorized officer and shall:".

138. Section 3205.3-8 is revised to read:

§ 3205.3-8 Suspension of operations and/or production.

(a) A suspension of operations and production on a producing lease may be consented to by the authorized officer in the interest of conservation or in cases where the lessee is prevented from continuing production, despite the exercise of due care and diligence, by matters beyond its reasonable control. Applications by lessees for suspensions of operations and production shall be filed in the proper BLM office. Complete information showing the necessity for such relief shall be furnished.

(b) The authorized officer may, in the interest of conservation, direct the suspension of operations on any lease.

(c) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(d) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer and shall last for the period specified in the order or approval, except as provided in paragraphs (f) and (g) of this section.

(e) Rental or minimum royalty payments shall be suspended during any period of suspension directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension becomes effective or, if the suspension becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental or minimum royalty payments shall resume on the first day of the lease month in which the suspension is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

(f) Where all operations and production have been suspended on a producing lease and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (e) of this section.

(g) Whenever it appears from information obtained by or furnished to the authorized officer that the interest of the lessor requires additional drilling or producing operations, he/she may, by written notice, order the beginning or resumption of such operations.

(h) The relief authorized under this section also may be obtained for any leases included within an approval unit or cooperative plan or development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

§ 3205.3-9 [Amended]

139. Section 3205.3-9 is amended by removing from the two places it appears the word "Supervisor" and replacing it with the phrase "authorized officer", by removing from where it appears the word "chapter" and replacing it with the word "title", by removing from where it appears in fourth, seventh and eighth sentences the word "will" and replacing it with the word "shall" and by removing from where it appears in the seventh sentence the word "must" and replacing it with the word "shall".

§ 3205.4-1 [Amended]

140. Section 3205.4-1 is amended by removing from where it appears the citation "§ 3205.3" and replacing it with the citation "§ 3205.3 of this title".

§ 3205.4-2 [Amended]

141. Section 3205.4-2 is amended by removing from where it appears the citation "Subpart 3205" and replacing it with the citation "subpart 3205 of this title" and by removing from where it appears the citation "§ 3205.3" and replacing it with the citation "§ 3205.3 of this title".

142. Sections 3206.1, 3206.1-1 and 3206.1-2 are revised to read:

§ 3206.1 Bond obligations and filing.

§ 3206.1-1 Bond obligations.

A surety or personal bond conditioned upon compliance of the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operator or designated operator prior to the commencement of drilling operations.

§ 3206.1-2 Filing.

A single originally executed copy of a bond on the appropriate form approved by the Director shall be filed in the proper BLM office. Nationwide bonds may be filed in any Bureau State office (See § 1821.2-1). For unit bond forms see subpart 3284 of this title.

143. Section 3206.2 is revised to read:

§ 3206.2 Lessee's bond.

A lessee's general lease and drilling bond shall be in an amount of not less than $10,000 conditioned upon compliance with all terms and conditions of the lease and this section.

144. Section 3206.3-1 is revised to read:

§ 3206.3-1 Compliance.

A holder of operating rights or designated operator, or, if there is more than 1 for different portions of the lease, each operator, may furnish a general lease bond of not less than $10,000 in his/her own name as principal on the bond in lieu of the lessee. Where there is more than 1 operator's bond affecting a single lease, each such bond shall be conditioned upon compliance with all lease terms for the entire leasehold.

145. Section 3206.3-2 is revised to read:

§ 3206.3-2 Approval.

An operator's bond may be accepted if the operator holds the operating rights approved under a transfer made in accordance with Subpart 3241 of this title, or is the designated operator.

146. Section 3206.5 is revised to read:

§ 3206.5 Statewide bond.

In lieu of bonds required under this subpart, the holder of a lease or the holder of approved operating rights or designated operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

147. Section 3206.6 is revised to read:

§ 3206.6 Nationwide bond.

In lieu of bonds required under this subpart, the holder of a lease or the holder of approved operating rights or designated operator may furnish a bond

in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases.

148. A new § 3206.9 is added to read:

§ 3206.9 Termination of period of liability.

The period of liability of any lease shall not terminate until all lease terms and conditions have been fulfilled.

§ 3207.2-3 [Amended]

149. Section 3207.2-3 is amended by removing paragraph (c) thereof in its entirety and redesignating paragraph (d) as paragraph (c).

§ 3207.3-2 [Amended]

150. Section 3207.3-2 is amended by removing paragraph (c) thereof in its entirety and redesignating paragraphs (d) and (e) thereof as paragraphs (c) and (d), respectively.

§ 3209.0-1 [Amended]

151. Section 3209.0-1(a) is amended by removing the last sentence thereof in its entirety.

152. Section 3209.4-1(b) is revised to read:

§ 3209.4-1 General.

* * * * *

(b) A party shall be excused from compliance with the requirements of paragraph (a) of this section if he/she possesses either a nationwide bond in the amount of not less than $50,000 covering all exploration operations, or a statewide bond in the amount of not less than $25,000 covering all exploration operations in the state in which the lands on which he/she has filed the Notice of Intent are situated, or a lease bond of not less than $10,000 furnished in accordance with § 3206.2 of this title.

PART 3210—[AMENDED]

153. The authority citation for Part 3210 is revised to read:

Authority: The Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

154. Section 3210.2-1 is revised to read:

§ 3210.2-1 Application.

An application for a lease shall be filed in an original and 1 copy for public domain lands and an original and 2 copies for acquired lands in the proper BLM office on a form approved by the Director. The original form, or a copy thereof, filled in by typewriter or printed plainly in ink, manually signed in ink and dated by the offeror, or the offeror's duly authorized agent or attorney-in-fact, shall be required. Copies shall be an exact reproduction on 1 page of both sides of the approved form without additions, omissions or other changes or advertising. The application shall be submitted in a sealed envelope marked "Application for lease pursuant to 43 CFR Part 3210." The application shall include a complete and accurate description of the lands applied for, which shall include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed nor protracted and are described by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted.

PART 3220—[AMENDED]

155. The authority citation for Part 3220 is revised to read:

Authority: The Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

156. Section 3220.2 is revised and §§ 3220.2-1 and 3220.2-2 are added to read:

§ 3220.2 Notice of lease sale.

§ 3220.2-1 Contents of notice.

The notice of lease sale shall state the time, date and place of the sale, shall include a general description of the lands offered for sale and information on where the detailed statement of the precise description and terms and conditions of the lease(s), including rental and royalty rates, as well as the form on which a bid(s) shall be submitted and where that form may be obtained. Remittances for competitive bids shall be submitted as required in the detailed statement of sale notice.

§ 3220.2-2 Detailed statement.

The detailed statement shall contain information on when and where to submit bids, bidding requirements, required payments, lease terms and conditions, the description of the leasing units being offered and any other information that may be helpful to the prospective bidder.

157. Section 3220.3 is revised to read:

§ 3220.3 Publication of the notice.

The notice of lease sale shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated or in such other publications as the authorized officer may determine. The successful bidder shall, prior to lease issuance, pay his/her proportionate share of the total cost of publication of the notice.

§ 3220.4 [Amended]

158. Section 3220.4(a) is amended by removing from where it appears in the second sentence the phrase ", together with proof of qualifications as required by these regulations" and by removing the last sentence thereof and adding two new sentences to read: "Execution and submission of a bid as prescribed in the detailed statement of lease sale constitutes certification of compliance with subpart 3202 of this title. Proof of qualifications to hold a lease shall be furnished upon the written request of the authorized officer in accordance with § 3202.2 of this title."

§ 3220.5 [Amended]

159. Section 3220.5 is amended by:

A. Amending paragraph (b) by removing from where it appears at the end thereof the phrase ", except as required under Part 3230 of this chapter" and by adding to the end thereof the sentence "High bids determined to be inadequate by the authorized officer shall be rejected."

B. Revising paragraph (c) to read:

"(c) The right to reject any and all bids is reserved by the Secretary. If the high bid is rejected or is determined by the authorized officer to not be in compliance with the requirements set out in the detailed statement or the award notice, the bonus bid submitted with the bid shall be refunded."; and

C. Amending paragraph (d) by revising the first sentence thereof to read: "If the lease is awarded, 3 copies of the lease shall be sent to the successful bidder who shall, within 15 days of receipt of notice, sign and return the lease forms together with payment of the balance of the bonus bid, the first-year's rental and the bidder's proportionate share of the notice of lease sale publication costs."

PART 3240—[AMENDED]

160. The citation authority for Part 3240 is revised to read:

Authority: The Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

161. The title to Subpart 3241 is revised to read:

Subpart 3241-Transfers

162. Section 3241.1 is revised to read:

§ 3241.1 Transfers, interests and qualifications.

163. Section 3241.1-1 is amended by:

A. Revising the title to read:

§ 3241.1-1 Transfers of record title.

B. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the figure "(a)", by removing from where it appears the word "will" and replacing it with the word "shall", by removing from

where it appears the word "chapter" and replacing it with the word "title" and by removing from where it appears the word "Secretary" and replacing it with the phrase "authorized officer".; and

C. Removing paragraph (b) in its entirety.

164. A new § 3241.1–2 is added to read:

§ 3241.1–2 Transfers of operating rights.

A working interest or operating right in a lease also may be transferred under this subpart.

165. Section 3241.2 is revised to read:

§ 3241.2 Requirements for filing of transfers.

166. Section 3241.2–1 is revised to read:

§ 3241.2–1 Place of filing and filing fee.

A request for approval of a transfer of a lease or interest therein shall be filed in the proper BLM office and accompanied by a nonrefundable filing fee of $50. A transfer not accompanied by the required nonrefundable filing fee shall not be accepted and shall be returned.

§ 3241.2–2 [Removed]

167. Section 3241.2–2 is removed in its entirety.

168. Section 3241.2–3 is redesignated as § 3241.2–2 and is revised to read:

§ 3241.2–2 Time of filing of transfers.

(a) A request for approval of a transfer of a lease or of an interest therein, including a transfer of operating rights (sublease), shall be filed in the proper BLM office within 90 days from the date of execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. Transfers filed after the 90th day may be approved provided the transferor and transferee state to the proper BLM office that the transfer is still in force and provided that no intervening transfer(s) involving all or part of the interest(s) being transferred has been filed for approval.

(b) A separate transfer shall be filed in the proper BLM office for each geothermal lease involving transfers of record title or of operating rights (sublease). When transfers to the same person, association, including partnerships, or corporation, involve more than 1 geothermal lease, 1 request for approval shall be sufficient.

169. Section 3241.2–4 is redesignated as § 3241.2–3 and is revised to read:

§ 3241.2–3 Forms and number of copies required.

A current form approved by the Director or an exact reproduction of the front and back thereof shall be used for each transfer of record title or of operating rights (sublease). Any earlier edition of the current form is obsolete and is unacceptable for filing. Three copies of the form, including at least 1 originally executed copy, shall be filed in the proper BLM office.

170. Section 3241.2–5 is redesignated as § 3241.2–4 and is revised to read:

§ 3241.2–4 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease, except no land description is required when 100 percent of the entire area encompassed in a lease is conveyed.

171. Section 3241.3 is revised to read:

§ 3241.3 Bonds.

Where a transfer does not create separate leases, the transferee, if the transfer so provides, may become a co-principal on the bond with the transferor. Any transfer which does not covey the transferor's record title in all of the lands in a lease shall also be accompanied by a consent of his/her surety to remain bound under the bond as to the lease retained by said transferor, if the bond, by its terms, does not contain such consent. If a party to the transfer has previously furnished a statewide or nationwide bond, as appropriate, no additional showing by such party is necessary as to the bond requirement.

172. Section 3241.4 is revised to read:

§ 3241.4 Approval.

The request for transfer of record title or of operating rights (sublease) shall be approved upon the execution of the forms by the authorized officer. Upon approval, a transfer shall be effective as of the first day of the lease month following the date of filing of the transfer. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

173. Section 3241.5 is revised to read:

§ 3241.5 Continuing responsibility.

(a) The transferor and his/her surety shall continue to be responsible for the performance of any obligation under the lease until the transfer is approved.

(b) Upon approval, the tranferee and his/her surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the transfer to the contrary.

(c) When a transfer of operating rights (sublease) is approved, both the approved sublessee and the lessee of record are responsible for all lease obligations.

§ 3241.7–1 [Amended]

174. Section 3241.7–1 is amended by:

A. Amending paragraph (b) by removing from where it appears the phrase "assignment or transfer, a statement must" and replacing it with the phrase "transfer, a statement shall";

B. Removing paragraph (c) in its entirety; and

C. Redesignating paragraph (d) as paragraph (c) and amending the newly redesignated paragraph (c) by removing from where it appears in the first sentence thereof the phrase "assignments by overriding royalty interests must" and replacing it with the phrase "transfers of overriding royalty interests shall".

175. Section 3241.8 is revised to read:

§ 3241.8 Lease account status.

Unless the lease account is in good standing as to the area covered by a transfer at the time the transfer is filed, or is placed in good standing before the transfer is acted upon, the request for approval of the transfer shall be denied.

176. Section 3241.9 is revised to read:

§ 3241.9 Effect of transfer

A transfer of record title of the complete interest in a portion of the lands in a lease shall segregate the transferred and retained portions of the lease into separate and distinct leases. A transfer of an undivided record title interest in the entire leasehold or a transfer of operating rights (sublease) shall not segregate the lease into separate or distinct leases.

§ 3242.1 [Amended]

177. Section 3242.1 is amended by removing from where it appears in the first sentence of the introductory paragraph the word "Supervisor" and replacing it with the phrase "authorized officer", also by removing from where it appears in the introductory paragraph the word "he" and replacing it with the phrase "he/she" and by removing from where it appears in paragraph (c) the word "him" and replacing it with the phrase "him/her".

§ 3242.2–2 [Amended]

178. Section 3242.2–2 is amended by removing from where it appears the citation "§ 3242.2–1" and replacing it with the citation "§ 3242.2–1 of this title".

§ 3243.1 [Amended]

179. Section 3243.1 is amended by removing from where it appears in the second sentence thereof the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears at the end of the second sentence thereof the citation "43 CFR Part 3260" and replacing it with the citation "part 3260 of this title."

§ 3243.2 [Amended]

180. Section 3243.2 is amended by removing from where it appears in the first sentence thereof the word "Supervisor" and replacing it with the phrase "authorized officer".

§ 3243.3-1 [Amended]

181. Section 3243.3-1 is amended by amending paragraph (a) by revising the first sentence thereof to read: "When separate tracts under lease cannot be independently developed and operated in conformity with and established well-spacing or well-development program, the authorized officer may approve or require lessees to enter into communitization or drilling agreements providing for the apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof, with other lands, whether or not owned by the United States, when found in the public interest." And amending paragraphs (b) and (c) by removing from where it appears in those paragraphs the word "Supervisor" and replacing it with the phrase "authorized officer".

§ 3243.3-2 [Amended]

182. Section 3243.3-2 is amended by removing from where it appears in the second sentence the word "Supervisor" and replacing it with the phrase "authorized officer" and also by removing from where it appears in the second sentence the word "must" and replacing it with the word "shall."

§ 3243.4-1 [Amended]

183. Section 3243.4-1 is amended by:

A. Revising paragraph (a) to read:

"(a) The authorized officer may, on such conditions as may be prescribed, approve operating, drilling or development contracts made by 1 or more geothermal lessees, with 1 or more persons, associations, including partnerships, or corporations whenever the authorized officer determines that such contracts are required for the conservation of natural resources or are in the best interest of the United States.";

B. Amending paragraph (b) by removing from where it appears therein the word "Supervisor" and replacing it with the phrase "authorized officer"; and

C. Amending paragraph (c) by removing from where it appears therein the word "Secretary" and replacing it with the phrase "authorized officer" and also by removing from where it appears the word "will" and replacing it with the word "shall".

§ 3243.4-2 [Amended]

184. Section 3243.4-2 is amended by:

A. Amending paragraph (a) by removing from the two places it appears therein the word "must" and replacing it with the word "shall" and also by removing from where it appears therein the word "Secretary" and replacing it with the phrase "authorized officer"; and

B. Amending paragraph (b) by removing from where it appears the word "must" and replacing it with the word "shall".

§ 3244.1 [Amended]

185. Section 3244.1(a) is amended by revising the introductory text of the paragraph to read:

"(a) A lease, or any legal subdivision thereof, may be surrendered by the record title holder or the holder's duly authorized attorney-in-fact by filing a written relinquishment in the proper BLM office. A partial relinquishment shall not reduce the remaining acreage in the lease to less than 640 acres, except where a departure is occasioned by an irregular subdivision. The minimum acreage provision may be waived by the authorized officer when it is determined that an exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment shall:".

§ 3244.2-1 [Amended]

186. Section 3244.2-1 is amended by removing from where it appears in the first sentence thereof the citation "§ 3244.2-2" and replacing it with the citation § 3244.2-2 of this title" and by revising the second sentence thereof to read: "However, if the designated Service office is not open on the day a payment is due, payment received or postmarked on the next day the designated Service office is open to the public shall be deemed timely filed."

§ 3244.2-2 [Amended]

187. Section 3244.2-2(a) is amended by removing from where it appears in the first sentence the word "paid" and replacing it with the phrase "postmarked or received" and revising the third and fourth sentences thereof to read: "The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office."

§ 3244.5 [Amended]

188. Section 3244.5 is amended by removing from where it appears the word " "Supervisor" and replacing it with the phrase "authorized officer".

PART 3250—[AMENDED]

189. The authority citation for Part 3250 continues to read:

Authority: Secs. 3 and 24, Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025).

§ 3250.0-3 [Amended]

190. Section 3250.0-3 is amended by removing from where it appears the word "Stream" and replacing it with the word "Steam".

191. Section 3250.1-2 is revised to read:

§ 3250.1-2 Who may hold licenses.

Licenses shall be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States, any State or the District of Columbia or governmental units, including, without limitations, municipalities.

§ 3250.4-1 [Amended]

192. Section 3250.4-1 is amended to remove from where it appears the citation "§ 3200.0-8" and replacing it with the citation "§ 3200.0-6".

§ 3250.4-2 [Amended]

193. Section 3250.4-2 is amended by removing the second and third sentences thereof in their entirety and adding a new sentence at the end thereof to read: "In order to install such a facility, a permit shall be obtained from the authorized officer under the provisions of part 3260 of this title. Permits granted under part 3260 of this title shall conform with the requirements of § 3200.0-6 of this title."

§ 3250.6-1 [Amended]

194. Section 3250.6-1(b) is amended by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears the citation "43 CFR Part 3260" and

replacing it with the citation "part 3260 of this title".

§ 3250.6-2 [Amended]

195. Section 3250.6-2(a) is amended by removing from where it appears the word "Secretary" and replacing it with the phrase "authorized officer".

§ 3250.8 [Amended]

196. Section 3250.8 is amended by:

A. Amending paragraph (a) by removing from the three places it appears the word "must" and replacing it with the word "shall" and by removing from the two places it appears the word "will" and replacing it with the word "shall"; and

B. Amending paragraph (b) by removing from where it appears the phrases "non-refundable fee" and replacing it with the phrase "nonrefundable filing fee".

§ 3250.9 [Amended]

197. Section 3250.9 is amended by:

A. Amending paragraph (a) by removing from where it appears in the first sentence thereof the phrase", in triplicate ," and by removing from where it appears in the third sentence thereof the word "will" and replacing it with the word "shall"; and

B. Amending paragraph (d) by removing from where it appears therein the phrase "Area Geothermal Supervisor" and replacing it with the phrase "authorized officer".

198. The authority for Part 3260 continues to read:

Authority: Geothermal Steam Act as amended (30 U.S.C. 1001-1025) and Order No. 3087 (dated Dec. 3, 1982, as amended Feb. 7, 1983 [48 FR 8983].

§ 3260.0-5 [Amended]

199. Section 3260.0-5 is amended by:

A. Revising paragraph (a) to read:

"(a) "Lessee" means the party authorized by or through a lease or an approved transfer thereof, to explore for, develop and produce geothermal resources on the lease in accordance with the lease terms, regulations and law. For convenience of reference throughout this part, the term 'lessee' also refers to and includes the owners of approved operating rights and designated operators."; and

B. Amending paragraph (b) by removing from where it appears in the second sentence thereof the phrase ", or agent of the lessee, or holder of rights under an approved operating agreement." and replacing it with the phrase "or holder of an approved transfer of operating rights (sublease)."

§ 3261.2 [Amended]

200. Section 3261.2 is amended by removing from where it appears in the last sentence thereof the phrase "is authorized to conduct the proposed operations;" and by adding at the end of the section a new sentence to read: "Approval of a plan of operations or other permit does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct operations."

§ 3261.8 [Removed]

201. Section 3261.8 is removed in its entirety.

§ 3264.4 [Removed]

§ 3264.5 [Redesignated as § 3264.4]

202. Section 3264.4 is removed in its entirety and § 3264.5 is redesignated as § 3264.4.

J. Steven Griles,

Assistant Secretary of the Interior.

December 1, 1986.

[FR Doc. 87-13205 Filed 6-11-87; 8:45 am]

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federal register

Friday
June 12, 1987

Part IV

Department of State

Bureau of Consular Affairs

22 CFR Part 41

Application for Nonimmigrant Visas; Notice of Proposed Rulemaking; Correction

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

Application for Nonimmigrant Visas

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: This document corrects a proposed rulemaking published at 53 FR 20725, Wednesday, June 3, 1987, relating to the designation of a place at which an applicant for a nonimmigrant visa shall make the application. The proposed rulemaking would provide to U.S. agricultural employers a legal method to hire needed foreign temporary agricultural workers to replace illegal workers on whose employment seasonal agricultural employers have depended in the past. The purpose of this action is to change the original comment date, which was incorrectly posted, in order to allow for the timely submission of comments.

DATE: Written comments must be received on or before July 6, 1987.

ADDRESS: send to the Assistant Secretary for Consular Affairs, Room 6811, Department of State, Washington, DC. 20520.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully III, Director, Office of Legislation, Regulations and Advisory Assistance, Visa Office, Department of State, Washington, DC 20520, (202) 663-1184.

Accordingly, the date for submission of comments in FR State Department Proposed Rulemaking SD-208 appearing on page 20725 in the issue of June 3, 1987 is extended to read July 6, 1987.

Dated: June 11, 1987.

Cornelius D. Scully, III,

Director, Office of Legislation, Regulations, and Advisory Assistance Visa Office.

[FR Doc. 87-13667 Filed 6-11-87; 11:36 am]

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