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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Handling Requirement for Florida Oranges and Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of an interim rule which relaxed handling requirements for fresh shipments of Florida grapefruit, Temple oranges, and Valencia oranges, and fresh grapefruit imported into the United States.

EFFECTIVE DATE: September 2, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, USDA, AMS, Fruit and Vegetable Division, Marketing Order Administration Branch, P.O. Box 96456, Room 2523, South Building, Washington, DC 20250–6456; telephone: (202) 475–3914.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended, (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on 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 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.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines,and tangelos subject to regulation under the Florida citrus marketing order; approximately 15,000 oranges, grapefruit, tangerine, and tangelo producers in Florida; and approximately 26 importers of grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, producers, and importers may be classified as small entities.

The interim rule was issued May 21, 1987, and published in the **Federal Register** (52 FR 19717, May 27, 1987). That rule amended, effective May 21, 1987, § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (46 FR 60170, December 8, 1981), issued under the Marketing Order 905. That rule provided that interested persons could file public comments through June 26, 1987. No comments were received.

The interim rule temporarily relaxed the minimum external grade requirement for domestic, export, and import shipments of white and pink seedless grapefruit from Improved No. 2 to U.S. No. 2 Russett while the minimum internal requirement remained U.S. No. 1, and the minimum size requirement for domestic and import shipments of white seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). Also, the minimum size requirement for domestic shipments of Temple oranges was relaxed from size 125 (2$^{8}/_{16}$ inches in diameter) to size 163 (2$^{4}/_{16}$ inches in diameter). The relaxations for grapefruit and Temple oranges remained in effect through August 23, 1987, by which time this season's shipments were finished. In addition, that rule lowered the minimum external grade requirements for domestic shipments of Valencia oranges from U.S. No. 1 to U.S. No. 1 Golden with the minimum internal grade requirement remaining U.S. No. 1 during the period from July 1, 1987, through September 27, 1987. The later effective dates for the relaxed requirements for Valencia oranges recognize the late shipping season for this fruit, and the presence of late-bloom fruit, which matures later than normal.

At its May 8, 1987, meeting, the Citrus Administrative Committee unanimously recommended the relaxed requirements for the remainder of the 1986–87 season.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), which requires that the various varieties of grapefruit imported into the United States meet the same grade and size requirements as those specified for Florida grapefruit in Table 1 of paragraph (a) in § 905.306. Section 944.106 was issued under section 8e of the Act (7 U.S.C. 608e–1).

This rule maintains relaxed minimum grade and size requirements for Florida oranges and grapefruit grown in the production area in Florida shipped to the fresh domestic and export markets and the minimum grade and size requirements for grapefruit imported into the United States. Such action is designed to help ensure that such requirements do not unduly restrict the available supply of such fruit, and should make additional supplies of fruit available to consumers. The relaxation of the minimum grade and size requirements is only for the remainder of the 1986–87 shipping seasons for these fruits. The resumption of tighter requirements for 1987–88 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

Therefore, the Department's view is that the impact of the relaxed handling requirements upon producers, handlers, and importers would be beneficial. The application of minimum grade and size

requirements to Florida oranges, grapefruit, tangerines, and tangelos, and to imported grapefruit over the past several years, has helped to assure that only fruit of acceptable quality and size are shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains unchanged handling requirements currently in effect for Florida citrus under an interim rule: (2) the handling requirements currently in effect under the interim rule are only for 1986–87 season Florida citrus shipments; (3) the grapefruit import requirements are mandatory under section 8e of the Act; and (4) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 905 is taken:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

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

§ 905.306 [Amended]

2. Accordingly, the interim rule amending § 905.306 (46 FR 60170, December 8, 1981), which was published at 52 FR 19717 on May 27, 1987, is adopted as a final rule without change.

Dated: August 27, 1987.

William J. Doyle,

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

[FR Doc. 87–20121 Filed 9–1–87; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87–120]

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining an area in Los Angeles County in California because of the Mediterranean fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective August 27, 1987. Consideration will be given only to comments postmarked or received on or before November 2, 1987.

ADDRESS: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87–120. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 661 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" by adding a new Subpart 301.78, *Mediterranean Fruit Fly* (referred to below as the regulations). These regulations quarantine an area in Los Angeles County, California, because of the Mediterranean fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of California state and county agencies and by inspectors of Plant Protection and Quarantine (PPQ), a unit within the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that portions of Los Angeles County, California, are infested with the Mediterranean fruit fly. Specifically, inspectors collected seven male Mediterranean fruit flies and two female Mediterranean fruit flies in traps in the Maywood area of Los Angeles County between August 12 and August 18, 1987. In addition, 15 Mediterranean fruit fly larvae were collected in the same area on August 19, 1987. The Mediterranean fruit fly is not know to occur anywhere else in the United States, except in Hawaii.

Officials of state agencies of California have begun an intensive Mediterranean fruit fly eradication program in the quarantined area in California. Also, as explained below, California has taken action to restrict the intrastate movement of certain articles from the quarantined area to prevent the artificial spread of the Mediterranean fruit fly within California. However, it is also necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas in other states. Accordingly, to prevent the artificial spread of the Mediterranean fruit fly, this document establishes federal regulations, which are described below by section.

Restrictions on Interstate Movement of Regulated Articles (§ 301.78)

Section 301.78 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (footnote 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (§ 301.78–1)

Section 301.78–1 contains, for informational purposes, definitions of

the following terms: "Certificate," "Compliance Agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Plant Protection and Quarantine," "Quarantined Area," "Regulated article" and "State."

Regulated Articles (§ 301.78–2)

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.78–4 through 301.78–10.

Section 301.78–2 designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruits, nuts, vegetables, or berries. Based on research and experience, the articles listed in § 301.78–2 (a) and (b) as regulated articles are articles that are likely to cause the artificial spread of the Mediterranean fruit fly. In addition, § 301.78–2(c) allows designation of any other product, article, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the Mediterranean fruit fly and notifies the person in possession of the product, articles, or means of conveyance that it is subject to the restrictions in the regulations. This provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading Mediterranean fruit fly (e.g., a truck with Medfly pupae in cracks in the floorboards) to regulate the affected articles immediately, by informing the person in possession of the product, articles, or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, dried, or frozen below −17.8 °C. (0 °F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under those conditions.

Quarantined Areas (§ 301.78–3)

As stated in § 301.78–3(a), it is necessary to quarantine areas in which the Mediterranean fruit fly has been found by an inspector, areas in which the Deputy Administrator has reason to believe the Mediterranean fruit fly is present, and areas the Deputy Administrator considers necessary to quarantine because of their proximity to the Mediterranean fruit fly or their inseparability for quarantine enforcement purposes from localities where Mediterranean fruit flies have been found.

Section 301.78–3(a) further provides that less than an entire state will be designated as a quarantined area only if the Deputy Administrator determines that (1) the state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire state will prevent the interstate spread of the Mediterranean fruit fly. These determinations would indicate that infestrations are confined to the quarantined areas and eliminate the need for designating an entire state as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area an area in Los Angeles County in California. This area is as follows:

Los Angeles County—That portion of the county bounded by a line beginning at the intersection of Interstate Highway 10 and Central Avenue, then east along Interstate Highway 10 to its intersection with State Highway 60, then east on State Highway 60 to its intersection with Paramount Boulevard, then southeast along Paramount Boulevard to its intersection with Montebello Boulevard, then south along Montebello Boulevard to its intersection with State Highway 72, then east along State Highway 72 to its intersection with Paramount Boulevard, then southwest along Paramount Boulevard to its intersection with Washington Boulevard, then east along Washington Boulevard to its intersection with State Highway 19, then south along State Highway 19 to its intersection with Imperial Highway, then west along Imperial Highway to its intersection with Central Avenue, then north along Central Avenue to the point of beginning.

It is necessary to designate this portion of Los Angeles County as a quarantined area because it is an area in which the Mediterranean fruit fly has been found, or in which the Deputy Administrator has reason to believe the Mediterranean fruit fly is present, or an area necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in California other than those areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles under this subpart.

Section 301.78–3(b) provides that the Deputy Administrator or an inspector may designate an area as a quarantined area temporarily without publication in the **Federal Register** if there is a basis for listing the area as a quarantined area under § 301.78–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent artificial spread of the Mediterranean fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (§§ 301.78–4 Through 301.78–10)

Section 301.78–4

Section 301.78–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.78–5 through 301.78–10, unless moved as prescribed in § 301.78–4(b).

Section 301.78–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved directly through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Mediterranean fruit flies, if the point of origin is clearly indicated on shipping documents, and if the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Also, § 301.78–4(c) allows the Department to move interstate regulated articles without a certificate or limited permit for experimental or scientific purposes. However, they must be moved in accordance with a permit issued by the Deputy Administrator, under conditions that prevent the spread of Mediterranean fruit fly.

Section 301.78–4 contains a footnote (number 2) to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for interstate movement.

Section 301.78–5

Under federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g. the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.78–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.78–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of Mediterranean fruit fly, has been treated under direction of an inspector in accordance with § 301.78–10, or comes from a premise of origin which is free from Mediterranean fruit fly and has not been exposed to Mediterranean fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) is eligible for unrestricted movement under all other federal domestic plant quarantines and regulations applicable to that article.

Section 301.78–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing, and that the movement will not result in the spread of Mediterranean fruit fly.

Section 301.78–5(c) allows any person who has entered into and is operating under a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.78–5 (a) or (b).

Also, § 301.78–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.78–6

Section 301.78–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in the business of growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart 301.78. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of Subpart 301.78 and have agreed to comply with them.

Section 301.78–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact. This section contains a footnote (number 4) to explain where compliance agreement forms can be obtained.

Sections 301.78–7, 301.78–8 and 301.78–9

Section 301.78–7 provides that any person who desires a certificate or limited permit to move regulated articles should request that an inspector issue a certificate or limited permit as far in advance of movement as possible (no less than 48 hours before the desired movement). A footnote (number 3) is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.78–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement. These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.78–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the quarantine and regulations in Subpart 301.78 are provided without cost during normal business hours, but that we will not be responsible for any other costs or charges.

Section 301.78–10

Section 301.78–10 identifies as authorized treatments those treatments for the Mediterranean fruit fly that are contained in the Plant Protection and Quarantine Treatment Manual. Research has determined that these treatments would be adequate to destroy the Mediterranean fruit fly. Treatment schedules have not been developed for all regulated articles; however, an individual may obtain a certificate or limited permit for the interstate movement of some regulated articles by complying with the inspection provisions of § 301.78–5(a)(1)(ii) or (iii), as an alternative to treatment of those articles.

Emergency Action

William F. Helms, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553(d)(3) for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an

effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This amendment affects the interstate movement of regulated articles from a portion of the Los Angeles County, California. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. Specifically, the quarantined area is comprised of private residences and small wholesale dealers and shops. The small entities that may be affected by this regulation appear to consist of approximately 15 nurseries, 40 wholesale produce dealers (of which only 15 sell regulated articles), 75 mobile fruit vendors, five open fruit stands, and one farmers' market. Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate, movement. Also, many of the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities appears to be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other states.

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

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR Part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart-Mediterranean Fruit Fly" to read as follows:

Subpart—Mediterranean Fruit Fly

Sec.

301.78 Restrictions on interstate movement of regulated articles.
301.78–1 Definitions.
301.78–2 Regulated articles.
301.78–3 Quarantined areas.
301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.78–5 Issuance and cancellation of certificates and limited permits.
301.78–6 Compliance agreement and cancellation thereof.
301.78–7 Assembly and inspection of regulated articles.
301.78–8 Attachment and disposition of certificates and limited permits.
301.78–9 Costs and charges.
301.78–10 Treatments.

Subpart—Mediterranean Fruit Fly

§ 301.78 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.78–1 Definitions.

In this subpart the following definitions apply:

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Mediterranean fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to it.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection for Plant Protection and Quarantine, or any officer or employee of the United States Department of Agriculture to whom the Deputy Administrator has delegated authority to act in his or her stead.

Infestation. The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator to enforce this subpart.

Interstate. From any state into or through any other state.

Limited permit. A document, in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is eligible for interstate movement in accordance with § 301.78–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)) in any stage of development.

Moved (Move, Movement). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other organized group.

Plant Protection and Quarantine. Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any state, or any portion of a state, listed in § 301.78–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.78–3(b) of this subpart.

Regulated article. Any article listed in § 301.78–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.78–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

§ 301.78-2 Regulated articles.

The following are regulated articles:

(a) The following fruits, nuts, vegetables and berries:

Almond with husk (*Prunus dulcis* (*P. amygdalus*))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Black Myrobalan (*Terminalia cherbula*)
Cherries (sweet and sour) (*Prunus avium, P. cerasus*)
Citrus citron (*Citrus medica*)
Date (*Phoenix dactylifera*)
Fig (*Ficus carica*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) (smooth-skinned lemon of commerce that is cleaned and waxed)
Lime, sweet (*Citrus aurantiifolia*)
Loquat (*Eriobotrya japonica*)
Mandarin orange (*Citrus reticulata*) (tangerine)
Mango (*Mangifera indica*)
Mock orange (*Murraya exotica*)
Mountain apple (*Syzigium malaccense* (*Eugenia malaccensis*)
Natal plum (*Carissa macrocarpa*)
Nectarine (*Prunus persica* var. *nectarina*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Orange, calamondin (*Citrus reticulata* x. *Fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata* x. *C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Papaya (*Carica papaya*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum frutescens, C. annuum*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava Pomiferum*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Pyriform guajava (*Psidium guajava Pyriform*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sour orange (*Citrus aurantium*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*))
Strawberry guava (*Psidium cattleianum*)
Surinam cherry (*Eugenia uniflora*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestili) (*Thevetia peruviana*)

Any fruits, nuts, vegetables, or berries which are canned or dried or frozen below −17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a).

(c) Any other product, article, or means of conveyance, not covered by paragraph (a) or (b) of this section, that an inspector determines presents a risk of spread of the Mediterranean fruit fly and notifies the person in possession of it that the product, article, or means of conveyance is subject to the restrictions of this subpart.

§ 301.78-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a quarantined area in paragraph (c) of this section, each state, or each portion of a state, in which the Mediterranean fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found. Less than an entire state will be designated as a quarantined area only if the Deputy Administrator determines that:

(1) The state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire state as a quarantined area will prevent the interstate spread of the Mediterranean fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area in a state as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Deputy Administrator will give written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation shall be terminated by the Deputy Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

California

Los Angeles County—That portion of the county bounded by a line beginning at the intersection of Interstate Highway 10 and Central Avenue, then east along Interstate Highway 10 to its intersection with State Highway 60, then east on State Highway 60 to its intersection with Paramount Boulevard, then southeast along Paramount Boulevard to its intersection with Montebello Boulevard, then south along Montebello Boulevard to its intersection with State Highway 72, then east along State Highway 72 to its intersection with Paramount Boulevard, then southwest along Paramount Boulevard to its intersection with Washington Boulevard, then east along Washington Boulevard to its intersection with State Highway 19, then south along State Highway 19 to its intersection with Imperial Highway, then west along Imperial Highway to its intersection with Central Avenue, then north along Central Avenue to the point of beginning.

§ 301.78-4 Conditions governing the interstate movement of regulated articles from quarantined areas.[2]

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78-5 and 301.78-8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved directly through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, and

(2) The point of origin of the regulated article is clearly indicated by shipping documents and the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Deputy Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent

[2] Requirements under all other applicable federal domestic plant quarantines and regulations must also be met.

the spread of Mediterranean fruit fly; and,

(4) With a tag or label bearing the number of the permit issued for the regulated article securely attached to the outside of the container of the regulated article or securely attached to the regulated article itself if not in a container.

§ 301.78–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector for the interstate movement of a regulated article if the inspector:

(1)(i) Determines that the regulated article has been treated under the direction of an inspector in accordance with § 301.78–10 of this subpart; or

(ii) Determines, based on inspection of the premises of origin, that the premises are free from Mediterranean fruit flies and the regulated article has not been exposed to Mediterranean fruit fly; or

(iii) Determines, based on inspection of the regulated article, that it is free of Mediterranean fruit fly; and

(2) Determines that the regulated article is to be moved in compliance with any additional emergency conditions the Deputy Administrator may impose under the Federal Plant Pest Act to prevent the spread of the Mediterranean fruit fly; and

(3) Determines that the regulated article is eligible for unrestricted movement under all other federal domestic plant quarantines and regulations applicable to such articles.

(b) An inspector [3] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Mediterranean fruit fly because life stages of the Mediterranean fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) The regulated article is to be moved interstate in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) The regulated article is eligible for interstate movement under all other federal domestic plant quarantines and regulations applicable the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person engaged in the business of growing, handling, or moving regulated articles provided the person is operating under a compliance agreement. A person operating under a compliance agreement may execute a certificate for the interstate movement of a regulated article if the inspector has made the determination that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may execute a limited permit for interstate movement of a regulated article when the inspector has made the determination that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Deputy Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Deputy Administrator.

§ 301.78–6 Compliance agreement and cancellation.

(a) Any person engaged in the business of growing handling, or moving regulated articles may enter into a compliance agreement to facilitate the interstate movement of regulated articles under this subpart.[4]

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with the subpart or any conditions imposed pursuant to this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within ten days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision. A hearing shall be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Deputy Administrator.

§ 301.78–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78–5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance of the desired interstate movement as possible (no less than 48 hours before the desired interstate movement), request an inspector [3] to issue the certificate or limited permit.

(b) The regulated article shall be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart

§ 301.78–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be securely attached to the outside of the container containing the regulated article, securely attached to the regulated article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill document: *Provided however*, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping

[3] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland 20782.

[4] Compliance agreement forms are available without charge from the Permits Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

document only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

§ 301.78-9 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost. The United States Department of Agriculture will not be responsible for any other costs or charges.

§ 301.78-10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy Mediterranean fruit fly on regulated articles are authorized treatments. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

Done at Washington, DC, this 27th day of August 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87-20119 Filed 9-1-87; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Reopening and Extension of Comment Period on Final Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; reopening and extension of comment period.

SUMMARY: Notice is hereby given that the time period for filing written comments is being reopened and extended for 15 days on a final rule which established a volume regulation for lemons grown in California and Arizona. This final rule was published in the Federal Register on July 31, 1987. The comment period is reopened and extended until 15 days after publication of this document.

DATE: Comments must be received by September 17, 1987.

ADDRESS: Comments should be sent to: Docket Clerk, USDA, AMS, Fruit and Vegetable Division, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, USDA, AMS, Fruit and Vegetable Division, Marketing Order Administration Branch, P.O. Box 96456, Room 2523, South Building, Washington, DC 20090-6456; telephone: (202) 475-3914.

SUPPLEMENTARY INFORMATION: The final rule was issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601 through 674), as amended. The final rule was issued July 29, 1987, and published on July 31, 1987, in the Federal Register (52 FR 28535). It established a volume regulation for lemons grown in California and Arizona for the period August 2-8, 1987 (§ 910.872 Lemon Regulation 572). Comments were due on August 20, 1987.

The Department received a request from an interested person that the Department provide more time to analyze the rule and prepare comments.

Reopening and extending the comment period will provide all interested persons more time to review this final rule and submit comments. Accordingly, the comment period is reopened and extended until 15 days after the date of publication of this document in the Federal Register.

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.

Dated: August 28, 1987.

William J. Doyle,

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

[FR Doc. 87-20210 Filed 9-1-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-19-AD; Amdt. 39-5708]

Airworthiness Directives; Beech 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Models of the Beech 200 and 300 Series airplanes. This AD supersedes AD 84-24-01 and requires repetitive inspection and repair of wing fuel bay upper skin panels. Entry of moisture through blind fastener rivets in the outer skin of the panels causes corrosion which results in debonding of these panels. Structural integrity of the panel may be impaired. The one-time actions of AD 84-24-01 are inadequate to insure safety, since repaired panels can also deteriorate.

DATES: Effective date: October 2, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2040, Rev. 1, dated March, 1987, and Beech Service Instructions No. C-12-0094, Rev. 1, dated February, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspections and repair of wing center section upper skin panels on certain Beech 200 and 300 Series airplanes was published in the Federal Register on June 18, 1987 (52 FR 22786). The proposal resulted from inadequacy of AD 84-24-01. That AD was issued on November 23, 1984, requiring a one-time inspection for and repair of a debond condition of wing upper skin panels in the area bounded by the fuselage, nacelle, front spar, and rear spar on Beech 200 and 300 Series airplanes. The area in question is a one piece all-aluminum bonded honeycomb sandwich which serves as the fuel bay upper cover, as well as a load-carrying structural member. The debonding is caused by moisture leaking into the honeycomb via blind fasteners (rivets) in the outer face sheet of the panel. The moisture causes corrosion to form inside the honeycomb, which attacks the face sheet bonds. Without corrective

maintenance, the debonding can progress to a point where safe flight is jeopardized.

A large portion of the fleet has been inspected and repaired in accordance with AD 84–24–01, which is a one-time inspection. The inspection consisted basically of searching for debonded areas by the "coin tap" method. If debonding was detected, the panel was repaired by potting-in extra fasteners provided in Beech service kits designed for this purpose. To preclude entry of moisture into the honeycomb area, it is necessary to seal each blind fastener in the upper surface of the fuel bay upper skin panels on all affected airplanes.

Subsequent to the issuance of AD 84–24–01, some complying airplanes experienced a recurrence of debonding. Out of the total of 44 aircraft reporting delamination, 20 had to have repeat repairs, and 19 cases of delamination occurred subsequent to the initial inspection. Additionally, some airplanes not subject to AD 84–24–01 have experienced debonding. Beech has revised the pertinent service information to call for repetitive inspections and expand the model effectivity. Improved skin panels are available which, if installed, eliminate the need for continued inspection. Since the condition described is likely to exist or develop in other Beech 200 and 300 Series airplanes of the same design, the FAA proposed an AD which would require repetitive inspections and repair of wing center section upper skin panels on Beech 200 and 300 Series airplanes in accordance with Beech Service Bulletin No. 2040, Rev. 1, dated March 1987, or Beech Service Instructions No. C–12–0094, Rev. 1, dated February 1987, as applicable. These inspections could be discontinued after installation of the appropriate replacement skin panels as described in the service information.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change, except for minor editorial corrections. The FAA has determined that this regulation only involves 682 airplanes at an approximate annual cost of $480 for each airplane, or a total annual fleet cost of $327,360. The only significant cost to small entities will occur whenever repair at a cost of $1,800 per airplane is not feasible and wing skin panel replacement is necessary at a cost of $10,700. It is estimated that less than 7 percent of the panels will require replacement. Few, if any, small entities own more than one of these airplanes. Therefore, a substantial number of small entities cannot receive a significant economic impact from this mandatory action.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to 200 and 300 Series (all serial numbers) airplanes certificated in any category which have wing center section fuel bay upper skin panels of bonded construction with blind fasteners in the three areas shown on Figure 1 of this AD.

Note 1: The subject panels may have been installed as original equipment or as replacement spares. The Beech Service Bulletins referenced in this AD contain explanatory material relating to this topic.

Compliance: Required as indicated after the effective date of this AD.

To assure the continued structural integrity of the wing fuel bay upper skin panels, accomplish the following:

(a) Within the next 75 hours time-in-service (TIS) or six calendar months, whichever occurs first, unless previously accomplished within the last 75 hours TIS or six calendar months per AD 84–24–01, and thereafter at intervals not to exceed 300 hours TIS or six calendar months, whichever occurs first, inspect the wing center section fuel bay upper skin panels for possible debonding in accordance with Beech Service Bulletin No. 2040, Rev. 1, dated March 1987 (for civil registered airplanes) or Beech Service Instructions No. C–12–0094, Rev. 1, dated February 1987, (for military airplanes).

(1) If no debonding is detected, prior to further flight, accomplish the actions of paragraph (b) below.

(2) If debonding is detected in either panel, prior to further flight modify the discrepant panel by installation of Kit No. 101–4032–1 (L.H.) or 101–4032–3 (R.H.), and the accomplishments of the actions of paragraph (b) below, or by installation of replacement skin panel P/N 101108–603 (L.H.) or –604 (R.H.).

(3) If debonding is detected in a panel which was previously repaired per paragraph (a)(2) above or AD 84–24–01, prior to further flight remove the discrepant panel and install a replacement skin panel P/N 101108–603 (L.H.) or –604 (R.H.) as applicable.

(b) Seal all accessible blind rivets in both wing center section fuel bay upper skin panels as described in Service Bulletin No. 2040, Rev. 1, dated March 1987, or Service Instructions No. C–12–0094, Rev. 1, dated February 1987 (as applicable).

Note 2: Resealing of these blind rivets is recommended anytime paint is removed from this area.

(c) The requirements of this AD are no longer required when skin panels P/N 101108–603 (L.H.) or –604 (R.H.) have been installed.

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

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201–0085; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 84–24–01; Amendment 39–4958.

This amendment becomes effective on October 2, 1987.

Issued in Kansas City, Missouri, on August 7, 1987.

Barry D. Clements,

Acting Director, Central Region.

BILLING CODE 4910–13–M

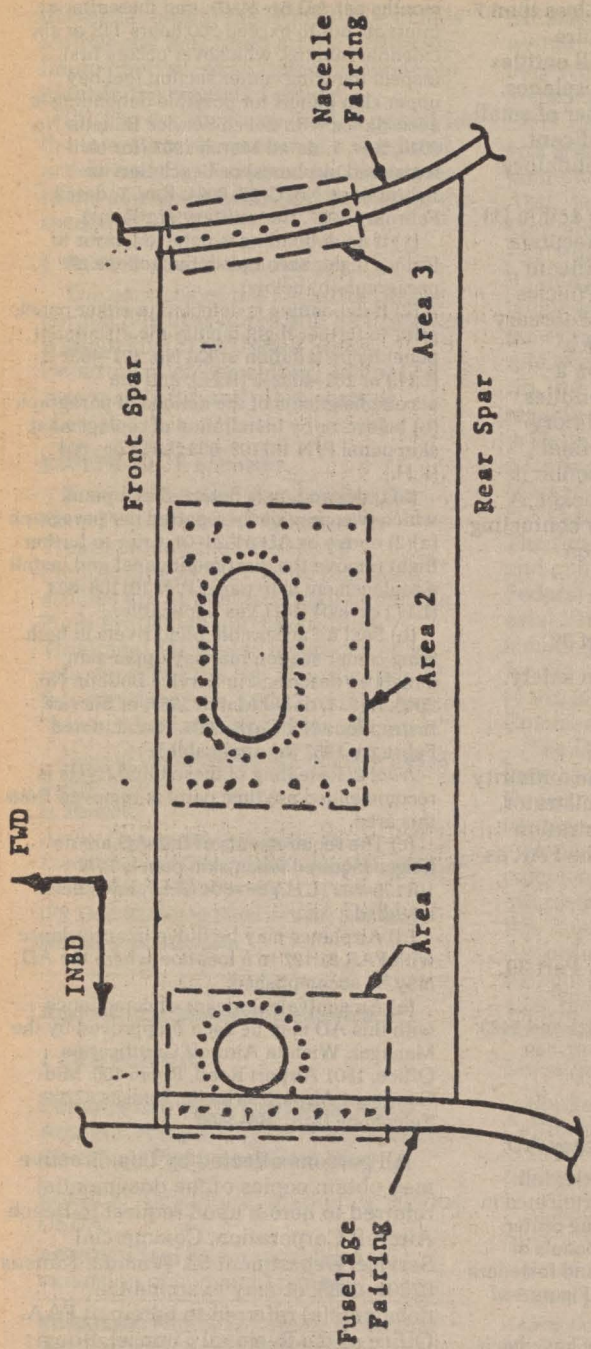


FIGURE 1

Showing Areas where Blind Fasteners may be Located (Upper Surface) (RH Wing Shown)

[FR Doc. 87-20091 Filed 9-1-87; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 39

[Docket No. 87-NM-39-AD; Amdt. 39-5717]

Airworthiness Directives; Short Brothers Model SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-30 series airplanes, which requires the installation of an extended guard behind the overhead lockers to protect the elevator and rudder control system from interference caused by oversized luggage. This condition, if not corrected, could result in partial loss of control of the airplane.

DATES: Effective September 28, 1987.

ADDRESSES: The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires the installation of an extended guard behind the overhead lockers on certain Short Brothers Model SD3-30 series airplanes, was published in the **Federal Register** on May 18, 1987 (52 FR 18575).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $33,280.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($640). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3-30 series airplanes, serial numbers SH3002 through SH3099, SH3102, and SH3105, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent interference with the elevator and rudder control system, accomplish the following:

A. Within 180 days after the effective date of this AD, install an extended guard behind the overhead lockers in accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD330-27-31, dated March 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 28, 1987.

Issued in Seattle, Washington, on August 14, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-20090 Filed 9-1-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-14-AD; Amdt. 39-5719]

Airworthiness Directives: Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 series airplanes, which requires replacement of the horizontal stabilizer control units. This amendment is prompted by reports of fatigue failure of certain bolts within the horizontal stabilizer control unit. This condition, combined with a dual hydraulic failure, could result in uncontrolled movement of the horizontal stabilizer.

EFFECTIVE DATE: Effective October 7, 1987.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft, 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires replacement of the horizontal stabilizer control unit on Fokker Model F28 series airplanes, was published in the **Federal Register** on April 14, 1987 (52 FR 11997).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the single comment received.

The one commenter concurred with the NPRM, but suggested that the applicability of the proposed rule be expanded to include any airplane in which the unmodified control unit could be installed. The FAA has considered this suggestion, and has determined, based on present information, that this unit is applicable for installation only on the Fokker Model F28. Accordingly, there is no need to expand the AD effectivity to include any other airplanes.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $2,000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $77,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($2,200). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F28 airplanes certificated in any category, serial numbers 11003 through 11195, 11991, and 11992. Compliance required as indicated, unless previously accomplished.

To prevent uncommanded movement of the horizontal stabilizer as a result of fatigue failure of certain bolts within the horizontal stabilizer control unit, accomplish the following within one year after the effective date of this AD:

A. Replace the horizontal stabilizer control unit in accordance with the Accomplishment Instructions in Fokker Service Bulletin No. F28/F27-168, Revision 1, dated June 30, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Fokker Aircraft, 1199 North Fairfax Street, Alexandria, Virginia 22314. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 7, 1987.

Issued in Seattle, Washington, on August 24, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-20088 Filed 9-1-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ASW-26; Amdt. 39-5700]

Airworthiness Directives; McDonnell Douglas Helicopter Company, Model 369 D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspection of the main rotor transmission output shaft assembly ring gear carriers and removal from service of all defective units on McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF helicopters. The AD is prompted by reports that main rotor transmission output shaft assembly ring gear carriers have failed in flight. Failure could result in loss of power to the main rotor or possible jamming of the main rotor transmission and loss of control of the helicopter.

DATES: Effective dates: September 18, 1987.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 18, 1987.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information notice may be obtained from McDonnell Douglas Helicopter Company, 500 E. McDowell Road, Mesa, Arizona 85205. A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Twa, Jr., Aerospace Engineer, Propulsion Section, ANM-174W, Western Aircraft Certification Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1128.

SUPPLEMENTARY INFORMATION: There have been eight cases of upper disc failures of the main rotor transmission output shaft assembly ring gear carrier (P/N 369D25132) due to fatigue in an area that has been undercut during the electron beam welding of the lower disc. All failures have occurred during flight, and the pilot noted a chip detector light, a loud noise, and/or excessive lateral vibrations. Two output shaft assembly ring gear carriers had the upper and lower discs fail completely. The remaining six failed completely in the upper disc with the lower disc still carrying the load and with cracks varying from zero to 350 degrees around the disc. The currently acceptable nondestructive test method for verifying the integrity of the upper disc material is a visual inspection with a 10X magnifying glass and a dye penetrant inspection of the affected area. MDHC has issued Mandatory Service Information Notice DN-148/EN-36/FN-25, dated April 23, 1987. A more complete ultrasonic inspection is being developed by MDHC and will be implemented at a later date which will probably terminate the repetitive inspections imposed by this AD. Since this condition is likely to exist or

develop in other helicopters of the same type design, an airworthiness directive is being issued which requires a repetitive visual and dye penetrant inspection of the main rotor transmission output shaft assembly ring gear carrier (P/N 369D25132) and the removal from service of unairworthy ring gear carriers on MDHC Model 369D, E, F, and FF helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC) (Hughes Helicopters, Inc.): Applies to all Model 369 D, E, F, and FF helicopters, certificated in any category, incorporating main rotor transmission output shaft assembly ring gear carrier (P/N 369D25132) in main transmission assemblies P/N 369D25100-BSC or -501 except (1) those with both the letter "U" etched before the serial number and the letter "T" after the serial number on the transmission I.D. plate; and (2) those with main transmission output shafts P/N 369D25132 identified by "N105" or "EPB" along with "MDHC" etched on lower bearing journal of output shaft.

Compliance is required as indicated unless previously accomplished.

To prevent possible loss of power to the main rotor, accomplish the following:

(a) For helicopters with metal particles found in the main transmission, excessive noise or vibration experienced in the main transmission, or vibrations felt in the aircraft that cannot be reduced or eliminated by ordinary main rotor blade tracking and balancing procedures, accomplish the inspection of paragraph (d) of this AD prior to further flight after the effective date of this AD and thereafter at intervals not to exceed 300 hours' time in service from the last inspection.

(b) For helicopters that have main transmission assemblies installed with less than 200 hours' time in service on the output shaft assembly ring gear carrier on the effective date of this AD, accomplish the inspection of paragraph (d) of this AD prior to accumulating 300 hours' time in service and thereafter at intervals not to exceed 300 hours' time in service from the last inspection.

(c) For helicopters that have main transmission assemblies installed with more than 200 hours' time in service on the output shaft assembly ring gear carrier on the effective date of this AD, accomplish the inspection of paragraph (d) of this AD within the next 100 hours' time in service after the effective date of this AD and, thereafter, at intervals not to exceed 300 hours' time in service from the last inspection.

(d) Perform a dye penetrant and visual inspection on the affected ring gear carriers in accordance with the procedures detailed in paragraphs a through e of the "Periodic Visual Inspection" section of McDonnell Douglas Helicopter Company Mandatory Service Information Notice (SIN) DN-148/EN-36/FN-25, dated April 23, 1987.

Remove from service prior to further flight:

(1) Output shafts with any bulging or raised surface in the area being inspected on the upper disc surface (See Figure 2 in referenced SIN).

(2) Output shafts with any crack indication in the area being inspected on the lower and upper disc surfaces (See Figure 3 in referenced SIN).

(e) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

(f) Special flight permits may be issued in accordance with FAR sections 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

The procedure shall be done in accordance with MDHC Mandatory Service Information Notice DN-148/EN-36/FN-25, dated April 23, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Helicopter Company, 500 E. McDowell Road, Mesa, Arizona 85205. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective September 18, 1987.

Issued in Fort Worth, Texas, on July 28, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87-20089 Filed 9-1-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1212-87]

Department of Justice Fee Regulation Implementing Fee and Fee Waiver Provisions of Freedom of Information Reform Act of 1986

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This notice constitutes the final revision of a procedural regulation of the Department of Justice, 28 CFR 16.10, setting forth the fees to be charged under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, in light of the new fee provisions of the Freedom of Information Reform Act of 1986 (Pub. L. No. 99-570, section 1803). The fee provisions conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, 52 FR 10011 (March 27, 1987) ("OMB Fee Guidelines"). Additionally, as is required by the amended Act, this final revision contains procedures and guidelines for determining when such fees should be waived or reduced.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Richard L. Huff or Daniel J. Metcalfe,

Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530 ((202) 633–3642).

SUPPLEMENTARY INFORMATION: On June 16, 1987, the Department of Justice published a proposed FOIA fee schedule, in conformity with the OMB Fee Guidelines, which included procedures and guidelines for determining when such fees should be waived or reduced. 52 FR 22795 (June 16, 1987); 52 FR 24583 (July 1, 1987) (correcting error in printing). Public comment on the proposed regulation was invited, with the comment period extending to July 16, 1987.

Analysis of Comments Received

A total of five comments were postmarked or received within the comment period. Comments were received from the following:

Society of Professional Journalists/ Sigma Delta Chi
Reporters Committee for Freedom of the Press
Public Citizen Litigation Group
Mr. Edward H. Kohn
Mr. Dan Fiduccia

The comments are addressed below sequentially according to the specific subsections of the regulation to which they apply.

1. *Fees in general (§ 16.10(a)).* One commenter questioned the inclusion of language requiring components to collect all applicable fees before making copies of requested records available to a requester. Such language, however, is entirely consistent with subsection (a)(3) of the Act, which states that agencies are not required to make records available to a requester unless the request is made "in accordance with published rules stating the * * * fees (if any), and procedures to be followed * * *." The statute thus specifically predicates the release of disclosable records upon the payment of any applicable fees. Routinely requiring requesters to pay assessed fees before receiving what has been purchased also comports with sound business practice and protects the government and the taxpayers from possible loss of revenue. Further, this requirement does not constitute an impermissible "advance payment," contrary to the commenter's suggestion. As stated in § 16.10(g)(3), payment owed for work already completed is not an advance payment. Rather, an "advance payment," as addressed in new subsection (a)(4)(A)(v) of the Act, refers to payments requested by agencies before any work is begun on a request, where either the requester has previously failed to pay properly assessed fees in a timely manner or the agency has estimated that the total fee will exceed $250.00.

2. *Search charges (§ 16.10(b)(1)).* One commenter objected to what was perceived to be an incorrect treatment of searches conducted by computer, stating that the two hours of search time without charge that is provided for in new subsection (a)(4)(A)(iv)(II) should not be limited to manual searches. It was not the Department's intent to foreclose the applicability of that new subsection to searches conducted by computer, nor did it in fact do so. Indeed, § 16.10(c)(2)(ii), which addresses the rule that certain requesters shall receive the first two hours of search without charge, specifically includes the phrase, "or its cost equivalent," in accordance with the language of the provision addressing this point in the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 7f, 52 FR 10011, 10018 (March 27, 1987). This provides for the cost equivalent of two hours of manual search to be applied in the context of a computer search; in order to make this unquestionably clear, additional language to this effect is now inserted into § 16.10(b)(1)(C) as well. Contrary to a further comment, however, it is not reasonable to conclude that Congress intended that the "free two hours of search time" provision be applied indiscriminately to computer searches in the same way as to manual searches; if such were the case, then search fees would rarely, if ever, be assessed. Indeed, most computer searches can be completed in far less than two hours, yet the cost of computer search time is far greater per unit of time than the cost of manual search.

One commenter also objected to the provision for charging requesters for unsuccessful searches, asserting that this might intimidate potential requesters. Yet the statute clearly provides for the recovery of search costs, where applicable, without any such reservation. *See* 5 U.S.C. 552(a)(4)(A)(ii). Moreover, the OMB Fee Guidelines, which already have been subject to notice and comment and are binding on all federal agencies subject to the FOIA, specifically provide for the recovery of costs for unsuccessful searches. *See* OMB Fee Guidelines, sec. 9b, 52 FR 10011, 10019 (March 27, 1987). Additionally, as such costs are incurred by the Department regardless of whether a search results in the discovery of responsive records, the Department believes that there is no reason for it, and in turn the taxpayers, to absorb these costs in lieu of the requester.

Lastly, two commenters expressed concern that this section does not provide requesters with an opportunity to confer with Department personnel in order to reformulate requests at a lower cost. These comments reflect a misunderstanding of the relationship of this section to § 16.10(e), which specifically addresses the subjects of anticipated fees and reformulation of requests. In all cases, whether the anticipated fees concern search charges or duplication charges, § 16.10(e) provides that if the anticipated fee exceeds $25.00, the component shall notify the requester of the actual or estimated fee (unless the requester has previously indicated his willingness to pay any fee assessed) and provide the requester with an opportunity to confer with Department personnel in order to reformulate the request at a lower cost.

3. *Review charges (§ 16.10(b)(3)).* One commenter objected to the provision for charging review costs for a subsequent review of records previously withheld pursuant to an exemption determined to no longer apply. However, this provision was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 7c, 52 FR 10011, 10018 (March 27, 1987). Furthermore, the Department believes that such review properly qualifies under the statute as an "initial examination" because the record is being reviewed for the first time with respect to other potentially applicable exemptions. If such review costs were precluded, then at the first time at which records are processed components would be compelled to review them for the applicability of all possible exemptions, even though at the time of processing one exemption clearly covered all of the records or portions in question. Such an approach would unnecessarily increase review costs to requesters.

4. *Limitations on charging fees (§ 16.10(c)).* One commenter approved of the provision for not collecting a fee which is $8.00 or less, but questioned how the figure was calculated. The minimum charge of $8.00, set forth in § 16.10(c)(3), is based upon the Justice Management Division's estimated average cost of processing a check—including the cost of the salary of the employee processing the check (plus 16%, as provided for in the OMB Fee Guidelines), as well as the cost of the system used.

5. *Waiver or reduction of fees (§ 16.10(d)).* All five commenters addressed this section, expressing concern that the factors to be considered require components to make speculative and subjective value

judgments regarding the subject of a request and its value to the public. While the Department appreciates that the statutory standard governing the waiver or reduction of FOIA fees is phrased largely in general evaluative terms, the factors set forth by the Department are taken directly from the statute's plain language. It is entirely in keeping with well-recognized principles of statutory construction that each word of the statutory standard be given some effect, and this is precisely what the Department has done through its six factors. Furthermore, in its New FOIA Fee Waiver Policy Guidance issued to all agencies by the Department's Office of Legal Policy on April 2, 1987, the Department specifically cautioned against the imposition of improper value judgments by those deciding fee waiver requests. *See FOIA Update*, Vol. VIII, No. 1, at 8 (1987). The Department's components will make every effort to apply these factors, under the statutory standard, in an objective manner.

In order to ensure that components have all the necessary information that must be considered when applying these factors, the Department has added paragraph (d)(5), which requires a requester seeking a fee waiver or reduction to address each of the factors listed in paragraphs (d) (2) and (3), as they apply to the particular request for records in question. Contrary to the suggestion of three of the commenters, the requirement that such information be submitted in support of a fee waiver request is not affected by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The Office of Information and Regulatory Affairs of the Office of Management and Budget, which holds responsibility for the Paperwork Reduction Act's implementation, has determined that FOIA fee regulation requirements that requesters submit information in support of their fee waiver and fee limitation claims are not "information collection requests" within the meaning of that Act. *See also* 5 CFR 1320.7(c) (1987).

All of the commenters also urged the Department to establish certain categories of requesters or types of requests which would be presumptively entitled to a fee waiver. The Department declines to do this, firmly believing that each request must be judged on its own merits and that the provisions of § 16.10(d) accurately reflect the appropriate considerations guiding agency fee waiver determinations. The fee waiver provision of the FOIA, as amended, 5 U.S.C. 552(a)(4)(A)(iii), does not provide for any such presumptions for categories of requesters, although the limitations on duplication, search, and review fees under subsection (a)(4)(A)(ii) of the Act do distinguish among categories of requesters. The fee waiver provision in subsection (a)(4)(A)(iii), therefore, must be applied on a case-by-case basis for all requesters.

6. *Notice of anticipated fees in excess of $25.00 (§ 16.10(e)).* One commenter objected to the provision that a request will be deemed not to have been received until the requester has agreed to pay the total anticipated fee. However, this provision is not different in this regard than that which existed previously in the FOIA fee regulations of the Department, as well as those of other agencies. Such time-tolling FOIA fee provisions, which are based upon sound principles of responsible cost recovery and are aimed at providing the government with some assurance of reimbursement before it expends the effort and cost to process a request, have been upheld by the courts. *See, e.g., Irons* v. *FBI*, 571 F. Supp. 1241, 1243 (D. Mass. 1983).

7. *Advance payments (§ 16.10(g)).* One commenter objected to the requirement of an advance payment from a first-time requester, where the total fee to be assessed is estimated to exceed $250.00, and another commenter objected to the suspension of the statutory time limits for responding to a request while an advance payment is being sought. However, each of these provisions was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 9d, 52 FR 10011, 10020 (March 27, 1987). The Department firmly believes that they correctly implement the statutory provision concerning advance payments.

8. *Charging interest (§ 16.10(h)).* One commenter questioned the legal basis for this provision, asserting that there is no statutory authorization for assessing interest charges in connection with FOIA fees. However, this provision was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 9a, 52 FR 10011, 10019 (March 27, 1987). The statutory authority for assessing such interest is 31 U.S.C. 3717. Additionally, in accordance with section 9e of the OMB Fee Guidelines, 52 FR 10020, language has been inserted which further addresses collection procedures under the Debt Collection Act of 1982, Pub. L. No. 97–365 (Oct. 25, 1982).

9. *Definitions (§ 16.10(j)).* All five commenters objected to certain of the definition contained in this section, especially that of "representative of the news media." However, once again, these definitions were drawn from the OMB Fee Guidelines, which were made final only after a period of public notice and comment during which concerns such as those raised by these commenters were considered. *See* OMB Fee Guidelines, sec. 6g–6j, 52 FR 10011, 10017–18 (March 27, 1987); *see also* 52 FR 10013–15 (OMB analysis of comments on definitions). The Department is required by the amended Act to conform its fee schedule, which includes these definitions of categories of requesters, to the OMB Fee Guidelines. Furthermore, the Department firmly believes that these definitions, including that of "representative of the news media," properly implement the statutory terms of the amended Act.

These rules do not constitute "major rules" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 28 CFR Part 16

Freedom of Information.

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510, and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.10 is revised to read as follows:

§ 16.10 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by components in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. A component shall collect all applicable fees before making copies of requested records available to a requester. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or

reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in paragraphs (j)(6), (j)(7) and (j)(8) of this section, respectively). Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Components may assess fees for time spent searching even if they fail to locate any respective record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be $2.25. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of records within the scope of a request requires the use of professional personnel—the fee shall be $4.50 for each quarter hour of search time spent by such professional personnel. Where the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph(c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $4.50 per quarter hour of time so spent). A component is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, components shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, components shall charge the actual direct costs of duplicating a record.

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $4.50, except that where the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(ii) Review fees shall be assessed only for the initial record review, *i.e.*, all of the review undertaken when a component analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsquently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), components shall provide without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $8.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $8.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where a component determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the component, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—*i.e.*, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—components shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—*e.g.*, expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the

news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Components shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—*i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester—components shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* Components shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. Components shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* Where a component determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with Department personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* Where a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the component may aggregate any such requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, components shall aggregate them only where there exists a solid basis for determining that such aggregation is warranted, *e.g.*, where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) Where a component estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, a component may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the component begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (2) of this section, a component shall not require the requester to make an advance payment, *i.e.*, a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) Where a component acts under paragraphs (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the component has received payment of the assessed fee.

(h) *Charging interest.* Components may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of the billing. Components shall follow the provisions of the Debt Collection Act of 1982, Pub. L. No. 97–265 (Oct. 25, 1982), and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a

statute specifically providing for setting the level of fees for particular types of records—*i.e.*, any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, components shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Components shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, components shall not engage in line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication" refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, *e.g.*, doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. Components shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because a component otherwise has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, where a component elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

Dated: August 24, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-20149 Filed 9-1-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 46 and 47

State Grants for Advancement of Health and Safety in Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule removes the existing Mine Safety and Health Administration (MSHA) regulations in 30 CFR Part 46 governing grants to States and makes conforming technical changes to 30 CFR Part 47, which addresses education and training at the National Mine Health and Safety Academy. Part 46, which prescribes programmatic and administrative requirements for grants, has been superseded by other regulations and policy directives of MSHA, the Department of Labor (DOL) and the Office of Management and Budget (OMB). Part 46 is therefore unnecessary and is removed.

EFFECTIVE DATE: September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

Background and Effect of Rule

MSHA is revoking the existing regulations in Part 46 because they are outdated and duplicative of other regulations and policy directives of MSHA, DOL, and OMB. Revocation of Part 46 will eliminate unnecessary regulations which are potentially confusing to current grantees and grant applicants and will streamline administration of the States grants program. References to Part 46 which appear in 30 CFR Part 47 are also removed by this rule. This action will have no substantive effect on MSHA's grants program, which will continue to be administered in accordance with section 503 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 953, and other applicable regulations and guidelines.

Part 46 was promulgated in 1979 (44 FR 28588) and consists primarily of a restatement of key provisions of section 503 of the Mine Act and references to OMB Circular No. A–102, "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments." The purpose of OMB Circular No. A–102 is to establish consistency and uniformity among Federal agencies in the administration of grants by prescribing standards for such matters as cash management, recordkeeping, financial reporting, property management and procurement, closeout procedures and audits. Each agency with grant-making authority is directed to issue "appropirate" regulations necessary to implement the standards set forth in Circular No. A–102. Part 46 was intended to satisfy this requirement.

Shortly after MSHA promulgated Part 46, DOL promulgated the regulations in Part 29–70 of Title 41, Code of Federal Regulations (44 FR 42920). The DOL regulations, "Administrative Requirements Governing all Grants and Agreements by which Department of Labor Agencies Award Funds to State and Local Governments, Indian and Native American Entities, Public and Private Institutions of Higher Education and Hospitals, and other Quasi-Public and Private Nonprofit Organizations," also implemented OMB Circular No. A–102 and were intended to apply all grant programs administered by the Department or any of its component agencies. The regulations, which were last published in full text in the July 1, 1984 edition of Title 41 CFR, provide in § 29–70.101(f) that DOL grantees no longer need to refer directly to OMB Circular No. A–102, and that with certain exceptions, separate agency rules governing grants would no longer be necessary.

Additionally, Part 46 refers specifically to he 1977 revisions of OMB Circular No. A–102. Since 1977, OMB has issued several significant revisions and additions to the circular and the entire circular was reviewed by an interagency task force chaired by OMB. As a result of that review, government-wide regulations have recently been proposed by 21 agencies, including DOL, which would establish uniform administrative requirements for grants and cooperative agreements to state and local governments (See 52 FR 21820, June 9, 1987). These rules would set forth fiscal and administrative conditions governing DOL grants to State and local governments and subrecipients which are State and local governments. A revised Circular No. A–102 would provide OMB guidance to agencies on good grants management practices.

In practice, MSHA administers its State grants program according to Departmental regulations and current OMB guidelines. Accordingly, Part 46 is obsolete and potentially confusing to grantees and grant applicants.

MSHA has published a Grant Program Operator's Manual to assist grantees in complying with programmatic and administrative requirements applicable to MSHA grants. The manual sets forth a summary of the key requirements of current DOL regulations, as well as OMB Circular No. A–102, OMB guidance on cost principles, audit standards, closeout of grants and instructions concerning transfer of funds. The full text of relevant regulations and guidelines is included in appendices to the manual. The manual thus provides in a single, easily updated volume, all the key regulations and guidelines applicable to MSHA grants. MSHA anticipates updating this manual when the revised OMB Circular No. A–102 and government-wide regulations dicussed above are inssued in final form. The avlability of the manual along with the text of section 503 of the Mine Act eliminates the need for grantees to consult Part 46.

Executive Order 12291 and the Regulatory Flexibility Act

MSHA has determined that the final rule would not result in major cost increases nor have an incremental effect of $100 milliion or more on the economy. Therefore, a regulatory impact analaysis is not required. The Agency has also determined that the final rule required. The Agency has also detemined that the final rule will not have a signficant impact on a substantial number of small entities.

Publication as a Final Rule Effective Upon Publication

The rule eliminates an outdated and unnecessary regulation, and does not affect the rights or obigations of any MSHA grantee or applicant for a grant. In addition, the rules relates to Agency practice and procedure for the processing of grant applications and the award of grants. Publication of a general notice of proposed rulemaking therefore is not required by 5 U.S.C. 553; and good cause exists to make the rule effective immediately.

List of Subjects in 30 CFR Parts 46 and 47

Mine safety and health, Grants.

Under the authority of section 508 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 957, Chapter I of Title 30 of Code of Federal Regulations is amended as follows:

PART 46—[REMOVED]

Part 46 is removed.

PART 47—[AMENDED]

1. The authority citation for Part 47 is revised to read as follows:

Authority: 30 U.S.C. 957.

§ 47.10 [Amended]

2. Section 47.10 is amended by removing the words "under 30 CFR Part 46" at the end of the section.

§ 47.50 [Amended]

3. Section 47.50 is amended by removing the words "under 30 CFR Part 46" at the end of the first sentence.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

Date: August 26, 1987.

[FR Doc. 87-20042 Filed 9-1-87; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300163A; FRL-3253-2]

Raw Agricultural Commodities; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends certain sections in 40 CFR Part 180 by recodifying certain established tolerances as "tolerances with regional registration" as defined in 40 CFR 180.1(n). This Agency-initiated action distinguishes tolerances for minor uses, based on residue data from geographically specific areas for which data have been submitted and approved by EPA.

EFFECTIVE DATE: Effective on October 2, 1987.

ADDRESS: Written objections, identified by the document control number [OPP-300163A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 6, 1987 (52 FR 16880) which proposed to recodify certain established tolerances as "tolerances with regional registration" as defined in § 180.1(n). Prior to the proposed recodification, no distinction was made for tolerances established based on residue data from geographically specific areas. Later, some "tolerances with regional registration" were defined and listed in separate subsections, alerting users to the fact that these tolerances were established for pesticides with registration restricted to defined geographic areas ("regional registrations").

This rule identifies "tolerances with regional registration" in 40 CFR 180.101 through 180.999 by deleting unidentified "tolerances with regional registration" and recodifying them in paragraphs clearly identified for that specific purpose.

It is not necessary, however, to recodify tolerances for chlorpyrifos on dry bulb onions and on cherries and for methomyl on green onions. These tolerances were originally established in support of regional registration and proposed for recodification in the **Federal Register** notice of May 6, 1987. Data were submitted sufficient to remove these geographical restrictions.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and, therefore, does not require a Regulatory Impact analysis.

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1165.5 U.S.C. 601 et seq.) and it has been determined that it will not have an economic impact on a substantial number of small entities. Accordingly, I hereby certify that the regulation does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 12, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.108 is amended by removing the entry for "macadamia nuts . . . 0.05" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.108 Acephate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of acephate and its cholinesterase-inhibiting metabolite in or on the following raw agricultural commodities:

Commodities	Parts per million
Macadamia nuts	0.05

3. Section 180.172 is amended by removing the entry for "Spinach . . . 12.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.172 Dodine; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of dodine in or on the following raw agricultural commodities:

Commodities	Parts per million
Spinach	12.0

4. Section 180.175 is amended by removing the entry for "Cranberries . . . 15.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.175 Maleic hydrazide; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of maleic hydrazide in or on the following raw agricultural commodities:

Commodities	Parts per million
Cranberries	15.0

5. Section 180.183 is amended by removing the entry for "Asparagus . . . 0.1" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.183 O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of *O,O*-diethyl *S*-[2-(ethylthio)ethyl] phosphorodithioate and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on the following raw agricultural commodities:

Commodities	Parts per million
Asparagus	0.1

6. Section 180.185 is amended by removing the entries for "Radish, roots . . . 2.0" and "Radish, tops . . . 15.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.185 Dimethyl tetrachloroterephthalate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of dimethyl tetrachloroterephthalate and its metabolites, calculated as dimethyl tetrachloroterephthalate, in or on the following raw agricultural commodities:

Commodities	Parts per million
Radish, roots	2.0
Radish, tops	15.0

7. Section 180.199 is amended by removing the entries for "Asparagus . . . 300", "Lettuce . . . 300", and "Onions (dry bulb) . . . 300" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.199 Inorganic bromides resulting from soil treatment with combinations of chloropicrin, methyl bromide, and propargyl bromide; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodities grown in soil fumigated with combinations of chloropicrin, methyl bromide, and propargyl bromide:

Commodities	Parts per million
Asparagus	300
Lettuce	300
Onions (dry bulb)	300

8. Section 180.204 is amended by removing the entry for "Cherries . . . 2" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.204 Dimethoate including its oxygen analog; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for total residues of dimethoate including its oxygen analog in or on the following raw agricultural commodities:

Commodities	Parts per million
Cherries	2

9. Section 180.253 is amended by removing the entry "Pears . . . 4" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.253 Methomyl; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of methomyl in or on the following raw agricultural commodities:

Commodities	Parts per million
Pears	4

10. Section 180.258 is amended by removing the entry for "Cassava, roots . . . 0.1" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.258 Ametryn; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the residues of ametryn in or on the following raw agricultural commodities:

Commodities	Parts per million
Cassava, root	0.1

11. Section 180.259 is amended by removing the entry for "Corn, fresh (including sweet K+CWHR) . . . 0.1", designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.259 Propargite; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of propargite in or on the following raw agricultural commodities:

Commodities	Parts per million
Corn, fresh (including sweet K+CWHR)	0.1

12. Section 180.262 is amended by removing the entry for "Okra . . . 0.02" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of ethoprop in or on the following raw agricultural commodities:

Commodities	Parts per million
Okra	0.02

13. Section 180.275 is amended by removing the entry for "Mint hay . . . 2" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and

adding paragraph (b) to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of chlorothalonil and its metabolite in or on the following raw agricultural commodities:

Commodities	Parts per million
Mint hay	2

14. Section 180.294 is amended by removing the entry for "Turnip greens . . . 6.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of benomyl and its metabolites (calculated as benomyl) in or on the following raw agricultural commodities:

Commodities	Parts per million
Turnip greens	6.0

15. Section 180.315 is amended by removing the entry for "Celery . . . 1" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.315 Methamidophos; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of methamidophos in or on the following raw agricultural commodities:

Commodities	Parts per million
Celery	1

16. Section 180.330 is amended by removing the entry for "Apricots . . . 0.5" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.330 S-[2-(Ethylsulfinyl)ethyl] O,O-dimethyl phosphorothioate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of *S*-[2-(ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodities:

Commodities	Parts per million
Apricots	0.5

17. Section 180.342 is amended by removing the entries for "Asparagus . . . 5.0" and "Grapes . . . 0.5", from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of chlorpyrifos and its metabolite in or on the following raw agricultural commodities:

Commodities	Parts per million
Asparagus	5.0
Grapes	0.5

18. Section 180.349 is amended by removing the entry for "Asparagus . . . 0.02" from paragraph (a), and adding paragraph (c) to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

* * * * *

(c) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the following raw agricultural commodities:

Commodities	Parts per million
Asparagus	0.02

19. Section 180.350 is amended by removing the entry for "Strawberries . . . 0.2" from the list of commodities, designating the existing introductory paragragh and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.350 Nitrapyrin; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of nitrapyrin and its metabolite in or on the following raw agricultural commodities:

Commodities	Parts per million
Strawberries	0.2

20. Section 180.377 is amended by removing the entry for "Grass, pasture . . . 1.0" from the list of commodities, designating the existing introductory paragraph and list of commodities as paragraph (a), and adding paragraph (b) to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of diflubenzuron in or on the following raw agricultural commodities:

Commodities	Parts per million
Grass, pasture	1.0

[FR Doc. 87-19646 Filed 9-1-87; 8:45 am]
BILLING CODE 6560-60-M

40 CFR Part 180

[OPP-300167A; FRL-3255-8]

Definition and Interpretation Regarding Peaches

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.1(h) by adding and defining the crop term "peaches" to include both peaches and nectarines. This rule, which clarifies and updates the current definition of "peaches," was requested by the Interregional Research Project No. 4(IR-4).

EFFECTIVE DATE: Effective on September 2, 1987.

ADDRESS: Written objections, identified by the document control number [OPP-300167A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of June 24, 1987 (52 FR 23694), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a request to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the IR-4 Technical Committee.

The petitioner requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmestic Act, propose that 40 CFR 180.1(h) be amended by adding the general category "peaches" to column A and by adding the corresponding raw agricultural commodities "peaches, nectarines" to column B.

IR-4 requested this amendment in order to clarify and update the relationship between the general category definition of "peaches" in column A and the specific raw agricultural commodities listed in column B.

Comments were received in response to the proposed rulemaking. The Livingston Farmers Association of Livingston, California and the National Food Processors Association (NFPA) submitted comments in support of the proposed amendment. NFPA agreed with the conclusion of EPA and IR-4 that "in no case would applications of pesticides to nectarines be expected to result in higher residues than those already established for peaches." No adverse comments or requests for referral to an advisory committee were received in response to the proposed rule.

The data submitted in the request and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the amendment will protect the public health. Therefore, the amendment is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objection should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objection are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d), 68 Stat. 512 (21 U.S.C. 346a(d)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and Recordkeeping requirements.

Dated: August 21, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.1 [Amended]

2. Section 180.1 is amended by alphabetically inserting "peaches" in column A and adding the specific raw agricultural commodities "peaches, nectarines" in the corresponding column B, to read as follows:

§ 180.342 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Peaches	Peaches, nectarines
* * * * *	

* * * * *

[FR Doc. 87-20130 Filed 9-1-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6657

[CO-940-07-4220-10; C-0124534]

Withdrawal of Public Lands and Reserved Minerals for Protection of Fort Carson-Pinon Canyon Military Reservation, CO; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the **Federal Register** citation in Public Land Order No. 6649 effective June 23, 1987.

EFFECTIVE DATE: September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303-236-1768.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

The **Federal Register** citation in Public Land Order No. 6649 signed June 16, 1987, published June 23, 1987, 52 FR 23548, 23549 (FR Doc. 87-14254), on page 23549, first column, third and fourth lines from the bottom of paragraph 2, which reads "at pages 28343 and 28344" is hereby corrected to read "at pages 38343 and 38344."

J. Steven Griles,

Assistant Secretary of the Interior.

Dated: August 24, 1987.

[FR Doc. 87-20103 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 74

Administration of Grants

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This amendment to 45 CFR Part 74 implements for HHS a change to OMB Circular A-110. A longstanding rule generally requires recipients to remit to the Federal Government any interest they earn on advances of Federal grant funds. The change to Circular A-110 (1) requires recipients covered by the Circular to deposit advances of Federal funds in interest-bearing accounts, and (2) permits them to retain $100 per year of the earned

interest to cover administrative expenses.

DATE: This rule is effective October 2, 1987.

ADDRESS: Joel B. Feinglass, Director, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513D, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Joel B. Feinglass, telephone (202) 245–7565.

SUPPLEMENTARY INFORMATION: On October 30, 1985, OMB published a notice of proposed revision to OMB Circular No. A–110 to require that recipients covered by the Circular deposit advances of grant funds in interest bearing accounts (50 FR 45183). That OMB proposal would not affect the longstanding rule that generally requires recipients to remit to the Federal Government any interest they earn on advances of Federal funds.

On February 10, 1987, OMB published the final revision in the **Federal Register** (52 FR 4240). That final version incorporated the provisions of the proposed revision and also allows recipients to retain $100 per year of the interest for administrative expenses.

The specified sum of $100 is an overall ceiling on the aggregate amount that a single grantee may retain for a year, even if the grantee earns interest on advances from more than one Federal source—such as two or more letters of credit from the same or different Federal grantor agencies.

Where a grantee earns interest on advances from two or more Federal sources, the new rule does not require the grantee to prorate the retainer among its various Federal funding sources. Thus, for example, if a grantee earns $200 of interest on HHS cash advances, and $300 on cash advances from one or more other Federal agencies, the grantee may retain its entire $100 allowance from the amount it remits to HHS or likewise choose to deduct it from the $300 earned from cash advances from another Federal agency. No Federal purpose would be served by requiring the grantee to prorate its retainer, e.g., two-fifths to HHS and three-fifths to the other Federal agency or agencies. This is because, in general, interest earnings received from grantees by Federal agencies end up in the same place—the general treasury of the United States—regardless of which agency receives and deposits the money. Federal agencies are not permitted to credit these amounts to their appropriation accounts.

With respect to State universities, OMB pointed out in their final revision cited above that section 203 of the Intergovernmental Cooperation Act of 1968 (recodified on September 13, 1982 as 31 U.S.C. 6503) exempts States and their instrumentalities from accountability for interest earned on grant-in-aid funds. OMB then stated that, as a consequence, universities that are instrumentalities of a State would not be subject to the revision.

However, in HHS most of the funds awarded to State universities are for research grants. Since the Intergovernmental Cooperation Act's exemption from accountability for interest does not apply to the type of research grants awarded by HHS (nor to grants without a cost-sharing or matching requirement) (31 U.S.C. 6501 (4)(C)), most of the grants awarded to State universities by HHS will be subject to the revision.

Executive Order 12291

The Department has determined that this rule is not a major rule under Executive Order 12291. Therefore a regulatory impact analysis is not required.

Paperwork Reduction Act

This amendment imposes no additional reporting/recordkeeping requirements requiring clearance by OMB.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities. Grantees' recordkeeping systems have the capacity to account for interest income, and the revision provides reasonable compensation for doing so. Therefore no significant impact is involved and a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Waiver of Proposed Rule Making Procedures

This amendment to HHS' regulations merely incorporates changes to Government-wide policy established by OMB after obtaining public participation. Therefore HHS finds that proposed rule making procedures are unnecessary.

List of Subjects in 45 CFR Part 74

Accounting, Administrative practice and procedures, Grant programs—health, Grant programs—social programs, Grant administration.

Dated: July 31, 1987.

Otis R. Bowen

Secretary of Health and Human Services.

Accordingly, 45 CFR Part 74 is amended as follows:

PART 74—[AMENDED]

1. The authority citation for Part 74 continues to read:

Authority: 5 U.S.C. 301; sec. 74.62(a) and Appendix J also issued under sec. 7505 Pub. L. 98–502, 98 Stat. 2333 (31 U.S.C. 7505).

2. Section 74.92 is amended by designating the current text as paragraph (a), and by adding a new paragraph (b) as follows:

§ 74.92 Basic standard.

* * * * *

(b) Except as provided in § 74.47(b), public and private nonprofit institutions of higher education, public and private nonprofit hospitals, and other private nonprofit grantees shall maintain advances of Federal funds in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted promptly, but at least quarterly, to the Federal agencies that provided the funds. Interest amounts up to $100 per recipient fiscal year may be retained by the recipient for administrative expense. (The $100 pertains to the total interest earned on all Federal advances.)

[FR Doc. 87–20197 Filed 9–1–87; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–105; RM–5720]

Radio Broadcasting Services; Grants, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Kapdin Communications, Inc., licensee of Station KLLT (FM), Grants, New Mexico, substitutes Class C Channel 279 for Channel 237A at Grants and modifies its license to specify the higher powered channel. At the request of Jeremy Lansman and Davis Broadcasting Co., Inc., this document also allocates Class C Channel 288 to Grants. These allotments could provide Grants with its second and third wide coverage area FM services. Channel 279C can be allocated to Grants in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The allocation of Channel 288 requires a site restriction of 14.8 kilometers (9.2 miles) southeast to avoid a short-spacing to unoccupied and

unapplied for Channel 291C2 at Gallup, New Mexico. With this action, this proceeding is terminated.

DATES: Effective October 13, 1987. The window period for filing applications for Channel 288 will open on October 14, 1987, and close on November 13, 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. 87–105, adopted August 5, 1987, and released August 26, 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 contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Grants, New Mexico, is amended by removing Channel 237A and adding Channels 279C and 288C.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–20171 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–31; RM–5542]

Radio Broadcasting Services; Lisbon, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Sheyenne Valley Broadcasting, Inc., substitutes Channel 291C2 for Channel 292A at Lisbon, North Dakota, and modifies its permit for Station KQLX-FM to specify operation on the higher powered channel. Channel 291C2 can be allocated to Lisbon in compliance with the Commission's minimum distance separation requirements and used at Station KQLX-FM's present site. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 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. 87–31, adopted August 5, 1987, and released August 26, 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 Lisbon, North Dakota, is amended by removing Channel 292A and adding Channel 291C2.

Mark N. Lipp,

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

[FR Doc. 87–20172 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–476; RM–5567; RM–5765]

Radio Broadcasting Services; Greenwood and Abbeville, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of United Community Enterprises, allocates Channel 278A to Greenwood, SC, as the community's second local FM service. Channel 278A can be allocated to Greenwood in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. At the request of Abbeville Broadcasting Co., this document also allocates Channel 225A to Abbeville, SC, as the community's first local FM service. Channel 225A can be allocated to Abbeville in compliance with the Commission's minimum distance separation requirements with a site restriction of 5 kilometers (3.1 miles) east to avoid a short-spacing to Station WKSX, Channel 224A, Johnston, SC. With this action, this proceeding is terminated.

DATES: Effective October 8, 1987. The window period for filing applications will open on October 9, 1987, and close on November 9, 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. 86–476, adopted July 28, 1987, and released August 25, 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 South Carolina is amended by adding Abbeville, Channel 225A, and adding Channel 278A to the Greenwood entry.

Mark N. Lipp,

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

[FR Doc. 87–20173 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–20; RM–5544]

Radio Broadcasting Services; Caldwell, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 236A to Caldwell, Texas, as that community's first FM service, at the request of BCB Communications. With

this action, this proceeding is terminated.

DATES: Effective October 13, 1987. The window period for filing applications will open on October 14, 1987, and close on November 13, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–20, adopted August 5, 1987, and released August 26, 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, in the entry for Caldwell, Texas, Channel 236A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–20174 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–32; RM–5582]

Television Broadcasting Services; Aguada, PR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Evelyn Dueno, allocates UHF TV Channel 50 to Aguada, Puerto Rico, as the community's first local TV service. Channel 50 can be allocated to Aguada in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 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. 87–32, adopted August 5, 1987, and released August 26, 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 [Amended]

2. Section 73.606(b), the Table of TV Allotments for Puerto Rico is amended by adding Aguada, Channel 50.

Mark N. Lipp,

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

[FR Doc. 87–20175 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–505; RM–5533]

Radio Broadcasting Services; Fort Walton Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 258C2 for Channel 257A at Fort Walton Beach, Florida, and modifies the Class A license for Station WFTW–FM to specify Channel 258C2, at the request of the licensee, Vacationland Broadcasting Company, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 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. 86–505, adopted August 4, 1987, and released August 26, 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 is amended for Fort Walton Beach, Florida, by adding Channel 258C2 and deleting Channel 257A.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–20166 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–145; RM–5121]

Radio Broadcasting Services; Webster, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 255A to Webster, Massachusetts in response to a petition filed by Okum Broadcasting, Inc., as that community's first FM broadcast service. There is a site restriction 7.9 kilometers (4.9 miles) west of the community. A counterproposal was filed by Helical Systems Company proposing the allotment of FM Channel 255A to Thompson, Connecticut, instead of Webster, Massachusetts. On March 10, 1987, Helical Systems Co. filed a notice of withdrawal of its counterproposal. With this action, this proceeding is terminated.

DATE: Effective October 13, 1987; The window period for filing applications will open on October 14, 1987, and close on November 13, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–145, adopted August 4, 1987, and released August 26, 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. In § 73.202(b), the Table of FM Allotments is amended under Massachusetts, by adding Channel 255A to Webster.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-20168 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-372; RM-5348]

Radio Broadcasting Services; Winona, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 268A to Winona, Minnesota, as that community's second FM broadcast service, in response to a petition filed by L.F. Baechler. There is a site restriction 8.0 kilometers east of Winona. In addition the allotment of Channel 268A is conditioned on the grant of a pending application for Station KDWB, Channel 267, Richfield, Minnesota (BPH 850709IK). Therefore, the filing window dates for Channel 268A at Winona, Minnesota, will be announced at a future date to follow the licensing of Station KDWB, accordingly. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-372, adopted August 5, 1987, and released August 26, 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.

§ 73.203 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Minnesota, by adding Channel 268A at Winona.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-20169 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-146; RM-4958]

Radio Broadcasting Services; Palmyra, MO and Pittsfield, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 250C2 to Palmyra, Missouri, and modifies the license of Station KIDS to specify operation on Channel 250C2 instead of Channel 252A, and allocates FM Channel 248B1 to Pittsfield, Illinois, and modifies the license of FM Station WBBA(FM) to specify Channel 248B1 in place of Channel 249A. This action is taken in response to a petition filed by Palmyra Broadcasting Company, licensee of Station KIDS. Supporting comments were filed by Palmyra Broadcasting Company and by Pike Broadcasting Company, licensee of Station WBBA. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-146, adopted August 5, 1987, and released August 26, 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. In § 73.202(b), the Table of FM Allotments, is amended under Missouri, by deleting Channel 252a and adding Channel 250C2 at Palmyra. The entry for Pittsfield, Illinois is amended to delete FM Channel 249A and add FM Channel 248B1.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-20167 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-453; RM-5585]

Radio Broadcasting Services; Bennington, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of John Tynan, this document allocates Channel 227A to Bennington, Nebraska, as the community's first local FM service. Channel 227A can be allocated to Bennington in compliance with the Commission's minimum distance separation requirements without a site restriction. With this action, this proceeding is terminated.

DATES: Effective October 8, 1987. The window period for filing applications will open on October 9, 1987, and close on November 9, 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. 86-453, adopted July 29, 1987, and released August 25, 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 Nebraska is amended by adding Bennington, Channel 227A.

Mark N. Lipp,

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

[FR Doc. 87–20170 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845–7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: NOAA announces the (1) rescission of a restriction which requires that mixed loads of chinook and coho or loads of coho-only salmon caught in the commercial fishery from Cape Falcon to Cascade Head, Oregon, be delivered within the subarea; (2) establishment of a single daily possession and landing limit from Cape Falcon to Cape Blanco, Oregon; and (3) establishment of a season ending date for commercial all-species seasons from Cape Falcon to Cape Blanco, Oregon. The Director, Northwest Region, NMFS, has determined in consultation with the Chairman of the Pacific Fishery Management Council (Council), and representatives of the Washington Department of Fisheries, Oregon Department of Fish and Wildlife (ODFW), and the affected commercial fisheries, that these modifications meet the criteria for inseason adjustments to management measures. These modifications are intended to allow maximum harvest of the commercial coho salmon quota established for the 1987 season south of Cape Falcon, Oregon.

EFFECTIVE DATE: These inseason adjustments to commercial management measures in the exclusive economic zone (EEZ) from Cape Falcon to Cape Blanco, Oregon, are effective at 0001 hours, Pacific Daylight Time (PDT), August 29, 1987. Comments will be received until September 14, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206–526–6150.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries are managed under a framework fishery management plan (50 CFR Part 661). An amendment to the plan (52 FR 4116, February 10, 1987) authorizes inseason adjustments to management measures if the adjustments are consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework amendment. In addition, all inseason adjustments must be based on consideration of the following factors: predicted sizes of salmon runs; harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable; amount of recreational, commercial, and treaty Indian catch for each species in the area to date; amount of recreational, commercial, and treaty Indian fishing effort in the area to date; estimated average daily catch per fisherman, predicted fishing effort for the area to the end of the scheduled season; and other factors as appropriate.

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). According to this preseason notice, commercial fisheries south of Cape Falcon, Oregon, are partitioned into six subareas and managed not to exceed an overall troll catch quota south of Cape Falcon of 401,700 coho salmon.

Several of the six subareas south of Cape Falcon currently are closed to commercial fishing for coho salmon. Two subareas south of Point Delgada, California, were closed to commercial fishing for coho salmon on July 21, 1987, when the catch quota of 26,800 coho salmon for these subareas was projected to be reached (52 FR 27817, July 24, 1987). The subarea from Cape Blanco, Oregon, to Point Delgada, California, was closed to commercial fishing for all salmon on June 25, 1987, when the commercial fishing quota of 113,300 chinook salmon was projected to be reached (52 FR 24297, June 30, 1987).

In accordance with the preseason regulations, the estimated number of coho salmon not needed to complete recreational seasons south of Cape Falcon (35,000 coho) was transferred to the commercial fishery on August 22, 1987 (52 FR 32135, August 26, 1987) increasing the commercial quota for areas south of Cape Falcon from 401,700 to 436,700 coho salmon.

Based on the best available information, commercial landings south of Point Delgada, California, totaled approximately 26,800 coho, and commercial landings from Cape Falcon to Point Delgada totaled an estimated 334,300 coho salmon through August 26, 1987. Thus, nearly 75,600 coho salmon remain to be harvested in the commercial coho quota south of Cape Falcon. Recent commercial landings have averaged 2,000–3,000 coho salmon a day.

Three subareas in the area from Cape Falcon to Cape Blanco, Oregon, currently are open to commercial fishing for all salmon species with some restrictions. From Cape Falcon to Cascade Head, and from Cascade Head to Cape Perpetua (52 FR 32135, August 26, 1987), a single daily possession and landing per vessel of 100 coho salmon is permitted before a restriction on the number of coho accompanying the possession and landing of chinook (a ratio restriction) is applied. From Cape Perpetua to Cape Blanco, fishermen are not allowed this single daily possession and landing allowance before the ratio restriction is applied. Increasing the single daily possession and landing per vessel in all subareas to 200 coho salmon would increase landings of coho salmon, and shorten the time needed to harvest the coho quota. Ratio restrictions for possessing or landing more than the single daily possession and landing limit will remain as stated in Table 1 of the preseason notice (52 FR 17264).

From Cape Falcon to Cascade Head, and from Cascade Head to Cape Perpetua, mixed loads of chinook and coho and coho-only loads must be

delivered in the subarea where they were caught. This delivery requirement is not in effect from Cape Perpetua to Cape Blanco, because there is no single daily possession and landing allowance in that subarea. Commercial seasons off Oregon south of Cape Blanco and north of Cape Falcon are now closed. The regulation requiring that coho caught between Cape Falcon and Cascade Head be landed within that subarea is no longer needed as the area of catch can easily be determined.

Commercial fisheries for coho salmon south of Cape Falcon usually close by early to mid-August. Continued fishing into late September and early October would increase impacts on Oregon coastal natural (OCN) coho salmon, and may prevent the ocean escapement goal of 200,000 OCN coho from being met.

Therefore, NOAA issues this notice, after consideration of the factors specified for inseason adjustments, to adjust commercial management measures in specified areas south of Cape Falcon, Oregon, effective 0001 hours, local time, August 29, 1987, as follows:

1. The regulation which requires that mixed loads of chinook and coho or loads of coho-only salmon caught in the commercial fishery from Cape Falcon to Cascade Head, Oregon, be delivered within the subarea is rescinded.

2. A single daily possession and landing limit in all subareas from Cape Falcon to Cape Blanco, Oregon, of 200 coho salmon is established. (Ratio restrictions on possession or landing of more than the single daily possession and landing limit remain as stated at 52 FR 17264, May 6, 1987.)

3. An ending date for commercial all-species seasons in all subarea from Cape Falcon to Cape Blanco, Oregon, of September 15, 1987 is established.

The Regional Director consulted with the Chairman of the Council and representatives of ODFW regarding these inseason adjustments to commercial management measures from Cape Falcon to Cape Blanco, Oregon. An ODFW representative confirmed that Oregon will manage commercial fisheries in State waters adjacent to this area of the EEZ in accordance with this notice.

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 et seq.)

Dated: August 28, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-20215 Filed 8-28-87; 4:27 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 61225-7052]

Groundfish of the Bering Sea and Aleutian Islands Area; Inseason Adjustment; Corrections

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

ACTION: Notice of inseason adjustment; corrections.

SUMMARY: This document corrects two of the specifications in the table reapportioning amounts of non-specific reserve of Alaska groundfish to JVP that was presented in a notice of inseason adjustment for Groundfish of the Bering Sea and Aleutian Islands Area published August 5, 1987 (52 FR 29021).

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

In rule document 87-17771 beginning on page 29021 in the issues of August 5, 1987, make the following corrections:

On page 29022 in Table 1, in the entry "Pacific ocean perch (Aleutian Is. subarea)", the number, 120, referring to current JVP is corrected to read "163" and the number, 370, in the "Revised totals of JVP" column is corrected to read "413".

Dated: August 27, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-20214 Filed 9-1-87; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 1987

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 041CE, Notice No. 23-ACE-35]

Special Conditions; Mooney Model M20 Series Airplanes With Porsche PFM3200No3 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Mooney Model M20 Series Airplanes with Porsche PFM3200No3 Engines. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of the Porsche PFM3200No3 Engine, which incorporates an electronic ignition system and a unique single-lever power control, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 23.

DATE: Comments must be received on or before October 5, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 041CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 041CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Comunications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 041CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Mooney Model 20L airplane in CAR 3, effective November 1, 1949, as amended to May 18, 1954, with §§ 3.109, 3.112, 3.115, 3.118, 3.120, and 3.441 of CAR 3, effective May 15, 1956, as amended to October 1, 1959; Part 23, effective February 1, 1965; § 23. 901 as amended to May 2, 1977; § 23.903, as amended to December 20, 1973; §§ 23.905 through 23.953, 23.955 through 23.963, 23.967 through 23.1063, as amended to September 14, 1969; §§ 23.1091 through 23.1105, as amended to February 1, 1977; §§ 23.1221 through 23.1193, 23.1351 through 23.1553, and 23.33 as amended to September 14, 1969; §§ 23.1527, as amended 23.1527, as amended to June 17, 1970; § 23.1557, as amended. to December 21, 1973; Part 36, effective September 20, 1976; Exemption No. 4753A; and any special conditions that may result from this notice.

Background

On April 10, 1986, Mooney Aircraft Corporation, Post Office Box 72, Kerrville, Texas 78029-0072, made application to the FAA to amend Type Certificate 2A3 to incorporate a new Model M20L. The Model M20L is a small, four-place cabin, normal category airplane. The Model M20L is basically a Model M20K with the Porsche PFM3200No3 Engine installed. The Porsche engine installation incorporates an electronic ignition system and a single-lever power control.

Discussion

Electronic ignition systems and single-lever power control were not envisaged by the applicable CAR 3/Part 23 airworthiness standards. These features are considered novel and unusual design features and, as such, will require special conditions to provide adequate airworthiness standards.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The Porsche PFM3200No3 Engine's electronic ignition system consists of two independent microprocessor controlled circuits, each of which is capable of maintaining full engine performance. Both of the engine ignition control circuits, including the microprocessors and software programming, may be susceptible to malfunction due to a single lightning strike on any part of the airplane.

The regulations incorporated by reference include standards for protection from ignition of fuel vapor by lightning (§ 23.954). The airworthiness standards do not, however, provide for protection of an electronic ignition system from the influence of lightning that is inherently provided by traditional

designs, such as engine-driven magnetos. Therefore, a special condition is proposed.

The Porsche engine installation manual requires lightning protection for the ignition system if induced power spikes, caused by a lightning strike, exceed 600 volts and/or a duration time of 10 microseconds. The special condition will assure that the ignition system will be protected from induced power spikes in excess for the level for which the system was certificated.

The lightning current waveforms defined in the Society of Automotive Engineers (SAE) AE4L Committee Report AE4L–87–3 dated February 4, 1987, along with the voltage waveforms in Advisory Circular 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, under these special conditions, tests (including tests on the completed airplane or an adequate simulation) and/or a verified analysis must be conducted in order to determine the resultant internal threat to installed systems. The individual systems must then be evaluated with this internal threat in order to determine their susceptibility to malfunction.

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic propulsion system components, the immunity of the airplane to RF energy must be established. Therefore, a special condition is proposed.

No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established. At this time, the FAA and other airworthiness authorities are working to establish an agreed level of RF energy representative of that to which the airplane will be exposed in service. These special conditions require that the airplane be evaluated under an interim standard for the protection of the electronic engine control system and its associated wiring harness, exclusive of airframe shielding.

The applicant has requested approval of a unique, single-level power control to provide simultaneous control of the engine throttle and propeller governor and, to a limited extent, the mixture. The single-lever control incorporates standard industry components to drive both the throttle plate and propeller governor through one lever. Two control cables are connected to the lever and routed to the throttle and governor. In addition, for takeoff power, the lever closes a switch which activates the fuel injection system to provide the best power mixture for the engine. For all other operations, the fuel injection system provides the best economy mixture automatically.

The FAA has determined that this unique design feature requires an evaluation of the effect on engine performance and control in the event of a control lever system failure. A failure analysis of the interconnecting components would enhance confidence in the engine control system. Therefore, a special condition is proposd to require the single lever system to have the same level of integrity and reliability as currently provided by the regulations for individual controls.

Conclusion

In view of the design features discussed above, the following special conditions are proposed for the propulsion control system of the Model M20 Series Airplanes, with Porsche PFM3200 engine installed, under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

The authority citation for these proposed special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Mooney Model M20 Series Airplanes with Porsche PFM3200 engines installed:

1. *Lightning Protection.* In addition to compliance with other applicable requirements relative to lightning protection, each electronic propulsion control system component, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

2. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* In the absence of specific requirements for protection from the unwanted effects of RF energy, each electronic propulsion control system component, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiation electromagnetic energy.

3. *Propulsion Control System.* In addition to the requirements applicable to throttle, mixture and propeller controls, components of the propulsion control system, both airframe and engine manufacturer furnished, that affect thrust and that are required for continued safe operation, must be shown to have the level of integrity and reliability of the typical Mooney Model M20 propulsion control system with independent throttle, mixture, and propeller controls.

Issued in Kansas City, Missouri, on August 18, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87–20087 Filed 9–1–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Royalty Management; Revision of Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Further notice of proposed rulemaking, extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that

it is extending the public comment period on its Further Notice of Proposed Rulemaking for both gas and oil product valuation regulations which were published in the **Federal Register** on August 17, 1987 (52 FR 30776 and 52 FR 30826). In response to requests for additional time, the MMS will extend the comment period from September 2, 1987, to September 11, 1987.

DATES: Comments must be received by 4:00 p.m. m.s.t. September 11, 1987.

ADDRESS: Written comments should be sent to: Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, Chief, Rules and Procedures, telephone (303) 231–3432, (FTS) 326–3432.

August 28, 1987

David W. Crow,

Acting Director, Minerals Management Service.

[FR Doc. 87–20224 Filed 9–1–87; 8:45 am]

BILLING CODE 4310-MR-M

VETERANS ADMINISTRATION

38 CFR Part 13

Fiduciary Activities; Investment by Legal Custodians; Estates $1,500; Determination of Value of Estate

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) is proposing to amend 38 CFR Part 13 (Fiduciary Activities) to implement a suggestion contained in an unpublished opinion by the Veterans Administration General Counsel to provide clear authority for a Federally appointed fiduciary to purchase a pre-need burial arrangement on behalf of an incompetent beneficiary. The effect of this proposed amendment is to allow a Federally appointed beneficiary the latitude to provide the beneficiary with a decent burial.

In addition, the VA is amending Part 13 to provide two additional types of assets to be excluded from the value of estate computation; this amendment implements an unpublished VA General Counsel opinion and a provision of the Veterans Benefits Improvements Act of 1984. The effect of the proposed amendment is to protect the veteran's property from loss while hospitalized and to allow the accumulation of assets needed to provide a decent burial.

Certain technical amendments are also being incorporated into Part 13 at this time.

DATES: Comments must be received on or before October 5, 1987. Comments will be available for public inspection until October 16, 1987. It is proposed to make these regulatory amendments effective 30 days after publication of the final notice.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 16, 1987.

FOR FURTHER INFORMATION CONTACT: William Saliski, Investigation and Compliance Staff, Veterans Assistance Service, Department of Veterans Benefits, (202) 233–3644.

SUPPLEMENTARY INFORMATION: The VA is aware that many people desire to provide themselves with an adequate burial or other form of disposition of the remains after death. Pre-need burial plans or trusts now seem to answer this need. During the past few years, the VA has received inquiries from fiduciaries of incompetent VA beneficiaries as to the propriety of investment in or purchase of such pre-need burial arrangements on behalf of their wards. A court-appointed fiduciary's responsibilities with regard to such expenditure from the ward's estate is generally governed by State law; however, no clear authority existed for Federally appointed fiduciaries to make deposits in or purchase such burial arrangements with VA funds. The VA General Counsel was asked for an opinion in this regard. The General Counsel, in an unpublished opinion, stated that the Administrator had the authority to amend the regulations to provide authority to purchase pre-need burial plans and further suggested that the value of such plans by exempted from consideration of total estate for purposes of the $1,500 estate limitation under 38 U.S.C. 3203(b)(1)(A). The VA is sensitive to the needs of incompetent VA beneficiaries and therefore proposes to amend § 13.103 to provide clear authority to Federally appointed fiduciaries to invest in or purchase pre-need burial plans on behalf of their wards and to amend § 13.109 to provide an exemption as cited above.

The VA also proposes to amend § 13.103 to make clear that an institutional award payee has no investment authority with regard to VA benefits placed by the VA into an account at the institution on behalf of an incompetent veteran. Many VA General Counsel opinions given over the years have held that such funds do not lose their identity as VA funds. These monies are not part of the veteran's estate and are subject to the limited distribution and recoupment provisions of 38 U.S.C. 3202(d). This point is often overlooked, causing the VA to lose time and manpower in attempting to rectify mistakes. The VA, therefore, proposes to inform the public with regard to the status of these funds for investment purposes.

Section 13.108 contains language that has not kept up with amendments to 38 U.S.C. 3203(b)(1). The VA, therefore, proposes to amend § 13.108 to more accurately reflect current law, and further, to clearly state the Veterans Services Officer's authority to recommend a waiver of the provisions of 38 U.S.C. 3203(b)(1)(A) when appropriate and in accordance with the intent of 38 U.S.C. 3202(b)(1)(C). The Veterans Services Officer is responsible for supervising the management of an incompetent veteran's estate. The responsibility places the Veterans Services Officer in a position to assist in the making of any determination with regard to an incompetent veteran's eligibility for a waiver under the criteria set within 38 CFR 3.557(e).

The VA also proposes to amend § 13.109 to provide an additional exemption to estate computation. This exemption is specifically provided under 38 U.S.C. 3203(b)(1)(A) and applies to the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home. The change, then, merely implements the law.

The Administrator hereby certifies that these proposed regulatory amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. The reason for this certification is that these proposed regulatory amendments impose no regulatory burdens on small entities, and only claimants for VA benefits and their dependents will be directly affected.

In accordance with Executive order 12291, Federal Regulation, the VA has determined that these proposed regulatory amendments are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no Catalog of Federal Domestic Assistance Program number.

These proposed regulatory amendments contain no information collection requirements.

List of Subjects in 38 CFR Part 13

Administrative practice and procedure, Estates, Fraud, Handicapped, Infants and children, Investigations, Investments, Surety bonds, Trusts and trustees, Veterans.

Approved: July 8, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 13, *Fiduciary Activities*, is proposed to be amended as follows:

PART 13—[AMENDED]

§ 13.77, 13.101, 13.105, and 13.106 [Amended]

1. Add the citation "(38 U.S.C. 210)" at the end of §§ 13.77,13.101,13.105, and 13.106.

§ 13.100 [Amended]

2. Add the citation "(38 U.S.C. 3202)" at the end of paragraphs (a) and (c); add the citation "(38 U.S.C. 210)" at the end of paragraph (b); and add the citation "(38 U.S.C. 3501)" at the end of paragraph (d).

3. In § 13.102, paragraph (a) is revised and a citation is added at the end of the section to read as follows:

§ 13.102 Accountability of legal custodians.

(a) *Institutionalized veterans without spouse or child.* The legal custodian of VA benefits of an incompetent veteran who has neither spouse nor child and who is being furnished hospital treatment or institutional or domiciliary care by the United States or a political subdivision thereof, will account upon request to the VA for funds received from the VA for the beneficary and will submit a statement of all other income received and the total assets from any source held for the beneficiary.

* * * * *

(38 U.S.C. 210)

4. Section 13.103 is revised to read as follows:

§ 13.103 Investments by Federal fiduciaries.

(a) *Type authorized.* VA benefits paid to a Federally appointed fiduciary other than a spouse payee or an institutional award payee may be invested only in United States savings bonds, or in interest or dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary's advantage. Veterans Administration benefits that are paid on behalf of an incompetent veteran to an institution via an institutional award payment arrangement may not be invested.

(b) *Registration.* (1) When funds are invested in bonds, the bonds will be registered in this form: (Beneficiary's Name), (Social Security No.), under custodianship by designation of the Veterans Administration.

(2) When funds are invested in interest or dividend-paying accounts in State or Federally insured institutions, the account will be registered in this form: (Beneficiary's name), by (Fiduciary's Name), Federal fiduciary.

(c) *Pre-need burial arrangements.* Federally appointed fiduciaries, other than institutional award payees, may use a beneficiary's funds derived from VA benefits to make deposits into, or purchase, a pre-need burial plan or burial insurance on behalf of the beneficiary, if to do so is in the beneficiary's interest.

(38 U.S.C. 210)

§ 13.107 [Amended]

5. Add the citation "(38 U.S.C. 3203(b)(3))" at the end of the section.

6. Section 13.108 is revised to read as follows:

§ 13.108 Estate $1,500; 38 U.S.C. 3203(b)(1).

(a) *Discontinuance of payments.* When a veteran, rated incompetent by the VA, without spouse or child, is receiving hospital treatment or domiciliary or institutional care by the United States or any political subdivision, with or without charge, and the veteran's estate equals or exceeds $1,500, the Veterans Services Officer shall, with regard to those estates monitored by the VSO, immediately notify the Adjudication Division so that VA payments, other than insurance, may be discontinued under the provision of § 3.557 of this title. In those cases in which the payments have been discontinued, the VSO shall, when the estate has been reduced to $500, immediately notify the Adjudication Division of that fact. (38 U.S.C. 3203(b)(1)(A))

(b) *Waiver of discontinuance.* The Veterans Services Officer shall assist in those cases under the VSO's supervision in determining when discontinuance should be waived for one or more periods not to exceed 60 days of the veteran's care during any calendar year by making an appropriate recommendation.

(1) The VSO should not recommend waiver as an administrative expediency but should recommend waiver when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities. (38 U.S.C. 3203(b)(1)(A))

(c) *Apportionment to dependent parent; care and maintenance award.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because of his or her estate exceeds $1,500, an apportionment of the award otherwise payable may nevertheless be made to a dependent parent, if any, based on actual need as determined by the Veterans Services Officer. So much of any monthly remainder of the discontinued payments as equals the amount charged to the veteran for his or her current care and maintenance in the institution in which treatment or care is furnished, but not more than the amount determined by the Veterans Services Officer to be the proper charge as fixed by statute or administrative regulation, may be paid to the institution. The Veterans Services Officer shall recommend to the Adjudication Division the amount of either award. (38 U.S.C. 3203(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients. (38 U.S.C. 210)

7. In § 13.109, the section heading is revised and paragraphs (d) (5), (6) and (7) are added to read as follows:

§ 13.109 Determination of value of estate; 38 U.S.C. 3203(b)(1)(A).

* * * * *

(d) * * *

(5) The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the

home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(6) Funds deposited into a pre-need burial arrangement such as a burial trust, prepaid burial agreement, burial insurance, etc. The value of the veteran's burial plot will be likewise excluded.

(7) Amounts withheld under § 3.551(b) of this title.

* * * * *

(38 U.S.C. 210)

[FR Doc. 87-20228 Filed 9-1-87; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-3255-3]

Exemption of Four Carbon Black Plants From Further Control Under Louisiana Air Quality Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking.

SUMMARY: This action proposes approval of a revision to the State of Louisiana Implementation Plan (SIP). The proposed approval is based on review of the SIP revision submitted to EPA by the Governor of Louisiana on January 12, 1987. This revision consists of exempting four carbon black plants in the State of Louisiana from further controls for acetylene emissions as required in the current SIP. Such emissions are presently required to be controlled by the Louisiana Air Quality Regulation (LAQR) 22.8, the waste gas stream regulation.

DATE: Comments must be received on or before October 2, 1987.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs at the EPA Region 6, Air Programs Branch (address below). Copies of the State's submittals and EPA's evaluation report may be examined during normal business hours at the following locations: U.S. Environmental Protection Agency, Region 6, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ricardo Saucedo, SIP/NSR Section, Air Programs Branch, Air, Pesticides and Toxics Division, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202-2733, (214) 655-7214.

SUPPLEMENTARY INFORMATION: On January 12, 1987, the Governor of Louisiana submitted a request to revise the Louisiana SIP to exempt four carbon black plants in the State of Louisiana from further controls on emissions of acetylene as required in the SIP. Such emissions are presently required to be controlled by the LAQR 22.8, the waste gas stream regulation. Even though stated in the Governor's submittal that this revision applies only to "additional controls", in another part of the Louisiana SIP submittal to EPA, the qualifying words additional controls were omitted from the exemptions. The State has agreed to correct this discrepancy in the SIP submittal, since the purpose of the SIP revision is, as mentioned in the letter from the Governor, to exempt the sources from further controls for acetylene emissions as required in the SIP, and not to exempt the sources from all controls for acetylene emissions. These four plants currently combust a portion of their waste gas in existing plant processes (i.e., dryers); however the current combustion practices do not meet the requirements of LAQR 22.8. The current level of combustion is not being exempted by this action.

This revision to the Louisiana SIP is being proposed for approval with the condition that the State corrects the noted discrepancy and submits the revised exemptions to reflect the actual purpose of the SIP revision as stated in the Governor's letter. EPA intends to publish notice of Final Rulemaking on the revisions discussed in today's notice once the State adopts the additional revision and submits it to EPA for incorporation into the SIP. However, if the State makes substantial changes from those currently proposed, EPA will have to evaluate those changes, and may publish a revised notice of proposed rulemaking. The submittal contained verification that adequate notice and a public hearing were provided for the proposed SIP revision. EPA proposes to approve this revision to the SIP and invites comments from all interested persons. Comments received by EPA within 30 days of the publication of the notice will be considered.

Background

On February 14, 1980, at 45 FR 9903, EPA approved the Louisiana Air Quality Regulation 22.8(a). This regulation requires burning at 1300 °F and 0.3 seconds for waste gas vents containing nonhalogenated compounds. The SIP revision submitted by the State on January 12, 1987, would allow the facilities to only combust a portion of their waste gas in existing plant processes (i.e. dryers) and exempt them from further controls on emissions of acetylene.

The State contends the SIP revision is approvable for the following reasons. First, three of the plants are located in areas classified as rural nonattainment for the pollutant ozone. The other plant is located in an ozone unclassified/attainment area. Second, the State did not consider emission reductions from VOC emission sources in rural ozone nonattainment areas in its demonstration that the ambient ozone air quality standard will be met in the adjacent Baton Rouge urban ozone nonattainment area by December 1987; and third, the State contends that available data shows that acetylene has low photochemical reactivity and toxicity. EPA disagrees with the State's reasons but believes the SIP revisions can be approved on other grounds. These grounds are discussed later in this notice.

Carbon Black Process Description

Carbon black is produced by the reaction of a hydrocarbon fuel such as oil or gas with air at high temperatures of 2400 to 2800 °F. The principal uses of carbon black are as a reinforcing agent in rubber compounds (e.g., tires), as a black pigment in printing inks, surface coatings, paper and plastics. Two major processes are presently used in the United States to manufacture carbon black, the oil furnace process and the thermal process. The oil furnace process accounts for about 90 percent of the total carbon black production in this country. The four carbon black plants considered in this action make use of the oil furnace process. In the oil furnace process, an aromatic liquid hydrocarbon feedstock is preheated and injected continously into a combustion zone of a natural gas fired furnace, where it is decomposed to form carbon black.

Emissions from the oil furnace process include particulate matter, carbon monoxide (CO), VOC, sulfur compounds, and trace elements. The principal source of emissions in the oil furnace process is the main process vent. Gaseous emissions vary considerably according to the grade of carbon black being produced. VOC and CO emissions tend to be higher for small particle production. Sulfur compound emissions are a function of the feed sulfur content. Particulates, sulfur oxides and nitrogen oxides are also emitted from the dryer vent.

Review

There are five carbon black facilities located in the State of Louisiana. None of them has ever met the requirements of the Louisiana Air Quality Regulation, section 22.8, the waste gas stream regulation. Four of the five plants are dealt with in this notice. Three of the carbon black plants are located in areas presently classified as rural nonattainment areas for the pollutant ozone. These three plants are the following: (1) Ashland Chemical Company, located in Louisa, Louisiana, St. Mary Parish, (2) Cabot Corporation, located in Centerville, Louisiana, St. Mary Parish and (3) Columbian Chemicals located in Franklin, Louisiana, St. Mary Parish. The other carbon black plant dealt with in this Notice is Cabot Corporation, located in Ville Platte, Louisiana, Evangeline Parish, an ozone attainment/ unclassified area. Cabot, Ville Platte is also affected by LAQR 22.8 (and by this Notice) because the LAQR currently applies not only to sources located in areas designated as nonattainment, but statewide. Another carbon black plant in Louisiana, Sid Richardson Carbon & Gasoline Company is located in Addis, Louisiana, West Baton Rouge Parish, an area presently classified as urban nonattainment for the pollutant ozone. The Sid Richardson plant is the subject of a separate action by the State and by EPA. Therefore, it will be addressed in a separate package.

EPA has reviewed the air quality data available for the parishes of St. Mary and Evangeline. St. Mary parish was designated as a rural nonattainment area for the pollutant ozone since, during the summer of 1976, an ozone monitor located in that parish registered a total of 10 exceedances of the ozone standard. However, during the summers of 1983 and 1984, an ozone monitor was placed again in the parish. This time, no exceedances of the ozone standard were recorded for either year. The ozone standard is 0.12 parts per million (ppm). The highest reading recorded during 1983 and 1984 was 0.10 ppm. The highest reading in the parish during the monitoring period for 1976 was 0.20 ppm.

There has never been an ozone monitor located in Evangeline Parish. Therefore, no ozone data is available. EPA has reviewed the ozone data available from surrounding areas which shows an overall improvement on the air quality for ozone, except for Iberville Parish, which is adjacent to East and West Baton Rouge Parishes. Although there has never been a monitor located in Evangeline Parish, the experience in St. Mary Parish, where an in place ozone monitor shows a decrease in the ozone levels with the carbon black emission sources in operation, can arguably be applied to the Evangeline Parish.

The exemption for the four plants being proposed by the State as a SIP revision should have neither a real nor an adverse impact on the present ozone ambient air quality data for these parishes, since under the exemptions, these facilities will not increase their historical emission levels for acetylene.

Regarding the State's position on reactivity of acetylene, the existing published data shows the reactivity of acetylene to range from 0.6 to 3 times that of ethane; the existing data is inconclusive with respect to classifying acetylene as reactive or unreactive. However, most recent studies indicate that EPA considers acetylene as a rective compound. These studies show acetylene to be 2.73 times more reactive than ethane, which is considered to be the "borderline" VOC for reactivity. Pursuant to EPA's policy, all VOC's are to be included in SIP control strategy demonstrations except those which have been listed specifically as exempt in the **Federal Register.** Four compounds were listed as exempt on July 3, 1977 (42 FR 35314), methylene chloride was listed on June 4, 1977 (44 FR 32042), and an additional six freon compounds were listed as exempt on July 22, 1980 (45 FR 48941). These eleven compounds have been exempted because EPA determined that they have "negligible" photochemical reactivity. Acetylene is not one of those eleven compounds.

EPA has not independently verified the State's conclusions on the economic infeasibility for these four plants meeting the requirements since major non-CTG sources in rural ozone nonattainment areas are presently not required to meet RACT. Therefore at this time, economic infeasibility is not relevant.

For 1979 SIPs, in rural nonattainment areas, no attainment demonstration was required. However, RACT was required on all major CTG category sources. No CTG has been issued for carbon black plants as of this time. The RACT requirement combined with reductions in transported ozone from urban areas were thought to be a sufficient control strategy for rural ozone areas. Significant changes to this policy are being contemplated by EPA. Changes to EPA's ozone policy may require a reevaluation of these sources at a future date.

EPA solicits public comments on this notice and on EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised Notice of Proposed Rule. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State of Louisiana and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time necessary for final approval of the SIP revision by 3 to 4 months.

Proposed Action: EPA has evaluated the revision to the SIP to exempt the four carbon black plants located in St. Mary and Evangeline Parishes from further controls on emissions of acetylene as required by the LAQR 22.8(a). The proposed SIP revision meets the requirements of demonstrating no adverse effect on the air quality and RACT is not presently required for existing major non-CTG sources in rural nonattainment areas. Therefore, EPA proposes approval.

Interested persons are invited to submit comments on the proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that the SIP revision will not have a significant economic impact on a substantial number of small entities.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7642.

Date: June 29, 1987.

Robert E. Layton, Jr.,

Regional Administrator (6A).

[FR Doc. 87–20135 Filed 9–1–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A-9-FRL-3255-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Northern Sonoma County and Four Other Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to approve several revisions to the California State Implementation Plan (SIP). California submitted most of these revisions on October 16 and November 12, 1985. EPA has also included one related rule from a February 23, 1983 submittal. The rules cover a variety of permitting and stationary source control subjects. EPA has evaluated these regulations and determined that they should be approved.

The five air pollution districts that adopted rules included in this notice are: the Bay Area Air Quality Management District (AQMD), the Northrn Sonoma County Air Pollution Control District (APCD), the South Coast AQMD, the Ventura County APCD, and the Yolo-Solano APCD.

DATES: Comments may be submitted to EPA at the address below up to October 2, 1987.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, Attn.: Air Management Division, SIP Section (A-2-3).

Copies of the rule and of EPA's Evaluation Report for each rule are available for review at EPA, Region IX. All of the rules are also available at the Air Resources Board address listed below. Rules of specific districts are available at the districts which adopted them. The addresses are given below.

California Air Resources Board, General Projects Section, 1131 "S" Street, Sacramento, CA 95812.
Bay Area AQMD, 939 Ellis Street, San Francisco, CA 94109.
Northern Sonoma County APCD, 118 North Street, Healdsburg, CA 95448.
South Coast AQMD, 9150 Flair Drive, El Monte, CA 91731.
Ventura County APCD, 800 South Victoria Avenue, Ventura, CA 93009.
Yolo-Salano APCD, P.O. Box 1006, Woodland, CA 95695.

FOR FURTHER INFORMATION CONTACT: Julie Rose, Air Management Division, A-2-3, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8066, FTS: 454-8066.

SUPPLEMENTARY INFORMATION:

Background

The State of California submitted a series of SIP revisions to EPA on October 16 and November 12, 1985. Some of those rules and revisions are proposed for approval in this notice. Others are being addressed in other notices. This notice also includes one rule submitted February 23, 1983.

The revisions addressed in this notice cover a wide variety of subjects, as indicated by the titles listed below. All involve permitting or control of stationary sources. They are not expected to have major impacts on the sources affected, but some will make significant changes in procedures and requirements.

EPA's evaluation of the rules follows the list of regulations.

Regulations Submitted

Bay Area AQMD

Rule 8-16—Solvent Cleaning Operations (VOC), 11/12/1985

Northern Sonoma County APCD

Rule 240 (a-c)—Permit to Operate, 10/16/1985

South Coast AQMD

Rule 212 (a,b)—Standards for Approving Permits, 10/16/1985
Rule 431.2—Sulfur Content of Liquid Fuels (SO_2), 11/12/1985
Rule 1140—Abrasive Blasting (TSP), 11/12/1985

Ventura County APCD

Rule 10—Permits Required, 10/16/1985

Yolo-Solano APCD

Rule 1.2(r)—Definitions (VOC), 11/12/1985
Rule 2.24(D)(1)(b)—Solvent Cleaning Oper. (VOC), 11/12/1985
Rule 2.24 (except (D)(1)(b))—Solvent Cleaning Operations (VOC), 2/23/1983

EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, EPA policy, and 40 CFR Part 51. It has also reviewed them to determine if they weaken or strengthen the existing SIP.

All of these rules meet the requirements of the Act, the Part 51 regulations, and EPA policy. Some also make the existing SIP more stringent.

The rules proposed for approval based on meeting the minimum requirements are South Coast rule 1140, Ventura County rule 10, and Yolo-Solano rule 1.2(r).

The rules that strengthen the SIP as well as meeting the minimum requirements are as follows: Bay Area rule 8-16, Northern Sonoma rule 240, South Coast rule 212, and Yolo-Solano rule 2.24.

South Coast AQMD rule 431.2, Sulfur Content of Liquid Fuels, has been revised to reduce the allowable sulfur content of diesel fuel. A provision has also been added which allows the District Executive Officer discretion in approving the use of an alternate fuel which will not create any additional emissions. EPA is proposing to approve this rule providing that the District submits a SIP revision with an accompanying air quality dispersion modeling demonstration which shows that the change will not result in a violation of the sulfur dioxide National Ambient Air Quality Standards each time the Executive Officer exercises this authority. This requirement will become part of 40 CFR Part 52. EPA policy requires that all discretionary Executive Officer actions be submitted to EPA as SIP revisions in order to become federally effective upon EPA approval. EPA is interested in receiving comments on this approach.

Copies of the rules and of EPA's Evaluation Report for each rule are ge available for review at EPA, Region IX.

EPA Proposed Action

EPA proposes to approve these rules under section 110 of the Clean Air Act, based on their meeting EPA's approval criteria.

Regulatory Process

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, Ozone, Sulfur oxides, Particulate matter, Hydrocarbons.

Authority: 42 U.S.C. 7401-7642.

Date: August 15, 1986.

John Wise,

Acting Regional Administrator.

[Editorial note.—This document was received at the Office of the Federal Register August 28, 1987.]

[FR Doc. 87-20134 Filed 9-1-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-323, RM-5341]

Radio Broadcasting Services; Webb City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by J.R. Communications Company, proposing the substitution of FM Channel 230C2 for 232A at Webb City, Missouri, and modification of its license for Station KIXQ to specify operation on Channel 230C2. The substitution has been requested to eliminate interference to Station KIXQ's primary service area and provide expanded coverage.

DATES: Comments must be filed on or before October 15, 1987, and reply comments on or before October 30, 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: James K. Edmundson, Mark Van Bergh, Kenkel, Barnard & Edmundson, 1220 Nineteenth Street, NW., Suite 202, Washington, DC 20036 (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87-323, adopted August 3, 1987, and released August 25, 1987. The full text of this Commission decsion 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. 87-20180 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-322, RM-5826]

Radio Broadcasting Services; Atoka, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ballard Broadcasting of Oklahoma, Inc. requesting the substitution of Channel 276C2 for Channel 276A at Atoka, and the modification of its license for Station KHKC to specify the higher powered channel. Channel 276C2 can be allocated to Atoka in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.9 kilometers (1.2 miles) southwest to avoid a short-spacing to Station KTFX, Channel 277, Tulsa, Oklahoma. Since this proposal represents a co-channel upgrade, the Commission will not accept competing expressions of interest in use of Channel 276C2 at Atoka and we will not require petitioner to demonstrate the availability of an additional equivalent channel. The substitution of channels could enable Station KHKC to improve its local service to Atoka and its surrounding area.

DATES: Comments must be filed on or before October 15, 1987, and reply comments on or before October 30, 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: Joseph E. Dunne III, Esq., May & Dunne, Chartered, 1156-15th Street, NW., Suite 515, Washington, DC 20005-1704 (Counsel to petitioner).

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. 87-322, adopted July 28, 1987, and released August 25, 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. 87-20181 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-321, RM-5781]

Radio Broadcasting Services; Ashland, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Rogue Radio Corporation requesting the substitution of Class C Channel 270 for Channel 270C1 at Ashland, Oregon, and the modification of its license for Station KCMX-FM to specify the higher powered channel. Channel 270 can be allocated to Ashland in compliance with the Commission's minimum distance separation requirements and used at Station KCMX-FM's present transmitter site. In accordance with § 1.420(g) of the Commission's Rules, the Commission will not accept competing expressions of interest in use of the channel at Ashland or require petitioner to demonstrate the availability of an additional equivalent channel.

DATES: Comments must be filed on or before October 15, 1987, and reply comments on or before October 30, 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: Benito Gaguine, Esq., Diane L. Mooney, Esq., Fly, Shuebruk, Gaguine, Boros and Braun, 1211 Connecticut Avenue, NW., Washington, DC 20036 (Counsel to petitioner).

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.87–321 adopted July 29, 1987, and released August 25, 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. 87–20182 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–327, RM–5703]

Radio Broadcasting Services; Frederiksted, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Judith Mendez proposing the allotment of Channel 273A to Frederiksted, Virgin Islands, as that community's first FM service. In order to avoid a nearby airport the closest site on land requires a site restriction of 12 kilometers (7.5 miles) east of the city (17–43–00 N Lat, 64–42–30 W Long).

DATES: Comments must be filed on or before October 16, 1987, and reply comments on or before November 2, 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: Judith Mendez, Avenida Barbosa No. 218, Catano, Puerto Rico 00632 (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. 87–327, adopted July 29, 1987, and released August 25, 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 Mass Media Bureau.

[FR Doc. 87–20183 Filed 9–1–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–326, RM–5778]

Radio Broadcasting Services; Ephrata, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Read Broadcasting, licensee of Station KGDN(FM), Channel 240A, Ephrata, Washington, proposing the substitution of Channel 222C2 for Channel 240A at Ephrata, Washington, and modification of its license to specify operation on the higher class channel. The proposal could provide a first wide coverage area FM station at Ephrata.

DATES: Comments must be filed on or before October 16, 1987, and reply comments on or before November 2, 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: Neal J. Friedman, Esquire, Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for 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. 87–326, adopted July 29, 1987, and released August 25, 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, Mass Media Bureau.

[FR Doc. 87-20184 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-334 , RM-5741]

Radio Broadcasting Services; Madera, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by SJCC Broadcasting, Inc. proposing the substitution of FM Channel 221B1 for Channel 221A at Madera, California, and modification of the license of Station KQMD-FM accordingly, to provide that community with its first wide-coverage area FM service.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553.

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. 87-334, adopted August 3, 1987, and released August 26, 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. 87-20176 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-337, RM-5788]

Radio Broadcasting Services; Augusta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Sunny Communications, Inc., licensee of Station WZNY(FM), Augusta, Georgia, which seeks to substitute Class C Channel 289 for Channel 289C1 at Augusta, and to modify its license to specify the new class of channel.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 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. Bodorff, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Washington, DC 20037, (Counsel for petitioner).

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. 87-337, adopted August 5, 1987, and released August 26, 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. 87-20177 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-336, RM-5672]

Radio Broadcasting Services; North Windham, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kollen Dodge, proposing the allocation of FM Channel 294A to North Windham, Maine, as that community's first FM broadcast service. There is a site restriction 1.2 kilometers west of the community. Concurrence of the Canadian government is required for the allotment of FM Channel 294A at North Windham.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 3, 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, P.O. Box 105FM,

Hinsdale, New Hampshire 03451. (Consultant to the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–336, adopted August 5, 1987, and released August 26, 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. 87–20178 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–335, RM–5634 and RM–5897]

Radio Broadcasting Services; Steelville and Hermann, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separate petitions. Twenty-One Sound Communications Inc. requests the substitution of FM Channel 227C2 for 244A at Steelville, Missouri and modification of its license for Station KNSX–FM to specify operation on Channel 227C2. Kenneth W. Kuenzie proposes the allotment of FM Channel 227A to Hermann, Missouri as that community's first FM broadcast service. There is a site restriction 6.8 kilometers (4.2 miles) west of the community.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 13, 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:

Randal Wachter, Twenty-One Sound Communications, Inc., 3418 Douglas Road, Florissant, Missouri 63034

Kenneth W. Kuenzie, 102 Elm Street, Suite 203, Washington, Missouri 63090

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87–335, adopted August 5, 1987, and released August 26 , 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. 87–20179 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–325, RM–5822]

Radio Broadcasting Services; Wenatchee, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wenatchee Wireless Works, licensee of Station KYJR(FM), Channel 285A, Wenatchee, Washington, proposing the substitution of Class C2 Channel 285 for 285A at Wenatchee and modification of its license to specify the higher class frequency, as that community's second wide coverage area station. A site restriction of 6.3 kilometers (3.9 miles) southeast of Wenatchee is required. Also Canadian concurrence is required.

DATES: Comments must be filed on or before October 16, 1987, and reply comments on or before November 2 , 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: Barry A. Friedman, Esquire, Wilner & Scheiner, 1200 New Hampshire Avenue, NW., Suite 300, 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. 87–325, adopted July 29, 1987, and released August 25, 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, Mass Media Bureau.

[FR Doc. 87-20185 Filed 9-1-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 230 (Sub-No. 5)]

Improvement of (TOFC/COFC) Regulation, Trailer on Flatcar and Container on Flatcar

AGENCY: Interstate Commerce Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: After reopening for additional comments (47 FR 220, Jan. 5, 1982) following a court remand, the Commission has concluded that the TOFC/COFC exemption formerly found in 49 CFR 1039.13, established in its prior decision (364 I.C.C. 731; 46 FR 14348, Feb. 27, 1981), can and should apply to the Alaska Railroad Transfer Act. No changes in 49 CFR 1039.13 (which has recently been replaced by new provisions in 49 CFR 1090.1 and 1090.2) are necessary.

Proposed changes in the lanugage of the TOFC/COFC exemption to clarify its scope will not be made in this proceeding, and a proposed technical amendment to 49 CFR 1300.67(b)(1) (now 49 CFR 1312.37(b)) is found to be unnecessary and will not be made.

DATE: This decision will be effective on October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Craig M. Keats, (202) 275-7312. TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from TSI in Room 2229 at Commission headquarters).

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

We reaffirm our certification in the proposed rulemaking notice that this action will not have a significant effect on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10505.

Decided: August 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20206 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-1-M

Notices

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 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

Office of the Secretary

State of Idaho Agricultural Water Quality Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income

AGENCY: Office of the Secretary, USDA.
ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the Idaho Agricultural Water Quality Program are made primarily for the purpose of conserving soil and water resources and protecting or restoring the environment. This determination, which is made in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and the provisions of 7 CFR Part 14, permits recipients of these payments to exclude them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013, (202) 447–6221; or Lee Stokes, Director, Division of Environment, Idaho Department of Health and Welfare, Statehouse, Boise, Idaho 83720, (208) 334–4061.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as added by the Revenue Act of 1978 and amended by the Technical Corrections Act of 1979, provides that certain payments made under State programs may be eligible for exclusion from gross income if certain determinations are made. The Secretary of Agriculture must determine whether payments made under a State program as described in section 162(a)(10), are "made primarily for the purpose of conserving soil and water resources, protection or restoring the environment, improving forests, or providing a habitat for wildlife." In making this determination, the Secretary of Agriculture must evaluate each program according to criteria set forth in 7 CFR Part 14.

One of the State conservation programs is the Idaho Agricultural Water Quality Program authorized by Idaho Code 39–3601 *et seq.*, effective July 1, 1980. The Idaho Agricultural Water Quality Program provides grants to soil conservation districts for cost-sharing with farmers who apply conservation and pollution control practices.

The objective of the program is to protect and enhance the quality and value of water resources of the State by controlling and abating water pollution from agricultural lands.

This program is funded by the availability of unobligated funds in the State Water Pollution Control Account and from the appropriation of funds by the Idaho State legislature to the Idaho Department of Health and Welfare.

Administration—The program is administered by the Idaho Department of Health and Welfare. The Idaho Board of Health and Welfare with the approval of the Idaho Soil Conservation Commission estabishes a list of priority projects for the control of agricultural nonpoint source pollution. The actual administration of the cost-share assistance rests with the local soil conservation district.

Program Operation—Under the Idaho Agricultural Water Quality Program, a grant is made to a soil conservation district by the board of health and welfare following an application and evaluation process. Only districts having projects included in the Idaho Soil Conservation Commission list of priority projects are eligible. After a grant is made, the district begins developing water quality plans with farmers in the project area. Each plan identifies farm problems and sets forth solutions (Best Management Practices) to those problems, as well as a schedule for installing the needed practices. The farmer-applicant must approve the plan and sign a long term (5 to 10 years) contract, agreeing to provide adequate treatment for all critical acres and pollution sources on his farm and agree to operate and maintain all installed practices for the life of the contract. The district then provides a cost-share payment to the applicant-farmer for portions of the practices. Additional practices are oftentimes required by the district for which cost-share assistance is not provided.

Practices which are eligible for cost/share assistance are those practices included in the catalogue of Best Management Practices set forth in the *Idaho Agricultural Pollution Abatement Plan*, a statewide plan for addressing agricultural pollution problems certified by the Governor of Idaho in 1979 as the agricultural portion of the State water quality management plan. These practices include: conservation cropping systems, contour farming, cover and green manure crops, diversions, grade stabilization structures, grassed waterway or outlets, irrigation improvement, animal waste control, pasture and hayland management, streambank protection, terraces and no-till farming systems.

Prior to project startup, all practices must be approved by the Idaho Soil Conservation Commission. In addition, cost-share rates are also approved at this time. Standards and specifications of the USDA Soil Conservation Service are used for design, construction, installation, operation, and maintenance of all practices in the program. Additional practices may be added to the catalogue of Best Management Practices in the *Idaho Agricultural Pollution Abatement Plan*, through the procedure spelled out in the *Plan*.

Cost-share rates are based upon average costs to land users for installing measures and practices. Eligible costs include labor, operating supplies, and other direct costs required for physical installation of a measure or practice. Average costs are based upon actual cost data collected from land users, suppliers and USDA Agricultural Stabilization and Conservation Service. The maximum payment per participant is $50,000. There is no annual payment limitation, however.

The authorizing legislation, regulations, and operating procedures for the Agricultural Water Quality Program of the State of Idaho have been carefully examined using the the criteria set forth in 7 CFR Part 14. The Department has concluded that the payments made under this cost-share

program are made to provide financial assistance to eligible persons in carrying out soil and water conservation measures and in protecting or restoring the environment.

A "Record of Decision Idaho Agricultural Water Quality Program: Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from the Conservation and Environmental Protection Division, ASCS. Requests may be sent to the address listed above.

Determination

It is hereby determined in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and 7 CFR Part 14 that all cost-share payments made after July 1, 1980 for conservation practices under the Idaho Agricultural Water Quality Program (Idaho Code 39–3601 *et seq.*) are for the following purposes: soil and water conservation and protecting or restoring the environment.

Signed at Washington, DC, on August 24, 1987.

Richard E. Lyng,

Secretary, U.S. Department of Agriculture.

[FR Doc. 87–20211 Filed 9–1–87; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

Lemons Grown in California and Arizona; Marketing Policy Reopening and Extension of the Comment Period on Notice of Marketing Policy

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy; reopening and extension of comment period.

SUMMARY: Notice is hereby given that the time period for filing written comments is reopened and extended on the notice of the 1987–88 marketing policy for lemons grown in California and Arizona until 15 days after publication of this document.

DATE: Written suggestions, views, or pertinent information will be considered if received by September 17, 1987.

ADDRESSES: Comments should be sent to: Docket Clerk, USDA, AMS, Fruit and Vegetable Division, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, USDA, AMS, Fruit and Vegetable Division, Marketing Order Administration Branch, P.O. Box 96456, Room 2523, South Building, Washington, DC 20090–6456; telephone: (202) 475–3914.

SUPPLEMENTARY INFORMATION: The notice of marketing policy was issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended. The notice was issued July 28, 1987, and published on August 3, 1987, in the **Federal Register** (52 FR 28736). If pertained to the 1987–88 marketing policy for lemons grown in California and Arizona. Comments were to be received by August 18, 1987.

The Department has recieved a request from an interested person, that the Department provide more time for interested persons including growers and handlers to analyze the marketing policy.

Reopening and extending the comment period will provide interested persons more time to review this marketing policy and submit written views and information pertinent to the marketing policy and the need for, and the level of, regulation for the 1987–88 season. The additional time will also provide interested persons more time to comment on the possible regulatory and informational impact of the marketing policy and seasonal regulations on small businesses. Accordingly, the comment period is reopened and extended until 15 days after the date of publication of this document in the Federal Register.

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

Dated: August 27, 1987.

William J. Doyle,

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

[FR Doc. 87–20120 Filed 9–1–87; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Intent To Supplement the Environmental Impact Statement for the Grand Mesa, Uncompahgre, and Gunnison National Forests Land and Resource Management Plan

The Department of Agriculture, Forest Service will prepare a supplement to the Final Environmental Impact Statement (EIS) and will amend the Grand Mesa, Uncompahgre, and Gunnison National Forests' Land and Resource Management Plan (the Forest Plan) in Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan, and San Miguel Counties, CO. The Forest Plan was approved September 29, 1983. The Notice of Availability for the EIS, Forest Plan and Record of Decision appeared in the October 14, 1983, **Federal Register**. A reanalysis of the Forest Plan was required by Deputy Assistant Secrtary of Agriculture, Douglas W. MacCleery's decision of July 31, 1985, related to a review of the Chief's decision on an appeal of the EIS and Plan by the Natural Resources Defense Council. A Notice of Intent to Reanalyze the Forest Plan appeared in the October 3, 1986, **Federal Register**.

The Forest Service has made a preliminary determination that significant changes to timber, water, wildlife, and range resources will occur to the Forest Plan (36 CFR 219.10(f)) based on results of its reanalysis efforts to date. No determination has yet been made as to what the specific changes to the Forest Plan might be. The Forest Service will subsequently make a final determination of significance in a new Record of Decision.

The analysis will concentrate on the following issue areas which initiated the need for a change:

1. USDA decision of July 31, 1985;
2. Below cost timber sales;
3. Timber demand; and
4. Aspen management.

The issues focus on demand for wood fiber on the Forest, vegetation treatment of aspen to provide non-timber benefits, "below-cost" timber sales, and the main points of the MacCleery decision. These six points deal with economic implications of the timber program, the timber program's contribution to net public benefits, timber cost reduction—revenue enhancement studies, timber demand, timberland suitability, and "below-cost" timber sales.

An addendum to Planning Action 1—Identification of Issues, Concerns, and Opportunities, is now available for public review by contacting the Forest Supervisor at the address below.

The Proposed Action (Forest Plan) and alternatives are described in Chapter II of the final Environmental Impact Statement prepared for the Forest Plan (Chapter II, pages II–15 through II–60). A discussion of the issues addressed in the final EIS is on pages I–10 through I–14. Public comment on the issues and the Forest Service responses appear in Chapter VI of the final EIS.

As part of the reanalysis effort the original alternatives will be redesigned to reflect the issues described above. Additional alternatives may be developed. Federal, State, and local

agencies, individuals, and organizations are invited to submit comments on the issues.

The Forest Service is following the requirements in 36 CFR Part 219 for amending the Forest Plan.

Gary E. Cargill, Regional Forester, Rocky Mountain Region, is the responsible official.

The draft supplement to the Environmental Impact Statement should be available for public review and comment by April 1988. The final supplement to the environmental impact statement is scheduled to be completed by September 1988.

Written comments and suggestions concerning the issues and their analysis should be sent to Raymond J. Evans, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416, by September 30, 1987.

Date: August 17, 1987.

S.H. Hanks,

Deputy Regional Forester.

[FR Doc. 87-20139 Filed 9-1-87; 8:45 a.m.]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Oregon

The certification of the Statewide central filing system of Oregon is hereby amended on the basis of information submitted by Barbara Roberts, Secretary of State, for farm products produced in that State as follows:

Barley	Triticale
Corn for grain Oats	Wheat
Rye	
Alfalfa	Hay
Ensilage	Sorghum
Grass & Grain Straw	
Alfalfa Seed	Rape Seed
Bentgrass	Ryegrass
Bluegrass	Timothy
Brome	Vetch
Clover	Wheat Grass
Fescue	Other Grass Seed
Field Peas	Other Legume Seed
Orchardgrass	
Herb	Potatoes
Hops	Sugarbeet
Mint	Vegetable & Flower
Oil Seed	Seeds
Apples	Peaches
Apricots	Pears
Cantaloupes	Plums
Cherries	Prunes
Grapes	Watermelons
Filberts	Walnuts
Blackberries	Elderberries
Blueberries	Gooseberries
Boysen & Youngberries	Loganberries
Caneberries	Marionberries
Cranberries	Raspberries
Currants	Strawberries
Artichokes	Broccoli
Asparagus	Brussel Sprouts
Beans	Cabbage
Beets	Carrots
Cauliflower	Peas
Celery	Peppers
Corn	Pumpkins
Cucumbers	Radishes
Eggplant	Rhubarb
Garlic	Rutabagas
Kohlrabi	Spinach
Lettuce	Squash
Mushrooms	Tomatoes
Onions	Turnip
Bees	Standing Timber
Bees Wax	Trees (Except Standing
Bulbs	Timber)
Greenhouse Stock Honey	Turf Sod
Logs	Worms
Nursery Stock	
Cattle & Calves	Mink
Goats	Mules
Hogs & Pigs	Rabbits
Horses	Sheep & Lamb
Llamas	Wool
Milk	
Broilers	Eggs
Chickens	Geese
Ducks	Turkeys

Fish & Shellfish

The central filing system was previsouly certified, pursuant to section 1324 of the Food Security Act of 1985, for specified farm products produced in that State (51 FR 43647, December 3, 1986).

This amendment is issued pursuant to authority delegated by the Secreatary of Agriculture

Authority: Sec. 1324(c)(2), P.L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: August 28, 1987.

Calvin W. Watkins,

Acting Administrator Packers and Stockyards Administration.

[FR Doc. 87-20118 Filed 9-1-87; 8:45 am]

BILLING CODE 3410-KD-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: September 23, 1987.

Time: 9:00 a.m.

Place: State Department Building, Washington, DC.

Type of meeting: Closed.

Contact: Barry Daniel, Executive Director, General Advisory Committee on Arms Control and Disarmament. Room 5927, Washington, DC 20451, (202) 647-5178.

Purpose of advisory committee: To advise the Director of the U.S. Arms Control and Disarmament Agency cn arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

September 23, 24, 1987

Soviet Arms Control Practices.
Soviet Force Developments
Executive Session.

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to close meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated April 1, 1987, made pusuant to the provisions of section 10 (d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 87-18915 Filed 9-1-87; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Review on Certain Universal Mill Edge Steel Plate; Request For Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products, with respect to certain universal mill edge steel plate.

DATE: Comments must be submitted on or before September 14, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular

product (including substantial objective evidence such as allocation, extended delivery periods, or other relevent factors), an additional tonnage shall be allowed for such product or products * * *".

We have received a short-supply request for certain universal mill edge plate in AISI grades 1060, 1552, 1572, and 15B28–H, which will be used in the manufacture of wearing parts for earth removal and snow removal equipment. The steel plate ranges from 3/4 to 3 1/2 inches in thickness, 9 to 27 inches in width, and 148 to 288 inches in length.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than September 14, 1987. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 27, 1987.

[FR Doc. 87–20199 Filed 9–1–87; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

Announcement of a Workshop for POSIX [1] (IEEE Std. 1003.1) System Implementors

The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces a workshop to discuss implementation issues related to the POSIX Standard, which has been proposed as a Federal Information Processing Standard (FIPS). To assure compatibility/interoperability, NBS has reviewed and analyzed the options that are available for implementing the Standard, and has selected options that will be proposed as part of the Federal Standard. At the workshop, NBS will present the proposed specification and participants will be invited to express their views.

The workshop will be held October 20–21, 1987 at a hotel in the Rockville-Gaithersburg area. Attendance is limited by space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshop.

Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshop.

To register for the workshop, companies may contact: POSIX Workshop, Attn: Debbie Jackson, National Bureau of Standards, Building 225, Room B–252, Gaithersburg, MD 20899, Telephone: (301) 975–3295.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. An NBS representative will confirm workshop registration reservations by telephone. For additional information, contact D. Richard Kuhn, (301) 975–3337.

Date August 26, 1987.

Ernest Ambler,

Director.

[FR Doc. 87–20189 Filed 9–1–87; 8:45 am]

BILLING CODE 3510–CN–M

[1] POSIX is a trademark of IEEE.

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Hobonny Plantation, Inc., From Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

SUMMARY: On July 31, 1987, the Department of Commerce received a letter from Hobonny Plantation, Inc. (Appellant) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the South Carolina Coastal Council to Appellant's consistency certification for U.S. Army Corps of Engineers Permit Application No. P/N 87–2A–158–C, under section 10 of the River and Harbor Act of 1899 and section 404 of the Federal Water Pollution Control Act, for construction of dikes to develop aquaculture ponds in Beaufort County, South Carolina.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: August 27, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87–20127 Filed 9–1–87; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals; Issuance of Permit to John G. Shedd Aquarium (P396)

On June 16, 1987, notice was published in the **Federal Register** (52 F.R. 22834) that an application had been filed by the John G. Shedd Aquarium, 1200 South Lakeshore Drive, Chicago, Illinois 60605 for a permit to import three (3) beluga whales (*Delphinapterus leucas*) for the purpose of public display.

Notice is hereby given that on August 26, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: August 26, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–20114 Filed 9–1–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in Pakistan

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 September 3, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated May 27, 1983 (48 FR 25257), as amended on June 2, 1987, established a new export visa arrangement and exempt certification for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported to the United States.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the export visa requirement to allow entry of certain cotton textile products in Category 369, visaed as 369–MCL or 369–DCL and 369–D or 369–SL, exported from Pakistan to the United States before August 3, 1987. Goods visaed as 369–MCL, 369–DCL or 369–SL and exported on or after August 3, 1987 shall be denied entry. Merchanise in Category 369 exported from Pakistan on or after August 3, 1987 must be visaed as 369–D, 369–R, 369–S or 369–O.

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).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended on June 2, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements which established export visa requirements and exempt certification requirements for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan.

Effective on September 3, 1987 the directive of May 27, 1983, as amended, is further amended to permit entry of cotton textile products, visaed as Category 369–MCL [1] or 369–DCL [1] and 369–D [2] or 369–SL [2], produced or manufactured in Pakistan and exported from Pakistan before August 3, 1987, for which the Government of Pakistan has issued an appropriate export visa. Merchandise in Category 369 exported on or after August 3, 1987 shall be visaed as 369–D [2], 369–R [3], 369–S [4] or 369–O [1]. Entry shall be denied to goods visaed as 369–MCL, 369–DCL, or 369–SL which have been exported from Pakistan on or after August 3, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–20190 Filed 9–1–87; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Competitive Strategies; Closed Session

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Competitive Strategies will meet in closed session on October 16, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceied needs of the Department of Defense. At this meeting the Task Force will periodically review the application of competitive strategies to the selection of technologies, weapons, and support systems including C3 for emphasis by the Department of Defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pul. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–20123 Filed 9–1–87; 8:45 am]
BILLING CODE 3810–01–M

[1] In Category 369, all TSUSA numbers except those in 365.6615, 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440, 366.2840 and 366.2860.

[2] In Category 369, TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[3] In Category 369, only TSUSA number 366.1955.

[4] In Category 369, only TSUSA number 366.2840.

Department of the Army

Open Meeting of the Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installations

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: 23 September 1987.

Time: 0800–1400 Hours.

Place: Fort Drum, New York.

Agenda: The Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installation will meet to familiarize themselves with the water supply and management issues at Fort Drum, New York. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–20140 Filed 9–1–87; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Inland Waterways Users Board; Open Meeting

August 24, 1987.

ACTION: Notice of opening meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: September 28, 1987.

Place: Memphis Cook Convention Center, 255 North Main Street, Memphis, TN 38103.

Time: 10 a.m. to 5 p.m.

Proposed Agenda

A.M. Session

10:00 Business Meeting: Opening Remarks and Old Business
10:30 Discussion of Meeting Objectives and Formulation of Preliminary Board Recommendations

P.M. Session

1:00 Formulation of Interim Board Report
4:00 Public Comment Period
4:30 New Business
5:00 Meeting Adjournment

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Holliday, Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000 at (202) 272–0146.

H.J. Hatch,

Major General, U.S. Army, Executive Director to the Inland Waterways Users Board.

[FR Doc. 87–20141 Filed 9–1–87; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 2, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 27, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Application for the Training Program for Special Programs Staff and Leadership Personnel
Agency Form Number: ED 883
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 60, *Burden Hours:* 2,040
Recordkepping Burden:
Recordkeepers: 0, *Burden Hours:* 0.
Abstract: This application will be used by institutions to apply for funds under the Training Program for Special Program Staff and Leadership Personnel. The Department will use the information collected to award grants for training projects to improve the operation of special programs for students from disadvantaged backgrounds.

Type of Review: Extension
Title: Application for the Endowment Challenge Grant Program
Agency Form Number: ED 2460
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 1,000, *Burden Hours:* 4,000
Recordkeeping Burden:
Recordkeepers: 0 *Burden Hours:* 0
Abstract: This application will be used by institutions of higher education to apply for grants under the Endowment Challenge Grant Program, Title III of the Higher Education Act, as amended. Data collected from the institutions will be used by the Department to make grant awards for the purpose of establishing or increasing endowment funds.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Annual Survey of Children in Institutions for Neglected or Delinquent Children or in Adult Correctional Institutions
Agency Form Number: ED 4376
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 52, *Burden Hours:* 2,000
Recordkeeping Burden:
Recordkeepers: 0, *Burden Hours:* 0
Abstract: This survey will be used by State educational agencies to report (1) the average daily attendance of children in State operated or supported institutions for neglected or delinquent children, and (2) the number of children residing in institutions (other than State operated) for neglected or delinquent children. These data are used in the formula for computation of Chapter 1 grants for State agencies.

Office of Postsecondary Education

Type of Review: Extension
Title: Institutional Quality Control Project and Workbook
Agency Form Number: E40–9P
Frequency: Annually
Affected Public: Businesses or other for-profit; non-profit institutions; small businesses or organizations

Reporting Burden:
Responses: 60, *Burden Hours:* 7,500
Recordkeeping Burden:
Recordkeepers: 0, *Burden Hours:* 0
Abstract: The Quality Control Workbook will be completed by participating financial aid administrators and their staffs to help them monitor their own errors, and design and implement procedures to reduce those errors when administering financial aid.

Type of Review: Reinstatement
Title: Financial Report for the Endowment Challenge Grant Program
Agency Form Number: E40–10P
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 175, *Burden Hours:* 175
Recordkeeping Burden:
Recordkeepers: 175, *Burden Hours:* 350
Abstract: The Endowment grant program consists of matching grants to institutions of higher education which they, in turn, invest in low-risk securities for 20 years. This form will be used by grantees to report to the Department what has happened to their investment and what they have done on their return on the investment. The Department would use the information collected to monitor grantees' compliance with regulations.

Type of Review: Reinstatement
Title: Performance Report for the Patricia Roberts Harris Fellowship
Agency Form Number: ED 591 and 404
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 265, *Burden Hours:* 1,060
Recordkeeping Burden:
Recordkeepers: 0, *Burden Hours:* 0
Abstract: This performance report will be used by institutions of higher education that receive grants under the Patricia Roberts Harris Fellowship program. The data collected on this form will help the Department confirm that the institutions are complying with the law and program regulations in recruiting and selecting students who are eligible for fellowships.

[FR Doc. 87–20162 Filed 9–1–87; 8:45 am]
BILLING CODE 4000–01–M

Intent To Repay to the Montana Board of Regents Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under Section 456 of the General Education Provisions Act (GEPA), the Secretary of Education (Secretary) intends to repay to the Montana Board of Regents (State) an amount equal to 75 percent of the funds recovered by the U.S. Department of Education as a result of a final audit determination. This notice describes the State's plans for the use of repaid funds and the terms and conditions under which the Secretary intends to make these funds available, and invites comments on the proposed grantback.

DATE: All written comments should be received on or before October 2, 1987.

ADDRESS: All written comments should be submitted to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202–5609.

FOR FURTHER INFORMATION CONTACT: Mrs. Sharon A. Jones, (202) 732–2470.

SUPPLEMENTARY INFORMATION:

A. Background

In June 1985, the U.S. Department of Education recovered $40,413.81 from the State in satisfaction of an audit, covering the period from July 1, 1974 to June 30, 1976. The auditors found that several local educational agencies (LEAs) failed to maintain fiscal effort and, therefore, should return funds received in fiscal years 1975 and 1976 under the Vocational Education Act of 1963 (VEA), as amended, 20 U.S.C. 2301 *et seq.* Additionally, the auditors found that the State overreported expenditures for one school district.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the State that resulted in the audit determination have been corrected, and that the State is, in all other respects, in compliance with the requirements of the applicable program;

(2) State has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the State's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Agreement

Pursuant to section 456(a)(2) of GEPA, the State has applied for a grantback of $30,311 and has submitted a plan to use the grantback funds consistent with section 332 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2301 *et seq.* (Supp. II 1984). The audit findings against the State resulted from improper expenditures of VEA funds. However, since the Perkins Act has superseded the VEA, the State's proposal reflects the requirements of the Perkins Act, which—like the VEA—provides for grants to States for vocational education.

The State proposes to use the grantback funds to provide, in the 19 LEAs with violations that resulted in the recovery of funds, vocational interest and aptitude assessments that will give students a better understanding of the vocational options available to them. The State's plan is available on request from the U.S. Department of Education contact person listed above.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan and other information submitted by the State. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Montana Board of Regents under a grantback arrangement.

The grantback award would be in the amount of $30,311, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The State agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements, and

(b) The plan that was submitted in conjunction with the request dated January 8, 1985, as amended on August 16, 1985, Feburary 20, 1987, and April 30, 1987, and any other amendments to that plan that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than September 30, 1988, in accordance with section 456(c) of GEPA and the State's plan.

(3) The State must, not later than December 30, 1988, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Expenditures from the funds received under the grantback arrangement will not be used to meet the "hold-harmless" requirement set forth in section 113(b)(15) of the Perkins Act, which establishes a minimum level of State expenditures for guidance and counseling.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: August 28, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-20163 Filed 9-1-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Floodplain/Wetlands Statement of Findings; Decontamination Research and Development Project Actions for Properties Located in Wayne, NJ

AGENCY: Office of the Secretary, DOE.

ACTION: Final floodplain/wetlands statement of findings.

SUMMARY: The Formerly Utilized Sites Remedial Action Program (FUSRAP), U.S. Department of Energy (DOE), has prepared a floodplain/wetland assessment for proposed remedial actions in the Wayne, New Jersey, area pursuant to 10 CFR 1022.18. Some of the proposed actions will take place within the Pompton River/Sheffield Brook wetlands and floodplains. Following publication of a notice of wetlands involvement (52 FR 12046), DOE completed a floodplain/wetland assessment. The proposed action was identified, environmental impacts examined, and mitigative measures identified. DOE has determined that there are no practicable alternatives to the proposed remedial action and that it has been designed to minimize potential harm to and within the floodplain/wetlands.

The radiological contamination in Sheffield Brook originated from a 2.7 ha (6.6-acre) site located at the intersection of Black Oak Ridge Road and Pompton Plains Cross Road in Wayne Township, Passaic County, New Jersey. The site was used to extract and process thorium and rare earth minerals from monazite sand during the period 1948 to 1971. During the processing operations, some of the various waste residues produced were buried on-site. Liquid effluents were treated in a waste treatment plant and then discharged into a drainage ditch which flowed into Sheffield Brook.

Remedial actions conducted by DOE in previous years have included cleanup of the drainage ditch and the portion of Sheffield Brook between Pompton Plains Cross Road and Farmingdale Road. The proposed action will complete the cleanup of Sheffield Brook from Farmingdale Road to the confluence of the Brook at the Pompton River.

The only alternative to the remedial action is no action. This alternative is not acceptable because it would result in continued potential health risks, continued potential for dispersion of contaminated materials by flooding and biota, and continued adverse social impacts such as concerns about health effects and property values. Thus, DOE plans to complete the remedial action in Sheffield Brook.

The potential effects resulting from the proposed activities include disruption of drainage patterns, erosion and sedimentation, habitat destruction, changes in water temperature, modification of water level, addition of contamination (e.g., engine fuel and oil), and displacement or destruction of biota. Overall impacts to wetland habitat will not be of sufficient magnitude to cause extinction of any species since the area affected is small relative to the total area in the vicinity of the Pompton River basin. Also, the habitat is not unique to the area and is a source of contamination that could adversely impact man and wildlife. The wetland habitat should return to preconstruction conditions within 5 to 10 years after completion of remedial actions due to the mitigative measures taken and the construction techniques used to restore the brook to its former condition.

Mitigative measures DOE will take to reduce the risk of adverse environmental consequences include: implementation of erosion and sedimentation control procedures during construction activities; minimization of changes to existing water regimes; preservation of surface drainage patterns; and seeding and/or replanting of disturbed areas.

Benefits derived from the proposed remedial action have been determined to outweigh the potential environmental impacts. As a result of its review of the environmental impacts, DOE has determined there is no practicable alternative to the proposed action in the floodplain/wetlands and that the proposed action has been designed to minimize harm to and within the floodplain/wetlands. All actions will be in conformity with local ordinances.

A copy of the floodplain/wetland assessment is available from: James W. Wagoner II, Office of Remedial Action and Waste Technology, NE-23, U.S. Department of Energy, Washington, DC 20545.

Issued in Washington, DC, on August 5, 1987.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

[FR Doc. 87-20126 Filed 9-1-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-37-NG]

Application To Amend Authorization To Import Canadian Natural Gas and Withdrawal of Pending Application; Texas Eastern Transmission Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to import Canadian natural gas and withdrawal of a pending application.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 14, 1987, of an application from Texas Eastern Transmission Corporation (Texas Eastern) to amend its existing natural gas import authorization expiring on October 31, 1987, based on a new gas sales agreement executed between Texas Eastern and its Canadian supplier, ProGas Limited (ProGas). The authorization requested would extend the term of the existing authorization from October 31, 1987, through October 31, 2000, and permit Texas Eastern to import gas at its currently authorized level of up to 75,000 Mcf per day during the extended period. The application also requests authorization to import authorized volumes not needed for system system supply for sale in the U.S. spot market by Texas Eastern's and/or ProGas's marketing agents under a special marketing agreement.

Concurrently with this request, Texas Eastern filed a notice of withdrawal of that portion of a previous application filed in ERA Docket No. 85-13-NG which sought extension of the term of this existing authorization from October 31, 1987, through October 31, 1989.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111.

Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on October 2, 1987.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence. Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Texas Eastern is a Delaware corporation with its principal office in Houston, Texas, and is engaged in the business of producing, purchasing, and selling natural gas. Texas Eastern's natural gas supply system extends from the Gulf Coast area through the Appalachian area to the Eastern seaboard in the Philadelphia-New York area plus the Boston area.

Texas Eastern was originally authorized in DOE/ERA Opinion and Order No. 32 (Order No. 32), dated April 24, 1981, to import up to 75,000 Mcf of natural gas per day from Canada through October 31, 1987, via the import point near Emerson, Manitoba, at an import price not to exceed $4.94 (U.S.) per MMBtu. The volumes imported entered the U.S. through existing pipeline facilities of Great Lakes Transmission Company (Great Lakes). Great Lakes delivered the gas to ANR Pipeline Company (ANR) at an existing delivery point near Farwell, Michigan. ANR then delivered the gas to Texas Eastern.

On July 15, 1985, Texas Eastern filed an application with the ERA in ERA Docket No. 85-13-NG seeking to amend the import authorization granted in Order No. 32 to take into account the terms of a May 30, 1985, revision to the gas sales agreement between Texas Eastern and ProGas and to extend the term of the import authorization through October 31, 1989. According to Texas Eastern, the revised agreement was designed to establish market responsive pricing provisions for the imported gas. On March 21, 1986, the ERA issued DOE/ERA Opinion and Order No.112 which amended the import authorization granted by Order No. 32 and allowed Texas Eastern to continue to import the volumes of Canadian gas previously authorized under the terms of the May 30, 1985, revision to the gas sales agreement.

The portion of Texas Eastern's July 15, 1985, application in ERA Docket No. 85-13-NG which sought an extension of the term of the existing import authorization from October 31, 1987, through October 31, 1989, was separated administratively by Order No. 112. Subsequently, the ERA consolidated it with ERA Docket Nos. 82-05-NG, 82-07-NG, and 85-19-NG for purposes of requesting additional comments. In procedural orders issued on March 21, 1986, and May 29, 1986, the ERA directed Texas Eastern to file additional information with respect to all four dockets and granted an indefinite extension of time in which to provide information showing that the proposed imports would be competitive and market responsive. On July 31, 1987, Texas Eastern filed a notice of withdrawal of that portion of its July 15, 1985, application in Docket No. 85-13-NG which sought to extend the term of the authorization through October 31, 1989, and filed a new application which has been docketed and is hereby being noticed in this **Federal Register** as ERA Docket No. 87-37-NG.

Based on a new gas sales agreement with ProGas dated November 1, 1986, as amended on July 9, 1987, which supersedes the previous sales agreement, Texas Eastern's current application requests an extension of the term of its existing import authorization from October 31, 1987, through October 31, 2000, and authority to continue to import for system supply up to 75,000 Mcf of Canadian natural gas per day via the same import and pipeline transportation facilities now being used to deliver gas to Texas Eastern. Texas Eastern also seeks authorization to import authorized volumes not needed for system supply under a November 1, 1986, Texas Eastern/ProGas special marketing agreement which provides that such gas may be released for sale in the U.S. spot market by Texas Eastern's and/or ProGas's marketing agents.

According to the application, the principle changes from the November 1, 1986, gas sales agreement, as amended, are: (1) Elimination of producer fixed costs from ProGas's demand charge; (2) addition of ProGas's fixed costs and the demand charge of NOVA, an Alberta Corporation's (NOVA) demand charge as an element in ProGas's monthly demand rate; (3) provision for natural gas imported but not needed for system supply to be sold on the U.S. spot market by the U.S. marketing agents of Texas Eastern and/or ProGas respectively; and (4) adjustment of ProGas's demand/commodity rates effective August 1, 1987, to comply with FERC Opinion No. 256, (37 FERC Para. 61,215 (December 8, 1986)), and FERC Opinion No. 256-A, (39 FERC Para. 61,218 (May 27, 1987)).

Under the price determination formula contained in the new gas sales agreement, effective August 1, 1987, ProGas's monthly demand charge consists of the demand tolls of TransCanada PipeLines Limited (TransCanada), NOVA's demand charge, and the fixed charges of ProGas, reduced in accordance with the provisions of FERC Opinion" Nos. 256 and 256-A (MDR adjustment). This

formula would result in a demand charge to Texas Eastern as of August 1, 1987, of $11.417 (U.S.) per MMBtu of the daily contract quantity but for the MDR adjustment which reduces the demand charge to $9.5689 (U.S.) per MMBtu. The new agreement further provides that the commodity charge for the gas at the border shall be an amount equal to the commodity charge per MMBtu in Texas Eastern's daily contract quantity rate schedule on file and in effect at the FERC for system supply customers in rate zone C, less an amount equal to the transportation charges for moving the gas from the international border to rate zone C. This formula results in a delivered commodity rate for the gas in rate zone C of $1.8812 (U.S.) per MMBtu and a border commodity rate of $1.76 (U.S.) per MMBtu.

The price determination formula further provides that ProGas's monthly demand charge shall be subject to adjustment for changes in the demand charges of NOVA, TransCanada, and in ProGas's fixed costs. The commodity charge is subject to adjustment for each change in Texas Eastern's commodity charge for firm sales in rate zone C and for changes in the charges for transporting the gas from the international border to Texas Eastern's pipeline system. Except for the MDR adjustment to conform ProGas's demand charge to FERC Opinion Nos. 256 and 256–A, the price of the imported gas may be renegotiated annually, when changes in market-responsive prices occur in Texas Eastern's gas purchase contracts for system supply, when ProGas makes a new PGA filing at the FERC, or when other changes in market or regulatory conditions occur, including a decision by the FERC to authorize a supply reservation charge applicable to the demand charges of Texas Eastern. The price provisions are also subject to renegotiation after a final decision has been rendered in the U.S. appellate courts on the merits of FERC Opinion Nos. 256 and 256–A, and if the quantity of gas Texas Eastern takes under the 1986 gas sales agreement as amended falls below 50 percent of the annual contract quantity.

The new Texas Eastern/ProGas gas sales agreement provides that the minimum annual quantity of gas which Texas Eastern must purchase shall be a quantity which maintains the same ratio of takes to total contract volumes available during the contract year as exists between Texas Eastern's takes and total contract volumes available under contracts with U.S. suppliers having a primary term of more than three years. Credit is given in meeting the minimum annual contract quantity requirement for gas sold on the U.S. spot market under the special marketing agreement between Texas Eastern and ProGas.

In support of its application, Texas Eastern urges that the proposed import is in the public interest because the arrangement will assure that the price of the imported gas is comparable to that of major energy sources, including natural gas, competing in Texas Eastern's market area. Texas Eastern asserts that the price adjustment and renegotiation provisions of the new gas sales contract provide the necessary flexibility so that the imported will remain competitive throughout the term of the authorization requested. According to Texas Eastern, the need for the imported gas is demonstrated by the fact that gas purchased under the new gas sales agreement and under the special marketing agreement will be competitive in the markets served, and that recent levels of gas purchases from ProGas have been at nearly 100 percent of daily contract quantity for system supply.

Texas Eastern contends that the information contained in the application satisfies the information request in the ERA's procedural order of March 21, 1986, in ERA Docket Nos. 85–13–NG, 82–05–NG, 82–07–NG, and 85–19–NG. Texas Eastern notes that it has not yet renegotiated the gas sales contracts underlying the import proposals in the latter three dockets. Texas Eastern requests expeditious processing of its application since the gas flowing under its existing import authorization would be shut off if the term of the authorization expiring on October 31, 1987, is not extended prior to that date.

The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.s.t., October 2, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Texas Eastern's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the

hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

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

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-20125 Filed 9-1-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 87-59; Certification Notice 4]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants; Pennsylvania Power Associates, et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the *Federal Register* a notice reciting that the certification has been filed. Three owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Pennsylvania Energy Associates, York, PA.	8-6-87	Combined cycle.	85	York, PA
Texas Energy Associates, Coahoma, TX.	8-6-87	.....do.....	170	Coahoma, TX
Frontier Energy Associates L.P., Olean, NY.	8-14-87	.....do.....	15	Jefferson Co., PA

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure. Pertinent provisions are restated in the appendix to this notice.

Issued in Washington, DC on August 24, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix

Sec. 201. Coal Capability of New Electric Powerplants; Certification of Compliance

(a) General Prohibitions—Except to such extent as may be authorized under subtitle B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability To Use Coal or Alternate Fuel—An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability To Base Load Powerplants—(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-Certification—(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b).

Such certification shall be effective to establish compliance with the requirement of subsection (a) as the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the **Federal Register** a notice reciting that the certification has been filed.

(2) The Secretary within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

[FR Doc. 87-20226 Filed 9-1-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL86-15 et al.]

Hydroelectric Applications; NC Group et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Declaration of Intention.

b. Project No: EL86-15.

c. Date Filed: December 13, 1985.

d. Applicant: NC Group.

e. Name of Project: Power Creek.

f. Location: On Power Creek near Cordova, Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Barry A. Noah, NC Group, 1013 Diamond Boulevard, #352, Anchorage, Alaska 99515, (907) 346-2302.

i. FERC Contact: Charles Brown, (202) 376-9129.

j. Comment Date: October 2, 1987.

k. Description of Project: The proposed project consists of: (1) A 10-foot-high, 65-foot-long diversion structure; (2) a 4,800-foot-long penstock; (3) a powerhouse containing a generating unit with a capacity of 1500kW; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: All power will be sold to Cordova Electric Cooperative.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: Declaration of Intention.

b. Project No: EL86-46.

c. Date Filed: June 24, 1986.

d. Applicant: Kickapoo Valley Energy Corporation.

e. Name of Project: LaFarge.

f. Location: On the East Branch Kickapoo River, Vernon County, Wisconsin, Southwest ¼ of Section 20, T. 13 N., R. 2 W.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Paul Bader, President, Kickapoo Valley Energy Corporation, Route 1, Box 15, LaFarge, Wisconsin 54639, (608) 625-2515.

i. FERC Contact: Charles Brown, (202) 376-9129.

j. Comment Date: October 2, 1987.

k. Description of Project: The existing project consists of: (1) A 100-foot-long, 10-foot-high dam; (2) 50-foot-long, 18-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 120kW; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: All power is being sold to a local utility company.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. Type of Application: Declaration of Intention.

b. Project No.: EL87-5.

c. Date Filed: December 1, 1986.

d. Applicant: Island Power Company, Inc.

e. Name of Project: Hanalei.

f. Location: On Hanalei River, Kauai County, Island of Kauai, Hawaii.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Kenneth D. Murri, Island Power Company, Inc., 5160 Wiley Post Way, Salt Lake City, Utah 84116, (804) 537-1520.

i. FERC Contact: Charles T. Brown, (202) 376-9129.

j. Comment Date: October 5, 1987.

k. Description of Project: The proposed run-of-river project consists of: (1) A 75-foot-long diversion weir located approximately 11.2 river miles from the mouth of the Hanalei River; (2) a 26,000-foot-long, 54-inch-diameter penstock; (3) a powerhouse containing two Pelton-type turbines with a capacity of 8,000kW; (4) a 3,000-foot-long transmission line; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: Island Power Company, Inc. will sell energy to the Kauai Electric Division of Citizens Utilities Company.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. Type of Application: Major License.

b. Project No.: 2756-004.

c. Date Filed: July 14, 1980, and amended November 3, 1986.

d. Applicant: Burlington Electric Light Department and Winooski One Partnership.

e. Name of Project: Chace Mill.

f. Location: On the Winooski River, in the City of Winooski, in Chittenden County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a-825r.

h. Contact Person: Robert Young, Mgr., Burlington Electric Light Dept., 585 Pine Street, Burlington, VT 05401, (802) 658-0300; John L. Warshow, Winooski One Partnership, 26 State Street, Montpelier, VT 05602, (802) 229-4666.

i. FERC Contact: William Guey-Lee, (202) 376-9827.

j. Comment Date: October 2, 1987.

k. Description of Project: The proposed project would consist of: (1) The existing 194-foot-long, 36-foot-high American Woolen timber-crib dam, to be repaired 8 feet to the original crest elevation of 136 feet N.G.V.D.; (2) a 5.7-acre reservoir; (3) a new 85-foot-long reinforced concrete intake structure; (4) 2 steel penstocks, one 90 feet long and one 74 feet long; (5) a submersible concrete powerhouse containing two 3250-kW generating units; (6) a 75-foot-long, 60-foot-wide tailrace; (7) a fish trap structure; (8) a 100-foot-long transmission line; and (9) appurtenant facilities. The dam is owned by Green Mountain Power Corporation. The estimated annual energy generation is 22 million kWh.

l. Purpose of Project: The energy will be sold to the Vermont Power Exchange.

m. This notice also consists of the following standard paragraphs: B, C, D1.

n. The amended application was filed in conjunction with a proposed settlement agreement for Commission approval. The issuance of this notice does not reflect a judgment by the Commission that the amended application conforms to the requirements of the Commission's regulations, and is without prejudice to the City of Winooski's rights pertaining to its preliminary permit application for Project No. 3101.

5 a. Type of Application: Transfer of License.

b. Project No.: 5000-010.

c. Date Filed: July 20, 1987.

d. Applicant: Lawrence R. Taft (licensee) and Trafalgar Power, Inc. (transferee).

e. Name of Project: Kayuta Lake.

f. Location: On the Black River in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John M. Cutler, McCarthy, Sweeney & Harkaway, P.C., Suite 1105, 1750 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 393–5710.

i. FERC Contact: Steven H. Rossi, (202) 376–9819.

j. Comment Date: October 5, 1987.

k. Description of Transfer: On July 20, 1987, Lawrence R. Taft (licensee), and Trafalgar Power, Inc. (transferee), filed a joint application for transfer of a minor license for the Kayuta Lake Project No. 5000.

The purpose of the proposed transfer of the license is to facilitate the financing of the licensed project. The proposed transfer would not result in any changes in the proposed development. All engineering, design and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and the conditions of the license.

l. This notice also consists of the following standard paragraphs: B & C.

6 a. Type of Application: Exemption from Licensing.

b. Project No: 10163–000.

c. Date Filed: November 10, 1986.

d. Applicant: Cresticon, Inc.

e. Name of Project: Cresticon Project.

f. Location: On the Millers River in the Town of Athol, Worcester County, Massachusetts.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Applicant Contact: Mr. Brook J. Pennypacker, Hydro-Tech, Inc., P.O. Box 277, South Barre, MA 01074, (617) 355–2139.

i. FERC Contact: Robert W. Bell—(202) 376–5706.

j. Comment Date: October 2, 1987.

k. Description of Project: The proposed project would consist of the following two developments:

(A) Upper Cresticon Development: (1) An existing 79-foot-long, 10-foot-high stone and concrete gravity dam; (2) the installation of 2-foot-high flashboards; (3) an impoundment having a surface area of 8.5 acres with negligible storage and normal water surface elevation of 569.06 feet m.s.l.; (4) an existing 334-foot-long power canal; (5) an existing powerhouse containing one generating unit with an installed capacity of 250 kW; (6) an existing 223-foot-long tailrace; (7) an existing 90-footlong, 13.8-kV transmission line; and (8) appurtenant facilities.

(B) Lower Cresticon Project: (1) An existing 135-foot-long, 3-foot 10-inch-high concrete and stone dam; (2) installation of 2-foot-high flashboards; (3) an impoundment having negligible storage and surface area and a normal water surface elevation of 555.2 feet m.s.l.; (4) a 670-foot-long power canal; (5) an existing powerhouse containing one generating unit with an installed capacity of 250 kW; (6) an existing tailrace; (7) an existing 1,200-foot-long, 13.8-kV transmission line; and (8) appurtenant facilities.

The applicant estimates the annual average generation would be 2,412,000 kWh. All energy generated would be utilized by the factory and excess would be sold to Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3A.

7 a. Type of Application: Minor License (5MW or Less).

b. Project No.: 10198–000.

c. Date Filed: November 28, 1986.

d. Applicant: Pelican Utility Company.

e. Name of Project: Pelican Hydroelectric Water Power Project.

f. Location: In the Tongass National Forest on Pelican Creek, near the city of Pelican, Alaska. Unsurveyed Township 45 S, Range 57 E of the Copper River Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Tom Whitmarsh, P.O. Box 601, Pelican, AK 99832, (907) 735–2213.

i. FERC Contact: Thomas Dean, (202) 376–9275.

j. Comment Date: October 23, 1987.

k. Description of Project: The proposed project consists of rehabilitating the 135-foot-long, 22-foot-high rock-filled timber crib Pelican Dam. The rehabilitation would consist of: (1) A 16-foot-wide by 30-foot-high rock-filled crib constructed against the downstream face of the existing structure, raising Pelican Dam approximately 7 feet; (2) an intake structure; (3) a 48-inch-diameter, 776-foot-long woodstave pipe to a surge tank; (4) a 36-inch-diameter, 330-foot-long penstock leading to; (5) a powerhouse containing two generating units rated at 600 kW and 100 kW operating under a gross head of 115 feet; (6) an 80-foot-long, 0.48-kV transmission line; and (7) appurtenant facilities. The applicant estimates the average annual energy production to be 2.75 GWh. The estimated cost of the project is $956,419.

l. Purpose of Project: Applicant proposes to supply electrical power generated at the facility to the city of Pelican.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and Dl.

8 a. Type of Application: License (5MW or Less).

b. Project No.: 8497–003.

c. Date Filed: January 5, 1987.

d. Applicant: Mesa II, Inc.

e. Name of Project: Mesa II.

f. Location: On the Middle Fork of the Weiser River within the Payette National Forest in T15N, RlE, near Council in Adams County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Paul E. Scofield, Secretary, Mesa II, Inc., 1107 Balsam, Boise, ID 83706, (208) 888–6764.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: October 1, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) A 6.5-foot-high concrete diversion dam at elevation 4,500 feet; (2) a 22,100-foot-long penstock with a diameter ranging from 48 inches to 60 inches; (3) a powerhouse at elevation 3,200 feet containing one generating unit with a rated capacity of 5 MW; (4) a 150-foot-long tailrace; and (5) a 3.6-mile-long, 69-kV transmission line to an existing Idaho Power Company line near Highway 95. The average annual energy production is estimated to be 15 GWh. The cost of the project is estimated to be $5,320,000.

l. Purpose of Project: The power produced is to be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and Dl.

9 a. Type of Application: Preliminary Permit.

b. Project No: 5903–000.

c. Date Filed: January 21, 1982.[1]

d. Applicant: Gem Irrigation District and Ridgeview Irrigation District.[2]

e. Name of Project: Black Canyon.

f. Location: At the United States Bureau of Reclamation's existing Black Canyon Dam on the Payette River in Sec. 22, T7N, RlW, near Emmett in Gem County, Idaho.

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[1] This application was rejected on February 26, 1982, and was reinstated by Commission order issued March 20, 1987.

[2] The original permit application was filed by Black Canyon Irrigation District, Gem Irrigation District and Ridgeview Irrigation District. On May 28, 1987, the application was amended to delete the Black Canyon Irrigation District.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ilene Garland, Hosey & Associates Engineering Company, 2850 Northrup Way, Bellevue, WA 98004, (206) 827–8661.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: October 5, 1987.

k. Description of Project: The proposed run-of-the-river project would use only water spilled from the existing Black Canyon Reservoir in excess of that used by the existing power plant and that diverted for irrigation and would consist of the following: (1) A widened canal at the South Main Canal head-works necessary to carry spill flows, in addition to the irrigation supply, to a bifurcation which will separate the irrigation from the power flow; (2) four 10-foot-long pen-stocks; (3) a powerhouse on the left bank of the Payette River at elevation 2,407 feet containing two generating units with a total rated capacity of 24,000 kW; and (4) a 300-foot-long transmission line. Applicant estimates the average annual energy production to be 62 gWh and the cost of the work to be performed under the preliminary permit to be $120,000.

l. Purpose of Project: The power produced is to be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No: 10439–000.

c. Date Filed: July 1, 1987.

d. Applicant: CRV Corporation.

e. Name of Project: Crystal River.

f. Location: On the Crystal River in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: William J. Kenney, Carlson & Warren, Suite 209, 2600 Virginia Avenue, NW., Washington, DC 20037, (202) 965–7040.

i. FERC Contact: Hector M. Perez (202) 376–1669.

j. Comment Date: October 5, 1987.

k. The proposed run-of-river project would consist of: (1) Reconstruction of a 5-foot-high, 7-foot-long wing wall with a top elevation of 8,409 feet msl, (2) a new 36-inch-diameter, 3,900-foot-long penstock; (3) a new powerhouse with an installed capacity of 4,900 kW; (4) a new 150-foot-long tailrace; (5) a new 14.4-kV short transmission line; and (6) other appurtenances. The applicant estimates an average annual generation of 13,600,000 kWh. The project would occupy lands of the White River National Forest.

l. Purpose of Project: Project energy would be sold to the Holy Cross Electric Association.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of prelimianry engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising adminstration over

fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l*(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time sent for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 28, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20198 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI61-426-000 et al.]

Applications for Certificates, Abandonments of Service and Petitions To Amend Certificate [1]; Samson Resources Co.

August 28, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 14, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Puchaser and location	Price per Mcf	Pressure base
CI61-426-000, E, Aug. 24, 1987	Samson Resources Co., Samson Plaza, Two West Second Street, Tulsa, Oklahoma 74103.	Arkla Energy Resources, a division of Arkla, Inc., Red Oak Field, Leflore County, Oklahoma.	(1)	
CI87-827-000, E, Aug. 17, 1987	Samson Resources Co	Mid Louisiana Gas Company and Arkla Energy Resources, a division of Arkla, Inc., Vixen Field, Caldwell Parish, Louisiana.	(2)	
CI87-541-000, B, Aug. 24, 1987 [3]	Jorguss Oil Corp., 407 N. Big Spring, Suite 200, Midland, Texas 79701.	El Paso Natural Gas Company, Sprayberry Trend Area, Irion County, Texas.	(4)	
CI87-542-000, B, Aug. 24, 1987 [3]	Evelyn Gruss Lipper & Evelyn Gruss Lipper Trust	do	(4)	
CI87-543-000, B, Aug. 24, 1987 [3]	Gruss Petrroleum Corp	do	(4)	
CI87-544-000, B, Aug. 24, 1987 [3]	Martin D. Gruss	do	(4)	
CI87-545-000, B, Aug. 24, 1987 [3]	Gruss Petroleum Corp	El Paso Natural Gas Company, Sprayberry Trend Area, Upton County, Texas.	(4)	
CI87-749-000, B, July 7, 1987	Oakwood Resources Inc., P.O. Box 740516, Dallas, Texas 75374-0516.	Transwestern Pipeline Company, South Follett (Morrow) Field, Lipscomb County, Texas.	(5)	
CI87-828-000, B, Aug. 17, 1987	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	ANR Pipeline Company, OCS Lease No. G-2398, High Island Blk. A-273, Offshore Texas.	(6)	

Docket No. and date filed	Applicant	Puchaser and location	Price per Mcf	Pressure base
CI87-829-000, B, Aug. 17, 1987	Highland Production Company P.O. Box 63267, Odessa, Texas 79762.	Northern Natural Gas Company, Bailey Lease, Ozona, N.E. Field, Crockett County, Texas.	(7)	
CI87-830-000, B, Aug. 17, 1987	Southwest Royalties, Inc., P.O. Drawer 10885, Midland, Texas 79702.	El Paso Natural Gas Company, Amacker-Tippett Field, Upton County, Texas.	(8)	
CI87-831-000, B, Aug. 17, 1987	....do	El Paso Natural Gas Company, Amacker-Tippett Field, Upton County, Texas.	(8)	
CI87-832-000, B, Aug. 17, 1987	Brookover Enterprises, c/o R.W. Lange, P.O. Box 1034, Garden City, Kansas 67846.	Panhandle Eastgerm Pipe Line Company, Novinger Marmoton Field, Meade County, Kansas.	(9)	
CI87-835-000, B, Aug. 17, 1987	Lone Wolf Producing Company, P.O. Drawer 11150, Midland, Texas 79702.	ARCO Oil and Gas Company/Northern Natural Gas Company, Robinson #1 & #2 wells, E/2 SE/4, Section 39, Block I, GH & SA RR Co., Survey, Schleicher County, Texas.	(10)	
CI87-837-000 (CI61-1284), B, Aug. 19, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75331.	Arkansas Louisiana Gas Company, Vixen Field, Caldwell Parish, Louisiana.	(11)	
CI87-838-000 (CI63-819), B, Aug. 19, 1987.	....do	Northwest Central Pipeline Corporation, Northwest Lovedale Field, Harper County, Oklahoma.	(12)	
CI87-839-000 (CI65-1150), B, Aug. 19, 1987.	....do	ANR Pipeline Company, Gageby Creek Field, Wheeler County, Texas.	(12)	
CI87-'840-000 (G-18859), B, Aug. 19, 1987.	....do	KN Energy, Inc., Camrick Gas Area, Texas County, Oklahama.	(12)	
CI87-843-000 (CI77-484), B, Aug. 10, 1987.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046-0957.	Transwestern Pipeline Company, West Atoka Field, Eddy County, New Mexico.	(13)	
CI87-841-000 (G-19138), Aug. 19, 1987.	ARCO Oil Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, South Pass Block 30 Field, Plaquemines Parish, Louisiana.	(14)	
CI87-844-000, B, Aug. 20, 1987	Celeste C. Grynberg, 500 So. Quebec, Suite 500, Denver, CO 80237.	Mountain Fuel Resources, Inc., Government Stauffer #1-25 Well, Blue Gravel Field, Section 25-T9N-R91W, Moffat County, Colorado.	(15)	

[1] Effective April 1, 1983, Applicant acquired acreage from Shell Western E&P Inc. in the Red Oak Field.

[2] Effective December 1, 1985, Applicant acquired acreage from Shell Western E&P Inc. in the Vixen Field. Effective January 1, 1987, Applicant Acquired acreage from ARCO Oil and Gas Company in the Vixen Field.

[3] This application was noticed on May 12, 1987. However, that notice did not include Applicants' additional request received August 24, 1987, to grant Applicant three-year pregranted abandonment of sales for resale in interstate commerce under its small producer certificate.

[4] Applicant requests permanent abandonment of gas sales to El Paso. Applicant states that the wells are becoming uneconomic to produce due to natural decline in oil and gas reserves and low prices. Applicant proposes to seek alternative markets and has requested three-year pregranted abandonment. Jogruss Oil Corp., Evelyn Gruss Lipper, Martin D. Gruss, and Gruss Petroleum Corp.'s (CI87-545-000) wells produce NGP Section 104 flowing gas with estimated deliverability of 1 Mcf/d, 60 Mcf/d, 25 Mcf/d and 100 Mcf/d, respectively. Gruss Petroleum Corp.'s (CI87-543-000) wells produce NGPA section 104 flowing and 104 1973-1974 biennium gas with estimated deliverability of 180 and 115 Mcf/d.

[5] Due to marketing and operational problems with the current purchaser, gas sales have been limited and intermittent. Applicant, desires to abandon gas in excess of the current purchaser's needs and sell the gas to another purchaser.

[6] Production ceased from the subject lease on 9-16-86, and the lease terminated on 12-16-86.

[7] Applicant request three-year limited-term abandonment with progranted abandonment. The contract's primary term expired in April 1987. Estimated deliverability is 243 Mcf/d. The gas is NGPA section 104 flowing gas. Applicant wishes to sell gas in the spot market.

[8] Applicant's gas well gas production is subject to significant curtailment. Applicant desires to improve gas sales through the spot market. Applicant also requests a three-year progranted abandonment.

[9] Uneconomical to produce.

[10] Lone Wolf's contract with ARCO has expired under its own terms. ARCO Oil and Gas Company's residue purchaser has indicated that its market demand is deteriorating as a result of its high cost of gas. The curtailment will make operations of the well uneconomical for ARCO as well as Lone Wolf causing severe economic hardship on Lone Wolf. Lone Wolf has secured a market which is ready, willing and able to take gas from the wells, thus preventing the possibility of premature abandonment of this well and loss of remaining reserves.

[11] By assignment effective 1-1-87, ARCO assigned its interest in certain acreage to Samson Resources Company.

[12] By assignment effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.

[13] By assignment effective 3-1-87, Mobil assigned its interest in the Ann M. Johnson lease to Petrus Management Corporation, General Partner of Petrus Oil Company.

[14] The gas sales contract expired by its own terms 3-15-81. The only lease dedicated to the subject contract, State Lease 2716, was surrendered May 1968.

[15] Purchaser has removed its meter and purchase equipment from the well, it is no longer possible for Applicant to deliver any gas to purchaser. Applicant desires to sell any potential production from the #1-25 well to Rocky Mountain Natural Gas, an intrastate purchaser.f

Filing Code: A-Initial Service; B-Abandonment; C-Amendment to add acreage; D-Amendment to delete acreage; E-Total Succession; F-Partial Succession.

[FR Doc. 87-20153 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-62-000]

Petition To Reopen Well Category Determination; Ohio Department of Natural Resources

August 28, 1987.

On July 13, 1987, the Ohio Department of Natural Resources (ODNR) filed a petition to reopen well category determination. ODNR requests that the Commission remand to it a determination that gas produced from the Gills No. 5 well does not qualify under section 108 of the Natural Gas Policy Act of 1978 (NGPA). ODNR states that Wynn Oil & Gas (Wynn) filed a section 108 category application with ODNR on May 21, 1984. A negative determination followed and was filed with the Commission March 20, 1985, becoming final April 26, 1985. ODNR states that the negative determination was based on a failure to receive updated production information. This discrepancy has been corrected, and ODNR states that an affirmative NGPA section 108 well category determination should be issued.

The procedures applicable to the conduct of this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

FR Doc. 87-20154 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-60-000]

Petition To Reopen and Vacate Final Well Category Determination; August 28, 1987.

Take notice that on July 6, 1987, Transcontinental Gas Pipe Line Corporation (Transco) filed pursuant to section 503(d) of the Natural Gas Policy Act of 1978 (NGPA)[1] and § 275.205[2] of the Federal Energy Regulatory Commission's (Commission) regulations a petition to reopen and vacate a deep high-cost well category determination made pursuant to section 107(c)(1) of the NGPA[3] for the, OCS-G-1960 No. A-3 well, which is located in the South Timbalier Block No. 148, Offshore Louisiana. C&K Marine Production (now Enstar Petroleum Company) made the filing with the United States Geological Survey (USGS) for the NGPA section 107(c)(1) determination for the OCS No. A-3 well. The USGS approved such filing and submitted notice of such determination to the Commission on May 6, 1980. That determination became final on June 19, 1980, pursuant to § 275.202(a) of the Commission's regulations, 45 days following notification.

Transco states that the USGS relied on incorrect data in determining that gas produced from the OCS No. A-3 well qualified for NGPA section 107(c)(1) incentive pricing. Transco states that the statement to the USGS that the OCS No. A-3 well's depth exceeded 15,000 feet was an untrue statement of material fact. Transco states that its review of pertinent well log data showed that the depth of the OCS No. A-3 well was never completed below 15,000 feet, and that, in accordance with the Commission's regulations, gas produced from such well whose depth was less than 15,000 feet cannot qualify as deep high-cost gas. Transco states that even though the gas produced from the well never qualified for NGPA section 107(c)(1) status and even though the NGPA section 107(c)(1) gas was decontrolled November 1, 1979, it has paid the NGPA section 107 (c) (1) price through January 1, 1987 for gas produced from the OCS No. A-3 well. Transco believes that the gas produced from the OCS No. A-3 well should be qualified for NGPA section 102(d) incentive pricing.

Transco requests that the Commission (1) reopen and vacate the well category determination granted to Enstar by the USGS; (2) find that gas from the OCS No. A-3 well should have been classified as NGPA section 102(d) gas; and (3) order Enstar, *et al* to refund to Transco the amounts by which Transco's payments exceeded the maximum lawful price for NGPA section 102(d) gas.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211 (1987)). All motions to intervene or protest should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20155 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-1-M

[1] 15 U.S.C. 3413(d) (1982).

[2] 15 U.S.C. 3317(c)(1) (1982).

[3] 15 U.S.C. 275.202(a) (1987).

[Docket No. SA87-52-000]

Applications; Petition for Adjustment; Beren Corp., Petitioner

August 28, 1987.

Take notice that on June 18, 1987, Beren Corporation (Petitioner) filed with the Commission pursuant to section 502(c) of the Natural Gas Policy Act of 1978, a petition for adjustment requesting that the Commission authorize and confirm the repayment of certain overpayments for gas purchases, which repayments would be made from proceeds of current and future gas sales made by Petitioner to KN Energy, Inc. Petitioner also requests that the Commission eliminate or reduce any interest due on the repayment after August 30, 1985, when Petitioner notified KN Energy of the overpayments.

Petitioner operates for interest owners of three leases in the Shelda Area in Cheyenne County, Nebraska, namely the Nelson, the Nelson A, and the Nelson H, (Nelson Leases). There are four producing wells from which casinghead gas is produced on the Nelson lease, one on the Nelson A lease and one on the Nelson H Lease. All six of these wells produced gas before the enactment of the NGPA, November 1, 1978.

Since gas sales from the "Nelson Leases" began in June 1978, Petitioner has sold all such gas production to KN Energy, Inc. (KN) (or its predecessor in interest), pursuant to a March 7, 1978, gas purchase contract. Under this contract KN paid Petitioner the highest gas prices allowed under the NGPA. However, when the NGPA became effective (November 1, 1978), the Nelson and Nelson A wells qualified only as section 104 NGPA gas, while the Nelson H No. 1 qualified as section 102(a)(2) NGPA gas (New Onshore Well) and associated higher pricing. Petitioner certified gas sales at section 102 NGPA pricing for the Nelson H No. 1 on February 21, 1979 and promptly notified KN of the same.

In February 1979, KN began paying Petitioner the section 102(a)(2) NGPA price for gas production from the Nelson H No. 1. Unbeknown to Petitioner, KN also began paying Petitioner such prices for gas production from the Nelson and Nelson A Leases. From approximately February 1979 through August 1985, KN paid Petition section 102 NGPA prices for all gas produced from the three "Nelson Leases". Such payments constituted overpayments for gas from the Nelson and Nelson A leases which should have been paid at the lower section 104 NGPA prices. Petitioner asserts that KN never notified it of the overpayments even though KN had the contractual duty to monitor production of the "Nelson Leases". Petitioner discovered the overpayments in 1985 during an audit of Btu adjustments to gas produced from wells in the Shelda area, and thereafter notified KN of the overpayments. In October 1985, KN suspended payments for purchases from the three "Nelson Leases" and now demands repayment of overpayments from February 1979 through October 1985 in the principal amount of $458,361.05 with alleged interest of $257,008.32. KN states that the payments suspended from the three "Nelson Leases" from October 1985 to April 30, 1987 reduced the principal owed to $358,604.56 with alleged accrued interest through April 1987 of $309,745.59. Both Petitioner and KN agreed that KN should withhold payment for gas purchases made from all of the wells under the contract until the overpayments are made up in gas supplies.

Petitioner argues that requiring the interest owners to pay KN interest on the overpayments would constitute special hardship, inequity, and unfair distribution of the burdens because it was KN's contractual duty to monitor the gas allocation from the three Nelson Leases and therefore that they should have discovered these overpayments. Petitioner claims it acted in good faith,

is without fault, and could not have discovered the overpayment before 1985. In support of its argument, Petitioner asserts that it originally notified KN that only the Nelson H No. 1 qualified for section 102 ceiling prices and immediately informed KN when it discovered the overpayments. Further, Petitioner asserts that KN waited 10 months after notification of the overpayments before demanding interest payments or principal refunds. Petitioner also argues that the total amount that interest owners would have to pay is greater than the undiscounted future gross gas revenue expected to be produced from the leases. This result, Petitioner asserts, is unfair and produces a hardship. Finally, Petitioner asserts that it never used the overpayments to its advantage and thus repayment of interest at the prime rate compounded quarterly is unjustified and punitive. Petitioner requests that if the Commission does determine that interest on the overpayments is due, that the amounts should be limited to one-half of the interest demanded by KN.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20156 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-816-000]

Notice of Application; LL&E Gas Marketing, Inc.

August 26, 1987.

Take notice that on August 7, 1987, LL&E Gas Marketing, Inc. (LGM), of 909 Poydras Street, New Orleans, Louisiana 70112, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. sections 716 and 717 and Parts 154 and 157 of the Commission's regulations [18 CFR Parts 154 and 157 (1987)], for a blanket certificate and pregranted abandonment authorization for a three year term which would include (1) blanket certificate authorization for the resale in interstate commerce of natural gas which is committed or dedicated to interstate commerce but for which the prior seller has obtained abandonment authorization and blanket certificate authorization for a new sale of the gas; and natural gas which is subject to the Commission's NGA jurisdiction but which has not previously been sold in interstate commerce (whether or not the gas was subject to a prior contract) and (2) pregranted abandonment on all gas which is subject to the blanket certificate in item (1) above so LGM can sell gas in the spot and other markets on behalf of itself and others. This application is on file with the Commission and open to public inspection.

Further LGM requests a waiver of the Commission's rules and regulations (now effective or hereinafter promulgated) to the extent that they are inconsistent with the blanket certificate and pregranted abandonment authorization requested herein. Also LGM requests a waiver of Part 154 of the Commission's regulations concerning the establishment and maintenance of rate schedules, and the filing of blanket affidavits pursuant to §§ 154.94(h) and 154.94(k) of the regulations (in addition to any other such provisions) and finally, LGM requests that the Commission assert jurisdiction over it pursuant to the NGA only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20157 Filed 9-1-87; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CI87-758-000]

Application for Permanent Abandonment With Three-Year Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate; Natural Resource Management

August 28, 1987.

Take notice that on July 9, 1987, as supplemented July 21, 1987, Natural Resource Management Corporation (NRM), 26th floor, San Jacinto Tower, 2121 San Jacinto Street, Dallas, Texas 75201, filed pursuant to section 7 of the Natural Gas Act and Part 157 and §§ 2.76 and 2.77 [1] of the Commission's Regulations thereunder, an application for permanent abandonment with three-year limited-term pregranted abandonment for future sales of the released gas under its small producer certificate, all as more fully set forth in said application on file with the Federal Energy Regulatory Commission and open to public inspection.

Approval would authorize NRM to make sales of natural gas released from contract by Southern Natural Gas Company (SONAT) with pregranted abandonment tied to the expiration of future sales contracts. All released gas will be subject to the provisions of the Natural Gas Act, and is subject to the maximum lawful ceiling prices under the Natural Gas Policy Act.

NRM submits that pursuant to agreements dated April 1, 1987, NRM and SONAT have agreed that NRM will forever waive and release SONAT from any retrospective and prospective take-or-pay liability under the contracts with respect to which permanent abandonment is sought, contingent upon NRM receiving the authorization requested. Once the requested authorities are granted, NRM will make released gas available on a nondiscriminatory basis to SONAT's

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or the parties have entered into a take-or-pay buy-out.

customers and any other interested parties. The gas will be sold at competitive terms. NRM further submits that the requested pregranted abandoment authority is necessary to permit NRM to engage in such competitive sales. NRM states its willingness to accept a three-year term for the requested pregranted abandonment authority, so long as such acceptance is without prejudice to any abandonment rights that may be conferred by a final rule in Docket No. RM87–16–000.

NRM states that as a result of a severe imbalance between the supply and demand for SONAT's system gas supplies, SONAT has reduced substantially its takes of gas all of its producer-suppliers, including NRM. NRM states that the three contracts subject to the instant application provide for SONAT to take-or-pay for 80 percent of deliverability from NRM on an annual basis. The three contracts cover sales from the Bayou Postillion Field, Iberia and St. Martin Parishes, Louisiana. Current estimated deliverability from NRM is 2,906 Mcf per day. The gas is NGPA section 104 flowing (92%) and 106(a) (8%) gas. Total recoverable reserves are approximately 6,229,007 Mcf. NRM states that SONAT faces potential take-or-pay liability to NRM under the subject contracts for past and future periods.

NRM states that to resolve the potential take-or-pay liability to NRM, SONAT and NRM entered into two separate agreements dated April 1, 1987.

The first of these agreements effects only a temporary and partial solution to the potential take-or-pay dispute between NRM and SONAT. SONAT has agreed to temporarily release up to the entire volume of gas available from NRM under these contracts pursuant to SONAT's limited-term abandonment and sales authority granted in Docket No. CI86–371–000, *et al.*, (36 FERC ¶ 61,401 (1987)) as extended and expanded in Docket Nos. CI86–371–001 and CI86–392–001 (38 FERC ¶ 61,347 (1987)). This temporary release agreement provides for credit to SONAT offsetting its take-or-pay liability to NRM under the contracts to the extent of volumes released and sold to another purchaser.

The parties' second agreement provides for termination of the three gas purchase contracts effective upon NRM obtaining the abandonment authority requested herein. Significantly, the agreement provides for the permanent release of SONAT from any retrospective or prospective take-or-pay liability under the contracts once abandonment authority is granted and the agreement to terminate becomes effective.

Thus, under existing authorities, NRM and SONAT have agreed to a temporary and partial solution to reduce SONAT's potential take-or-pay liability to NRM on a prospective basis from April 1, 1987. The authority requested herein, once granted, will trigger a complete and permanent release of SONAT from such liability both prospectively and for past periods.

Since Applicant alleges that it is subject to substantially reduced takes without payment, and has entered into a take-or-pay buy-out and requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20158 Filed 9–1–87, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–826–000]

Application; Standard Gas Marketing Co.

August 28, 1987.

Take notice that on August 17, 1987, Standard Gas Marketing Company (Standard Gas) of 5151 San Felipe, P.O. Box 4587, Houston, Texas 77210, filed an application under Sections 4 and 7 of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing Standard Gas to make sales for resale in interstate commerce, without supply or market restrictions, of any gas subject to Natural Gas Act jurisdiction, with pregranted abandonment of any such sale. The gas that Standard Gas would be purchasing and reselling under the blanket certificate would be gas released under other LTA authorizations, gas released pursuant to the Order No. 451 series, and any other natural gas subject to the Commission's Natural Gas Act jurisdiction which has been freed from requirements for continued deliveries to the previously certificated purchaser.

Standard Gas requests that the Commission waive Part 154 of its regulations as to the establishment and maintenance of rate schedules. Standard Gas requests permission to automatically collect the appropriate monthly adjustments under the Commission's wellhead ceiling price regulations without the filing of blanket affidavits pursuant to § 154.94(h). In addition, Standard Gas requests that, to the extent it qualifies for collection of any applicable allowances under section 110 of the Natural Gas Policy Act of 1978 and Subpart K, Part 271 of the Commission's regulations, it be permitted to collect such allowance without the filing of affidavits pursuant to § 154.94(k) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 14, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–20159 Filed 9–1–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA87–55–000]

Petition for Adjustment; Tana Oil and Gas Corp.

August 28, 1987.

Take notice that on July 2, 1987, Tana Oil and Gas Corporation (Tana) filed with the Commission a petition for an adjustment pursuant to section 502(c) of

the Natural Gas Policy Act of 1978 (NGPA) requesting an exemption from the requirements of § 273.202 of the Commission's regulations (18 CFR 273.202). Section 273.202 permits a seller to begin collection of a particular price for natural gas only after a well category application has been filed with the appropriate jurisdictional agency. Tana asserts that it failed to timely file its section 102 well category application due to circumstances beyond its control, and requests that it be permitted to collect the section 102 price for certain first sales of natural gas from its Hostetter No. 2 well. Without a waiver of § 273.202, Tana could only collect the section 109 price.

Tana advises that on April 22, 1986, during the drilling of the Hostetter No. 2 well located in McMullen County, Texas, an equipment failure caused the well to blow out of control. All of Tana's supervisory personnel were called to the location to supervise the installation of facilities to divert the gas so that the well could be brought under control. On April 26, 1986, the first of two sales lines was laid to Tana's gas treating plant, and sales of gas to Texas Eastern Transmission Corporation commenced. During the course of the emergency, all of Tana's supervisory personnel contained their efforts to control the well, until it was finally controlled on May 11, 1986, at which time sales were discontinued so that repairs could be made and the well completed.

Tana states that due to the blowout of the Hostetter well, it failed to file a section 102 application for the well with the Texas Railroad Commission (TRC) prior to commencing sales to Texas Eastern. Tana claims that it was necessary to immediately commence sales in order to bring the well under control and that the Tana personnel who would have prepared the well category application were not available because of the emergency situation at the well site. Tana also states that the TRC requires that a well category application be accompanied by a completion report, and that a completion report could not have been prepared prior to May 11, 1986. Tana asserts that it would suffer a special hardship if it is unable to collect the section 102 price in place of the section 109 price for natural gas sales from the Hostetter well during the period of emergency, from April 26, 1986 to May 11, 1986. According to Tana, the difference between its contract price of $3.25 per MMBtu and the section 109 price for the 119.320 MMBtu delivered during the fifteen-day period in question is $81,614.88.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20160 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-825-000]

Application; V.H.C Gas Systems, L.P.

August 27, 1987.

Take notice that, pursuant to sections 4 and 7 of the Natural Gas Act ("NGA") 15 U.S.C. 717c and 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission ("Commission") regulations Under the NGA, 18 CFR Parts 154 and 157, V.H.C Gas Systems, L.P. ("V.H.C") filed on August 14, 1987, an application which requests (1) an order (a) issuing a blanket certificate of public convenience and necessity for the sale for resale of gas (including gas qualifying under sections 102(d), 104, 106(a), 107(c)(5), 108 and 109 of the Natural Gas Policy Act ("NGPA")) in interstate commerce by V.H.C and any producer from whom V.H.C purchases gas, (b) issuing a blanket certificate of public convenience and necessity for sales for resale of gas in interstate commerce by producers through V.H.C as their agent, and (c) authorizing pre-granted abandonment of sales authorized in (a) and (b) above.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 11, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20161 Filed 9-1-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $135,000 (plus accrued interest) obtained from Thriftyman, Inc. of Dallas, Texas. The funds will be distributed in accordance with DOE's special refund procedures pursuant to 10 CFR Part 205, Subpart V.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed no later than December 1, 1987, and should be addressed to: Thriftyman Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0018.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION:

In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies obtained from Thriftyman, Inc. The firm remitted monies to the DOE to settle possible allocation violations with respect to its sale of motor gasoline. The firm's payments are being held in an interest-bearing escrow account pending distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the

consent order fund. 52 FR 17821 (May 12, 1987).

As the Decision and Order indicates, applications for refund from the consent order fund may now be filed. Applications will be accepted provided that they are filed no later than 90 days after the publication of this Decision and Order in the **Federal Register**. Applications will be accepted from customers who were entitled to purchase motor gasoline from Thriftyman during the consent order period. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: August 25, 1987.

George B. Breznay,

Director, Office of Hearings ad Appeals.

Decision and Order of the Department of Energy

August 25, 1987.

Implementation of Special Refund Procedures

Name of Firm: Thriftyman, Inc.
Date of Filing: March 25, 1986
Case Number: KEF–0018

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on March 25, 1986, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Thriftyman, Inc. (Thriftyman).

1. Background

Thriftyman is a "wholesale purchaser-reseller" of motor gasoline as that term was defined in 10 CFR 211.51 and is located in Dallas, Texas. Under the authority of the Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. 751 *et eq.* (EPAA), the ERA conducted an audit of Thriftyman with respect to its compliance with the Mandatory Petroleum Allocation Regulations found in 10 CFR Part 211, Subparts A and F. As a result of that audit the DOE alleged that during the period May through December 1979 (the audit period), Thriftyman violated the allocation regulations by failing to satisfy its motor gasoline supply obligations to its base period customers and by diverting motor gasoline to non-base period purchasers on the spot market.[1]

On October 9, 1985, Thriftyman and the DOE entered into a consent order resolving all civil and administrative disputes concerning Thriftyman's compliance with the petroleum allocation regulations. The consent order states that there was neither a formal finding by DOE nor an admission by Thriftyman that any violations of the regulations occurred. Under the terms of the consent order, Thriftyman was required to remit $135,000 to the DOE for deposit into an interest-bearing escrow account for ultimate distribution by the DOE.[2]

On May 5, 1987, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 52 FR 17821 (May 12, 1987). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations.

In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from Thriftyman customers who can demonstrate that they were injured as a result of Thriftyman's allocation practices during the consent order period. The PD&O was published in the **Federal Register** on May 12, 1987 and comments were solicited regarding the proposed refund procedures. We have received no comments regarding those procedures.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute refunds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we indicated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Thriftyman consent order fund. We will thereore grant the ERA's petition and assume jurisdiction over the fund.

III. Refund Procedures

The Proposed Decision and Order established tentative procedures for considering claims from firms and individuals who may have been injured by Thriftyman's motor gasoline allocation practices during the consent order period May 1, 1979, through December 31, 1979. Since we have not received any adverse comments regarding our proposed refund procedures we have determined that those procedures should be adopted.

A. Refunds to Eligible Purchases. From our analysis of the ERA audit material and information provided to us by Thriftyman, we have determined that the eligible claimants in this proceeding will be independently operated wholesale purchaser-resellers (e.g., retail sales outlets), and wholesale purchaser-consumers to which Thriftyman sold motor gasoline during the months of November and December 1977 and May-October 1978 (the base period months for May—December 1979). With the assistance of Thriftyman, we have identified some of those customers. They are listed in the Appendix to this Decision and Order.[3]

In order to assess claims in this proceeding, we propose to adopt certain presumptions. The two presumptions we plan to adopt are used to enable OHA to consider refund applications in the most efficient and equitable way possible in view of the limited resources available. First, we plan to adopt a presumption that a claimant was not injured by the alleged allocation violations unless it took some contemporaneous action to mitigate its injury. In addition, we plan to adopt a presumption that an applicant was not injured if it purchased a quantity of motor gasoline equivalent to its adjusted base period allocation of that product during the consent order period.

The basis of the first presumption is that any firm that was injured by an

[1] According to a Proposed Remedial Order issued to Thriftyman on July 8, 1985, approximately 98 percent of Thriftyman's base period customers were retail sales outlets owned and/or operated by Thriftyman itself. PRO at 15. The remainder of its base period customers were independent retail outlets and wholesale purchaser-consumers.

[2] On November 7, 1985, Thriftyman paid $135,000 to the DOE. This amount represents the principal which will form the basis for refund calculations. The total value of the Thriftyman account stood at $149,123.38, including accrued interest as of May 29, 1987.

[3] Claimants which were retail outlets operated by Thriftyman will be ineligible for refunds. Such affiliated claimants are barred by the equitable doctrine of unclean hands from seeking restitution in a refund proceeding. *See Cosby Oil Company/Yucca Valley Liquor Store*, 13 DOE ¶ 85,402 (1986) (citing *Citronelle-Mobile, Gathering, Inc.* v. *Edwards*, 669 F.2d 717, 732 (Temp. Emer. Ct. App. 1982)).

alleged allocation violation would have been immediately aware of its injury. Therefore, we would expect that a party which was injured by a supply disruption of an allocated product would immediately seek redress by (i) filing a complaint or allocation request with or otherwise notifying the appropriate agency officals, *see, e.g.*, 10 CFR 250.201 (a) and (d) and 211.17, or (ii) filing a private lawsuit under Section 210 of the Economic Stabilization Act of 1970, 12 U.S.C. 1904 Note, or (iii) taking some other action to mitigate its injury. We have concluded that while imposing this limitation would tend to prevent spurious claims and promote speed and efficiency in processing applications for refund, it would present no impediment to parties who were actually injured by Thriftyman's alleged allocation violations. Accordingly, we will presume that a party which had not taken some action to mitigate the effects of alleged allocation violations by Thriftyman does not have a meritorious claim. *See Tenneco*, 9 DOE at 85,202, and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,243 (1982) (*Pennzoil*)

Secondly, we will adopt a presumption that if, during the course of the entire consent order period, a claimant received aggregate volumes of motor gasoline at least equal to its adjusted base period allocation for that period, it was not injured by Thriftyman's alleged failure to supply correct volumes during certain months. We believe that this presumption is justified in order to limit eligibility for refunds to only those firms that were most adversely affected by Thriftyman's alleged allocation violations. *Aztex Energy Co.*, 12 DOE ¶ 85,116 at 88,356 (1984).

Each applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, we will consider a number of equitable factors such as, for example, whether the alleged violation had a significant deleterious impact on the claimant, and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action. *Tenneco*, 9 DOE at 85,207, *Pennzoil*, 9 DOE at 85,246. In accordance with our prior decisions, claimants who make a reasonable demonstration of an allocation violation may receive a refund based on the net profits lost as a result of the failure to receive the allocated products. *Aztex Energy Co.*, 12 DOE at 88,356 (1984).

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.[4]

If any funds remain after all meritorious claims have been paid, they will be distributed to the state and federal governments in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, Title III, *reprinted in* Fed. Energy Guidelines ¶ 11,703.

B. *Applications for Refund.* We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Thriftyman consent order fund. Accordingly, we shall now accept Applications for Refund from eligible purchasers of Thriftyman motor gasoline during the consent order period. As proposed, the consent order fund will be distributed to claimants that are identified in the ERA audit files as having been affected by Thriftyman's alleged allocation violations, as well as to any other eligible customers of Thriftyman who apply for refunds.

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. Applications for Refund should be written or typed on business letterhead or personal stationery. In its application, a claimant must include the following information:

(1) The name of the consent order firm: Thriftyman, Inc., the case number: KEF–0018, and the applicant's name should be prominently displayed on the first page.

(2) The name, position title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) A description of any contemporaneous actions taken during or immediately following the period May–December 1979 by which it attempted to mitigate the injury resulting from Thriftyman's alleged allocation violations (e.g., complaints made to appropriate officials or attempts to seek alternative supplies);

(4) Its "adjusted base period allocation" of motor gasoline from each of its suppliers for each month of the period May–December 1979 (its purchases during the months November and December 1977 and May through October 1978);

(5) Its actual purchases of motor gasoline from each supplier during each month of the period May–December 1979;

(6) A computation of lost net profits sustained as a result of Thriftyman's alleged allocation violations.

A claimant must also state:

(7) Whether it has previously received a refund, from any source, with respect to the alleged allocation violations underlying this proceeding;

(8) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not intend to claim a refund; and

(9) Whether it is or has been involved as a party in any DOE enforcement or private section 210 actions. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

(10) Whether it is or was during the consent order period affiliated in any way with Thriftyman.

In addition, the application must contain the following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the *Federal Register*. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted, together with a statement specifying why the information is alleged to be confidential or privileged. All applications should refer to Case No. KEF–0018 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

[4] As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.86(b). The same principle applies to the present situation.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Thriftyman, Inc. pursuant to the consent order executed on October 9, 1985 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: August 25, 1987.

Appendix

*Abel Vending
ABC Auto Parts
*ABC Auto Parts
Guy Bagwell
*Chip-Christ No. 3
*Chip-Christ No. 4
Chip-Christ No. 5
Bass Chevrolet
*Ben Franklin No. 4822
*Ben Franklin No. 4863-Gilme
Berry-Barnett
Bobby's Discount Auto
George Brabum
Farmers LP Gas
*Bread Box
*Bread Box No. 1
*Bread Box No. 3
Susan Burton
Cape Oil
*Cape-Tyler No. 2
*Cliff's No. 1
Columbus Club of ET
Crow-Burlingame
Larry Cummings
Economy Supperette Inc.
East Cotton Auto Parts
Ben Franklin
Ben Franklin
*Giant Petroleum Co.
*Giant No. 8
*Giant No. 9
*Giant No. 10
*Giant No. 12
*Giant No. 13
*Giant No. 18
*Giant No. 22
*Giant No. 23
*Giant No. 25
Giant No. 27
Giant No. 28
Gibson's Discount No. 186
*Gibson's Discount No. 83
*Gibson's Discount No. 535
*Gibson's Discount No. 221
*Gibson's Discount No. 387
*Gibson's Discount No. 688
Gibson's Discount No. 273
*Gibson's Discount No. 693
Gibson's Discount
*Gibson's Discount No. 706
*Gibson's No. 199
Gibson Products-Bay City
*Gibson Products-El Campo
Danceland USA
Gregg Liquor No. 3-ACE
*Huey Hancock Taw Ware
Jerry Harris
Heritage Tool and Supply
*Jackson Self-Serve
Jim's Mini-Mart No. 1
*Jim's Mini-Mart
*Bobby Johnson
Kwik Phil Gasoline Co.
Larry's ABC Auto Parts
Lone Star Peterbilt Inc.
*Longview Rollercades
Love Laddy Oil Co.
*M W Oil Co.
Martin and Sons, Inc.
*Martin Son Tyler
Martin and Son No. 1
Martin and Son No. 2
Louis Morgan No. 2
J C Penney Co. Inc.
Pine Tree
Pine Tree High School
R & R Vending
Elaine Rainey
*Reliable Sales Co.
Roadrunners
Joan Rouse
Red Rushing
Rush-in Food Mart
Sam's Candy Co.
Larry Sanders
*Service Center
Security Alarm System
Shop and Save
*Sav-Ko Bulk Plant
*Shamrock-Bay City
Shamrock-El Campo
Shamrock-Palacios
*Shamrock-West Columbia
TEI Pantry No. 6
TEI Station No. 7
TEI Station No. 8
TEI Station No. 9
*TEI Pantry No. 10
TEI Station No. 11
*TEI Station No. 12
TEI Station No. 13
TEI Station No. 14
TEI Station No. 15
*TEI Station No. 16
*TEI Station No. 17
*TEI Station No. 18
TEI Station No. 19
*TEI Station No. 21
*TEI Station No. 22
*TEI Station No. 23
*TEI Station No. 24
*TEI Station No. 25
TEI Station No. 26
TEI Station No. 27
TEI Station No. 28
TEI Station No. 29
*TEI Station No. 30
TEI Pantry No. 32
*TEI Station No. 33
TEI Station No. 34
*TEI Pantry No. 35
*TEI Station No. 36
TEI Station No. 37
*TEI Station No. 38
*TEI Station No. 39
*TEI Station No. 40
Speedy Pack No. 3
*TEI Station No. 42
TEI Station No. 43
*TEI Station No. 44
*TEI Station No. 45
*TEI Station No. 46
*TEI Station No. 47
*TEI Station No. 64
TEI Pantry No. 65
*TEI Station No. 66
*TEI Station No. 67
TEI Station No. 68
TEI Pantry No. 70
*TEI Pantry No. 72
*TEI Pantry No. 73
*TEI Station No. 77
*TEI Station No. 86
*TEI Station No. 87
*TEI Station No. 88
TEI Station No. 89
Toledo Automotive Supply
Toledo Automotive
*Triangle T. Corporation
Walls Vending Service
Wal-Mart Stores
Wal-Mart Stores No. 146
Wal-Mart
Wal-Mart
Wiley College
*Alice Williams
*Youngblood and Associate
A/N Wholesale
*Alexander's Grocery
Bailey Salmons Exxon
West Loop Quick Stop
B J's 2—Mize
B J's No. 1
*B J's No. 3
*B J's No. 4
Bill's Self Service
Bearcat Self-Service
*Beckville Market
Bob's Pantry
Bread Box No. 1
Blue Top Food Store
*Jo Boyd's Station
Broadway Gulf
Bully of the Woods
Burn's Self-Serve
Carthage Skate Palace
*Cliff's Food Market No. 1
College Lanes
*Copeland's Self-Service
Country Cache
Don's 7–11
Doug's Automotive
Gary Dow Vending
Downing Texaco
*Dugger Grocery
Duke's Gulf
East Erwin Self-Service
*Edmond's Vending Co.
El Patio Restaurant
Rick's W Main Mini-Mart
The Farm Club
Hickory Hut
Figley's Auto Service
Gregg Liquor No. 3
J–1
Hal's Grocery
*Harley's Cut Rate Liquor
*Harley's No. 5
Harley's Liquors
H L No. 2
Harley's No. 2
Bill Harpher's Gulf
Hartley's Oil
*Holiday Gulf
Hughes Grocery and Gas
Hutto-Roberts Station
1–20 Liquor Store
Jerry's Grocery
Jim's Auto Parts
*Jim's Citgo

Jim's Liquor
Jim's Mint-Mart No. 1
*Jim's Mini Mart
Jerry Jones
*Kwik Stop
Kirby Oil
Ames Automotive Service
Larry's Country Boy Gro
*Lenard's Self Service
Lee Gulf
London's Self Service
*Longview Christian Acad
Louis Morgan No. 1
Louis Morgan No. 3
Love's Pick-n-Pay
Joe Maloney
*Marantha Vending Co.
Jerry Martin Exxon
*McRea's Texaco
Lee Melton
Mike's Grocery No. 2
Mike's Qui⅛k Stop
Ronald Moore's Service St
*Morgas-Cash Only
Nadar Candy Company
National Truck Stop
*Nipper's Grocery
Kathy Norris
N Main 66
Grady Nutt Gulf Service
*Doom's Grocery
Dilwell Club
*Oldham Phillips 66
Ore City Self-Service
Par-Mar Oil Co.
Petty Cafe
*Piddlin Peeler's
*Pirtle Bar-BQue
Polly's Grocery Feed
Grand Gulf Station
Cynthia Pruitt
Quick Zip
Quillin Garage
R and M Grocery
*Ray's Liquor
Roger's Liquors
Rush-In Food Mart
*SHS Vending
Sabine Valley MHMPC
Salyard's Enterprises
Shamrock-Bay City
Sigmore Corp. No. 516
Sigmore Corp. No. 513
Sigmore Corp. No. 519
Laverne Walker
Skateland of Longview
*Sitton's Cape-Lindale
*Skyway Rest
*Smith's 7-11
*Slogan's Grocery
*Smith's Self Service
*Stan-Gas No. 5
*Stockyard Restaurant
*Texas City Warehouse
*Texsun Gas
*Texsun Gas No. 2
*Time Saver Mini Mart
*Lynn Timmons FINA
Tomball Station No. 20
Triangle Grocery Station
*Turner's Thriftyman
United Welding Spec.
Walker's FINA

*We do not have current addresses for these customers and hereby solicit this information.

[FR Doc. 87-20225 Filed 9-1-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3255-7]

Fuels and Fuel Additives; Waiver Application Submitted by AM Laboratories, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 23, 1987, AM Laboratories, Inc., submitted an application for a waiver of the prohibition against introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act ("Act"). This application seeks a waiver for a gasoline-alcohol fuel, referred to as AM 5/5, containing methanol in combination with cosolvent alcohol(s) and a proprietary corrosion inhibitor. The Administrator of EPA has until January 19, 1988 (180 days from the date of receipt of the application) to grant or deny this application. If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

DATE: Comments should be submitted on or before October 19, 1987.

ADDRESS: Copies of the information relative to this application are available for inspection in public docket EN-87-05 at the Central Docket Section (LE-131) of the EPA, Washington Information Center, Conference Room 4, 401 M Street SW., Washington, DC 20460, (202)382-7548, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202)475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case by January 19, 1988), the statute provides that the waiver shall be treated as granted.

AM Laboratories, Inc. is requesting that EPA grant a waiver for introduction into commerce of a gasoline-alcohol fuel blend, referred to as AM 5/5, such that the resultant fuel is composed of a maximum of 4.40 weight percent fuel oxygen, a maximum of 5 volume percent methanol, a minimum of 5 volume percent cosolvents and specified amounts of any corrosion inhibitor currently or subsequently approved by EPA pursuant to the waiver granted to E.I. DuPont de Nemours and Company, Inc. (DuPont), at 51 FR 39800 (October 31, 1986). These corrosion inhibitors currently include: 41.3 mg/l DuPont DGOI-100, 42.7 mg/l Petrolite TOLAD MFA-10, or 31.4 mg/l DuPont DMA-67. The cosolvents are any one or a mixture of ethanol, propanols, or butanols, including gasoline-grade tertiary butanol. With the exception of a higher oxygen content and a higher minimum cosolvent level, AM 5/5 must meet the same conditions to which the DuPont blend is subject: The gasoline-alcohol fuel must conform with the requirements of ASTM D439-83 Standard Specifications for Automotive Gasoline for the season and area in which it is sold, with the qualification that Test Method D323 for the Reid Vapor Pressure will be replaced by the test method attached to the EPA's January 10, 1985, DuPont waiver decision. The fuel must also meet the phase separation

and purity specifications set forth in the DuPont decision and the fuel manufacturer must take all reasonable precautions to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added.

EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: August 26, 1987.

W. Ray Cunningham,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87-20131 Filed 9-1-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3255-6]

Fuels and Fuel Additives; Waiver Application Submitted by Texas Methanol Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 7, 1987, the Texas Methanol Corporation submitted an application for a waiver of the prohibition of the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act ("Act"). This application seeks a waiver for a gasoline-alcohol fuel, referred to as OCTAMIX, containing methanol in combination with cosolvent alcohol(s) and a proprietary corrosion inhibitor. The Administrator of EPA has until February 3, 1988 (180 days from the date of receipt of the application) to grant or deny this application. If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

DATE: Comments should be submitted on or before October 19, 1987.

ADDRESS: Copies of the information relative to this application are available for inspection in public docket EN-87-06 at the Central Docket Section (LE-131) of the EPA, Washington Information Center, Conference Room 4, 401 M Street SW., Washington, DC 20460, (202)382-7548, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addresssed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case by February 3, 1988), the statute provides that the waiver shall be treated as granted.

The Texas Methanol Corporation is requesting that EPA grant a waiver for the introduction into commerce of a gasoline-alcohol fuel blend, referred to as OCTAMIX, such that the resultant fuel is composed of a maximum of 3.7 weight percent fuel oxygen, a maximum of 5 volume percent methanol, a minimum of 2.5 volume percent cosolvents and 42.7 mg/l of Petrolite TOLAD MFA-10 corrosion inhibitor or an appropriate concentration of other corrosion inhibitor such that the fuel will pass the National Association of Corrosion Engineers' test TM-01-72 (NACE Rust Test). The cosolvents are any one or a mixture of ethanol, propanols, butanols, pentanols, hexanols, heptanols and octanols within the following contraints: The ethanol, propanols and butanols or mixtures thereof must compose a minimum of 60 weight percent of the cosolvent mix whereas a maximum limit of 40 weight percent of the cosolvent mix is placed on the pentanols, hexanols, heptanols and octanols or mixtures thereof. Furthermore, the heptanols and octanols are limited to a maximum 5 weight percent of the higher molecular weight alcohol mix (pentanols, hexanols, heptanols and octanols). With the exception of the allowance for higher alcohols (C5 through C8) in the cosolvent mix, the allowance for any corrosion inhibitor which would pass the NACE Rust Test, and the allowance for 2 volume percent methyl tertiary butyl ether (MTBE) in the base fuel if present as a result of unintentional commingling during transport or storage. OCTAMIX must meet the same conditions specified in the waiver granted to E.I. DuPont de Nemours and Company, Inc. (DuPont), at 51 FR 39800: The gasoline-alcohol fuel must conform with the requirements of ASTM D439-85a (DuPont designated ASTM D439-83) Standard Specifications for Automotive Gasoline for the season and area in which it is sold, with the qualification that Test Method D323 for Reid Vapor Pressure will be replaced by the "dry" test method described in ASTM D-2 Proposal P-176, Proposed Specification for Automotive Spark Ignition Fuel, Annex A.3, or by automatic apparatus as described in Annex A.4. The fuel is limited to a maximum 3.7 weight percent oxygen. The fuel must meet the phase separation requirements set forth in ASTM D-2 Proposal P-176, Table 4 using the test method for water tolerance contained in Annex A.5. The alcohol purity specifications are the same as those specified in the DuPont decision. In addition, the manufacturer must take all reasonable precautions to ensure that the finished fuel is not used as a bas" gasoline to which other oxygenated materials are added.

EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: August 26, 1987.

W. Ray Cunningham,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87-20132 Filed 9-1-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3255-5]

California Marine Sanitation Device Standard for One Embayment Within the State

On May 26, 1987, (52 FR 19572 notice was published that the State of California has petitioned the Assistant Administrator for Water, U.S. Environmental Protection Agency (EPA), to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are

reasonably available for the waters of Richardson Bay, an embayment in the northern portion of San Francisco Bay. The waters of Richardson Bay covered by this petition are defined as that portion of Richardson Bay bounded by the shore and by a line bearing 257 degrees from north from Peninsula Point to the shore at Sausalito. The petition was filed pursuant to section 312(f)(3) of Pub. L. 92–500, as amended by Pub. L. 95–217.

Section 312(f)(3) states:

> After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adqequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to EPA by the State of California certified that there are six pumpout facilities available to service vessels in Richardson Bay. These facilities are located on the Bay's western shore. The pumpout facilities discharge directly to the Sausalito-Marin City Sanitary District's sewage treatment facility. The State has provided information on the location, the service hours, per pumpout, and the maximum draft of each facility. This information was updated by EPA, Region 9, on July 21, 1987, and is provided below.

(1) Kappas Yacht Harbor—Located just outside the city limits of Sausalito, at the end of Gate Six Road.
—One pumpout facility
—Available seven days a week, 24 hours a day
—Cost per pumpout: $1.00
—Can accept vessels with a draft of up to seven feet

(2) Clipper Yacht Harbor—located on the fuel dock in Clipper Basin No. 2 near the end of Harbor Drive in Sausalito.
—One pumpout facility
—Available seven days a week, 24 hours a day
—Cost per pumpout: Free
—Can accept vessels with a draft of up to 10 feet

(3) Marina Plaza—located in Sausalito, off the foot of Testa Street.
—One pumpout facility
—Available seven days a week, 24 hours a day
—Cost per pumpout: Free
—Can accept vessels with a draft of up to 10 feet

(4) Pelican Yacht Harbor—located in Sausalito, near the foot of Johnson Street.
—One pumpout facility for tenants
—Available seven days a week, 9:00 A.M. to 5:00 P.M.
—Cost per pumpout: Free
—Can accept vessels with a draft of up to 10 feet

(5) Sausalito Yacht Harbor—located in Sausalito, alongside Bay Street.
—Two pumpout facilities
—Available by appointment
—Cost per pumpout: Free to marina tenants, or for those vessel owners who can operate the facility without assistance. Vessel owners who require assistance in the use of the facility are charged at a rate of $45.00 per hour for the time of the marina personnel.

EPA received seven letters, one from each of the seven commenters, on the merits of the petition. These were all submitted prior to the deadline for eceipt of comments; June 25, 1987. The San Francisco Bay Conservation and Development Commission (BCDC), a State agency, was in favor of EPA granting the petition. The other six commenters were opposed to EPA granting the petition. They included three boating organizations, one engineering firm, and an individual.

Six commenters stated their belief that pumpout facilities are inadequate to accomodate a no-discharge zone in Richardson Bay. They were concerned with excessive fees, inconvenient schedules, mechanical problems, and general inaccessibility of the pumpout facilities; and that these problems resulted in a substantial reduction in pumpout facility availability. EPA disagrees with these commenters. The information on the six facilities, as presented above, indicates that there will be an adequate number of pumpout facilities to accomodate a no-discharge zone for Richardson Bay, given the number of berths in the bay.

The State of California certified that there are presently 1852 recreational vessel berths in Richardson Bay; two to six percent of which are occupied as permanent residences. The State further certified that 550 houseboats are berthed in the embayment, 50 of which are yet to be connected to sewers; and that approximately 120 recreational vessels anchor there during the summer months.

Richardson Bay has a ratio of approximately 310 vessel berths to one pumpout facility. This compares favorably with the berth to pumpout facility ratios in two other California no-discharge zones. The ratios are 600 berths per pumpout facility for the Oxnard-Channel Islands Harbor no-discharge zone, and 709 berths per pumpout facility for the San Diego no-discharge zone. Utilizing conservative assumptions, the staff of the San Francisco Regional Water Quality Control Board (Regional Board) revealed that the average pumpout time at the six identified pumpout facilities varied from three to fifteen minutes, depending primarily on the tank size and the pumping rate. The State of California also certified that the pumpout facility operators indicated that there was typically no problem in meeting the demand for service.

The State's BCDC has issued permits to the marinas in Richardson Bay. The conditions vary from permit to permit, but each of the six harbors discussed above are required to operate a pumpout facility. There have been problems with the availability of pumpout facilities in Richardson Bay in the past. The BCDC is currently working to ensure that these facilities are in full compliance with their permits, in order to maximize accessibility. Harbors that do not comply with their permits are subject to enforcement by the BCDC.

Two commenters expressed their concern that the volume of flow from the marine sanitation devices (MSD), and the loading of chemicals from Type III MSDs (e.g., formaldehyde), would adversely affect the local sewage treatment facilities. The Sausalito-Marin City Sanitary District receives all of the sewage from these six pumpout facilities. The District has not attributed any of their difficulties to the pumpout facilities' flows or chemical loads.

The majority of MSDs in current use on recreational vessels are Type III MSDs. Though some vessels are likely to switch from Type I or Type II MSDs to Type III MSDs, the change is not expected to significantly increase the flow from the pumpout stations to the sewage treatment facilities. Since the Sausalito-Marin City Sanitary District has not attributed any of its past difficulties to the flow or chemical load from the pumpout facilities, and since the flow is not expected to significantly increase from the present level, the sewage treatment facility should not experience any adverse effects from the pumpout facilities' discharges.

The commenters addressed other issues. These did not pertain directly to the State's petition that an adequate number of facilities were available which could remove and treat sewage from vessels in Richardson Bay, in a safe and sanitary manner. One commenter stated his belief that, "the primary purpose" of creating a no-discharge zone is to obtain improved control over unsewered houseboats in

Richardson Bay. This comment does not address the State's petition.

Three commenters felt that creating a no-discharge zone in Richardson Bay would, in effect, penalize and exclude vessels with Type I and II MSDs from the embayment. Two commenters were concerned that the creation of the zone would render costly Type I and II MSDs obsolete, and would require vessel owners to expend more capital to install, maintain, and pump out Type III MSDs. These comments address the effects of the creation of no-discharge zones, in general. They do not pertain to the availability of pumpout facilities in Richardson Bay.

Five commenters disagreed with various aspects of the Regional Board's study. They stated that the study did not indicate that the recreational vessels contributed significantly to the embayment's pollution. These commenters expressed their view that such a conclusion could not be reached without in depth studies of the character and volume of pollution from the embayment's bird sanctuary and houseboats. Two commenters felt that the study's results were inconclusive since the data were collected at a time when there were no operational pumpout facilities in Richardson Bay. These comments address the conclusions of the Regional Board's study, and not the availability of pumpout facilities.

Following an examination of the State's petition, and the comments received prior to the closing date of June 25, 1987, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Richardson Bay. This determination is made pursuant to section 312(f)(3) of the Pub. L 92–500.

Dated: August 11, 1987.

Judith E. Ayres,

Regional Administrator, Region 9.

[FR Doc. 87–20133 Filed 9–1–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3254–7]

Superfund Program; De Minimis Contributor Settlements

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment; extension of comment period.

SUMMARY: The Agency is today extending the 60-day public comment period on the Interim Guidance on Settlements with *De Minimis* Waste Contributors under section 122(g) of SARA by 30 days. The interim guidance was published on June 30, 1987, at 52 FR 24333. In accordance with this extension, comments are due by September 30, 1987.

DATE: Comments must be provided on or before September 30, 1987.

ADDRESS: Comments should be addressed to Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE–134S, 401 M Street SW., Washington, DC 20460, (202) 382–3077.

FOR FURTHER INFORMATION CONTACT: Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE–134S, 401 M Street SW., Washington, DC 20460, (202) 382–3077.

Date: August 26, 1987.

Edward E. Reich,

Associate Enforcement Counsel for Waste.

[FR Doc. 87–20129 Filed 9–1–87; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before October 19, 1987. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer and the OMB Reviewers.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Liaison Officer: Margaret P. Ulmer, Resource Management Division, Financial and Resource Management Services, Room 386, 2401 E. Street, NW., Washington, DC, 20507; Telephone (202) 634–1932

OMB Reviewer: Joseph Lackey, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washigton, DC, 20503; Telephone (202) 395–6880

Type of request: Extension (No change)

Title: Employer Information Report EEO–1

Form number: Standard Form 100

Frequency of report: Annually

Type of respondent: Private employers with 100 or more employees and certain Federal government contractors with 50 or more employees

Standard Industrial Classification (SIC) Code: Multiple

Description of affected public: IND/HHID and Farms and Businesses/INST

Responses: 126,700

Reporting hours: 558,500

Federal cost: $542,500

Applicable under section 3504(h) of Pub. L. 96–511: Not applicable

Number of forms: 1

Abstract-needs/users: EEO–1 data are used by EEOC to investigate charges of discrimination against employers in private industry. Data are shared with several Federal government agencies, particularly the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor. Under section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with approximately 127 State and local FEPC agencies.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 87–20124 Filed 9–1–87; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1674]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

August 25, 1987

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47

CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 73 of the Commission's Rules Concerning Equal Opportunity in the Broadcast Radio and Television Services. (MM Docket No. 85–350) Number of petitions received: 1

Subject: Regulation of Small Telephone Companies. (CC Docket No. 86–467) Number of petitions received: 6.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–20187 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; San Jacinto Broadcasting, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Mildred Baptist, Gerald M. Hale, Morris Courtright, Jr. d/b/a San Jacinto Broadcasting; Salinas, CA.	BPH–860911MB	87–338
B. Salinas Broadcasting LP, a California Limited Partnership; Salinas, CA.	BPH–860917MC	
C. Artichoke Broadcasting Corporation; Salinas, CA.	BPH–860917MG	
D. Gary T. Rodriguez; Salinas, CA.	BPH–860918MH	
E. B.F.J. Timm; Salinas, CA.	BPH–860918MI	
F. FM Salinas Limited Partnership; Salinas, CA.	BPH–860918MJ	
G. P&R Communication Partnership; Salinas, CA.	BPH–860918MN	
H. Franklin D. Graham; Salinas, CA.	BPH–860918MP	
I. Rose T. Casalan; Salinas, CA.	BPH–860918ND	
J. Lisa Ann Wayne; Salinas, CA.	BPH–860918NI	
K. Southern California Broadcasting Company; Salinas, CA.	BPH–860918NO	
L. Crystal Communications, Inc.; Salinas, CA.	BPH–860918NZ	
M. Innovative Broadcastings, Inc.; Salinas, CA.	BPH–860918OE	
N. Julio A. Villamil, Maria Elena Villamil, Lawrence M. Wrathall and Mayereh E. Wrathall, d/b/a Villamil FM Radio; Salinas, CA.	BPH–860918OL	
O. California Community Television Network; Salinas, CA.	BPH–86091800	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B,C,D,E,F,G,H,I,J,M,O
2. Comparative, ALL
3. Ultimate; ALL

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–20188 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

Radio Advisory Committee Meeting

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 1:30 p.m., Thursday, October 1, 1987, at the McCollough Room, National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The Committee will consider:

— Possible improvements to service on the AM band through revisions to the technical AM Broadcast Rules;
— Preparation for the Second Session of the Region 2 Administrative Radio Conference concerning expansion of the AM band;
— International matters affecting radio broadcasting; and
— Other Business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for October 1, 1987 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Mr. Larry Eads, at FCC Headquarters. His telephone number is (202) 632–6485.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–20186 Filed 9–1–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; The Scindia Steam Navigation Co., Ltd., et al.

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.: 202–007690–021
Title: The India, Pakistan, Bangladesh, Ceylon, & Burma Outward Freight Conference
Parties: The Scindia Steam Navigation Co., Ltd.; The Shipping Corporation of India, Ltd.; Waterman Isthmian Line
Synopsis: The proposed amendment would permit the parties to exercise independent action on the level of compensation paid to on ocean freight forwarder who is also a customs broker upon not more than ten days' written notice.

Agreement No.: 202–010636–023
Title: U.S. Atlantic-North Europe Conference
Parties: Atlantic Container Line, B.V.; Dart-ML Limited; Hapag-Lloyd AG; Sea-Land Service, Inc.; Gulf Container Line (GCL), B.V.; Trans Freight Lines; Compagnie Generale Maritime (CGM); Nedlloyd Lijnen, B.V.
Synopsis: The proposed amendment would delete Southampton and Greenock from the list of United Kingdom ports served under the agreement's alternate port service provisions.

Agreement No.: 202–010987–003
Title: United States/Central America Liner Agreement
Parties: Crowley Caribbean Transport, Inc.; Sea-Land Service, Inc.; Seaboard Marine Ltd.
Synopsis: The proposed amendment would permit the parties to exercise independent action on the level of compensation paid to on ocean freight

forwarder who is also a customs broker.

By Order of the Federal Maritime Commission.

Dated: August 28, 1987.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87-20192 Filed 9-1-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Gulfstream Line, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010876-002

Title: Port of Palm Beach Terminal Lease Agreement

Parties: Port of Palm Beach District (Landlord) Gulfstream Line, Inc. (Tenant)

Synopsis: The proposed agreement modifies the provisions of the basic lease to reflect the terms and conditions upon which the landlord shall regain possession of certain warehouse and open area, and other changes in the lease.

Agreement No.: 224-200028

Title: Kodiak Terminal Agreement

Parties: City of Kodiak American President Lines (APL)

Synopsis: The proposed agreement provides for a five year lease to APL of 66,200 square feet of space at the Port of Kodiak for the storage of chassis, containers and tractors.

Agreement No.: 224-200027

Title: Port of Pascagoula Terminal Lease Agreement

Parties: The Jackson Country Port Authority (County) Ryan-Walsh Stevedoring Company, Inc. (Lessee)

Synopsis: The proposed agreement provides that the County leases to Lessee, both real and personal property, Terminals E and F in the Port of Pascagoula, Mississippi. The initial term of the agreement shall be for 4 years and shall commence 3 days after delivery to Lessee by County of written otice of effectiveness pursuant to Federal Maritime Commission rules.

Dated: August 28, 1987.

Tony Kominoth,

Assistant Secretary.

[FR Doc. 87-20193 Filed 9-1-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 26, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For further information contact:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Agreement of Domestic and Foreign Nonmember Banks.

Agency form number: FR T-1, T-2.

OMB Docket number: 7100-0191.

Frequency: On occasion.

Reporters: Domestic and foreign nonmember banks.

Annual reporting hours: 8½.

Small businesses are not affected.

General description of report: This information collection is mandatory [15 U.S.C. 78h, w] and is not given confidential treatment.

This report is filed by nonmember banks, both domestic and foreign, which agree to comply with all statutes and regulations applicable to member banks relating to credit extended to broker-dealers on the collateral of registered securities.

2. *Report title:* Notice of Proposed Stock Redemption.

Agency form number: FR 4008.

OMB Docket number: 7100-0131.

Frequency: On occasion.

Reporters: Bank holding companies.

Annual reporting hours: 2,250.

Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [12 U.S.C. 1844] and is given confidential treatment [5 U.S.C. 552(b)(4), (6), and (8)].

The filing of this notice is required of a bank holding company proposing to purchase or redeem its shares when the gross consideration to be paid for such purchase or redemption is equal to 10 percent or more of the company's consolidated net worth over any 12-month period.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20095 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of July 7, 1987

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 7, 1987.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests on balance that economic activity expanded at a moderate pace in the second quarter. In May and June, total nonfarm payroll employment rose modestly further, with most of the gains continuing to be in the service-producing sectors. The civilian unemployment rate fell to 6.1 percent in June and was down appreciably from its average level in the first quarter. Industrial production increased substantially in May after rising moderately on balance in earlier months of the year. Consumer spending appears to have increased in the second quarter, but housing starts were down somewhat further in May to a level considerably below their first-quarter average. Recent indicators of business capital spending point to some recovery, particularly in equipment outlays, from a depressed level in the first quarter. In April the merchandise trade deficit was smaller than in March and below the monthly average for the first quarter. The rise in

[1] Copies of the Record of policy actions of the Committee for the meeting of July 7, 1987, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

consumer and producer prices moderated in May but for the year to date prices have risen more rapidly than in 1986, primarily reflecting sizable increases in prices of energy and non-oil imports. Wage increases have remained relatively moderte in recent months.

M2 increased slightly in May and June while growth of M3 remained moderate. For 1987 through June, expansion of M2 has been below the lower end of the range established by the Committee for the year, and growth of M3 around the lower end of its range. Following a surge in April, M1 contracted on balance in May and June. Expansion in total domestic nonfinancial debt has moderated this year.

Most interest rates have declined somewhat on balance since the May 19 meeting of the Committee. In foreign exchange markets, the trade-weighted value of the dollar against the other G–10 currencies has risen on balance since the May meeting.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at this meeting to reaffirm the ranges established in February for growth of 5½ to 8½ percent for both M2 and M3, measured from the fourth quarter of 1986 to the fourth quarter of 1987. The Committee agreed that growth in these aggregates around the lower ends of their ranges may be appropriate in light of developments with respect to velocity and signs of the potential for some strengthening in underlying inflationary pressures, provided that economic activity is expanding at an acceptable pace. The monitoring range for growth in total domestic nonfinancial debt set in February for the year was left unchanged at 8 to 11 percent.

For 1988, the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1987 to the fourth quarter of 1988, of 5 to 8 percent for both M2 and M3. The Committee provisionally set the associated range for growth in total domestic nonfinancial debt at 7½ to 10½ percent.

With respect to M1, the Committee recognized that, based on experience, the behavior of that aggregate must be judged in the light of other evidence relating to economic activity and prices; fluctuations in M1 have become much more sensitive in recent years to changes in interest rates, among other factors. Because of this sensitivity, which has been reflected in a sharp slowing of the decline in M1 velocity over the first half of the year, the Committee again decided not to establish a specific target for growth in M1 over the remainder of 1987 and no tentative range has been set for 1988. The appropriateness of changes in M1 this year will continue to be evaluated in the light of the behavior of its velocity, developments in the economy and financial markets, and the nature of emerging price pressures. The Committee welcomes substantially slower growth of M1 in 1987 than in 1986 in the context of continuing economic expansion and some evidence of greater inflationary pressures. The Committee in reaching operational decisions over the balance of the year will take account of growth in M1 in the light of circumstances then prevailing. The issues involved with establishing a target for M1 will be carefully reappraised at the beginning of 1988.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable depending on indications of inflationary pressures and on developments in foreign exchange markets, as well as the behavior of the aggregates and the strength of the business expansion. This approach is expected to be consistent with growth in M2 and M3 over the period from June through September at annual rates and around 5 and 7½ percent, respectively. Growth in M1, while picking up from recent levels, is expected to remain well below its pace during 1986. The Chairman may call for Committee consultation if its appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, August 27, 1987.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 87–20212 Filed 9–1–87; 8:45 am]

BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Anderson Brothers Bancshares, 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 Regulations 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 September 25, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Anderson Brothers Bancshares, Inc.*, Mullins, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Anderson Brothers Bank, Mullins, South Carolina.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CBTC Holding Company, Inc.*, Paris, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Holding Company, Inc., Paris, Tennessee, and thereby indirectly acquire Commercial Bank and Trust Company, Paris, Tennessee.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *FIH, L.P. and FIH, Inc.*, Beverly Hills, California; to become a bank holding company by acquiring 50.1 percent of the voting shares of First Interstate of Hawaii, Inc., Honolulu, Hawaii, and thereby indirectly acquire First Interstate Bank of Hawaii, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, August 27, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–20096 Filed 9–1–87; 8:45 am]

BILLING CODE 6210–01–M

Acquisition of Shares of Banks or Bank Holding Companies; R. Huston Babcock

The notificant listed below has 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 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 September 16, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *R. Huston Babcock, M.D., P.A.*, St. Petersburg, Florida; to acquire 10.53 percent of the voting shares of US Bancorp, Inc., St. Petersburg, Florida, and thereby indirectly acquire United Southern Bank, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20097 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; BAII Holdings S.A., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation 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, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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 September 15, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *BAII Holdings S.A.*, Luxembourg; B.A.I.I. Finance Company N.V., Curacao, Netherlands Antilles; Compagnie Arabe et Internationale d'Investissement (Nederland) B.V., Amsterdam, The Netherlands; and Banque Arabe et Internationale d'Investissement, Paris, France; to engage *de novo* through their subsidiary, Sheppards Overseas, Inc., New York, New York, in providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T and permitted incidental activities; such securities brokerage services will be restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwriting or dealing or investment advice or research services pursuant to § 225.25(b)915) of the Board's Regulation Y. These activities will be conducted through the United States, the Bahamas, Bahrain, France, Hong Kong, Luxembourg and the United Kingdom.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Franklin Financial Services Corporation*, Chambersburg, Pennsylvania; to engage *de novo* through its subsidiary, Franklin Founders Life Insurance Company, Phoenix, Arizona, and thereby engage in the reinsurance of credit life, and accident and health insurance issued in connection with extensions of credit made by Applicant's bank holding company system pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. This activity will be conducted in South Central Pennsylvania. Comments on this application must be received by September 24, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *County Financial Corporation*, North Miami Beach, Florida; to engage *de novo* in a joint venture with North American Financial Services of Southeast Florida, Inc., North Miami Beach, Florida, in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Dade, Broward and Palm Beach Counties, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.*, Peoria, Illinois; to engage *de novo* in acquiring and servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20098 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; BCB Financial Services Corp., 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 September 21, 1987.

A. **Federal Reserve Bank of Philadelphia**, (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *BCB Financial Services Corporation*, Reading, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Berks County Bank, Reading, Pennsylvania, a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to merge with Liberty Holding Company, Pensacola, Florida, and thereby indirectly acquire Liberty Bank, formerly Liberty Bank of Cantonment, Pensacola, Florida. Comments on this application must be received by September 16, 1987.

2. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to merge with CB&T Bancshares, Inc., Hartselle, Alabama, and thereby indirectly acquire Community Bank and Trust, Hartselle, Alabama. Comments on this application must be received by September 16, 1987.

3. *CNB, Inc.*, Lake City, Florida; to acquire 100 percent of the voting shares of Citizens Bank of Live Oak, Live Oak, Florida, a *de novo* bank.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Kingsbury Bank Holding Company*, DeSmet, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank of DeSmet, DeSmet, South Dakota. Comments on this application must be received by September 25, 1987.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Holding Company, Inc.*, Fullerton, Nebraska; to become a bank holding company by acquiring 80.6 percent of the voting shares of First National Bank and Trust Company, Fullerton, Nebraska.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20099 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 21, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank South Corporation*, Atlanta, Georgia; to acquire First Financial Realty Service, Corp., Conyers, Georgia, and thereby enagage in originating mortgage and other loans for sale in the secondary market pursuant to § 225.25(b)(l)(iii) of the Board's Regulation Y. Comments on this application must be received by September 14, 1987.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First State Agency of Lake Lillian, Inc.*, Lake Lillian, Minnesota; to acquire Harold Olson Agency, Lake Lillian, Minnesota, and thereby engage in general insurance activities in a town of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Lake Lillian, Minnesota.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Union Bancorp*, Los Angeles, California; Standard Chartered Holdings, Inc., Los Angeles, California, and Standard Chartered Overseas Holdings Limited, Standard Chartered Bank, and Standard Chartered PLC, all in London, England; to retain control of the voting securities of United Security Corporation, a wholly-owned subsidiary of United Bank of Arizona, Phoenix, Arizona, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. Union Security Corporation is licensed by the Arizona Department of Insurance and is authorized to sell a full range of life and casualty and disability insurance. United Security historically has offered a variety of coverages related to extensions of credit, including credit-life and accident and health insurance, and collateral protection through Vendor's Single Interest ("VSI"), Lender's Security Program ("LSP"), and Real Estate Owned ("REO") master policies. As a general insurance agency, United Security also offered its individual and commercial customers insurance unrelated to extensions of credit, including life, accident and health, disability, property, casualty, surety, automobile and marine transportation, workers' compensation, products liability, and general liability insurance. In addition, United Security has offered other products, including single and flexible premium tax-deferred annuities, interest-sensitive life insurance, and single premium whole life insurance.

Board of Governors of the Federal Reserve System, August 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20100 Filed 9-1-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; First Midwest Bancorp, Inc., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation 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, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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 September 24, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp, Inc.*, Naperville, Illinois; to engage *de novo* through its subsidiary, First Midwest Insurance Company, Naperville, Illinois, in acting as principal agent or broker for insurance that is directly related to the extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Western Bancorporation, Inc.*, La Jara, Colorado; to engage *de novo* in acting as agent for the sale of general insurance from offices of bank subsidiaries located in a community of less than 5,000 persons pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the southern half of Costilla and northern half of Conejos counties in Colorado.

Board of Governors of the Federal Reserve System, August 27, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-20101 Filed 9-7-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; New System

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

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Aftercare Evaluation System (AES)," HHS/HCFA/ORD NO. 09-70-0035. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. Please note, however, that comments with respect to "routine uses" must be received by October 2, 1987.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on August 27, 1987. In addition, HCFA has requested a waiver of the OMB requirement for this notice to remain in the **Federal Register** for a total of 60 days. If granted, the new system of records, including routine uses, will become effective September 28, 1987 unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-A-1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Lawrence Kucken, Division of Beneficiary Studies, Office of Research and Demonstrations, Health Care Financing Administration, Room 2C-14, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301-597-6148.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new sytem of records and to collect data under the authority of sections 9305(i), 9305(c), 9305(h), and 9313(d) of the Omnibus Budget Reconciliation Act (Pub. L. 99-509) which mandates that: "The Secretary of Health and Human Services shall: (1) Include information on the quality of post-hospital care in the annual reports to Congress on the Propsective Payment System, (2) develop guidelines and standards for discharge planning, (3) develop a uniform needs assessment instrument (or instruments) to be used by discharge planners and other health care providers to evaluate an individual's need for post-hospital extended care services, home health services, the long-term care services of a health-related or supportive nature, and (4) design a strategy for reviewing and assuring the quality of care for which payment is made under Medicare.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility criteria, since the information is collected for addressing the issues of assessing the adequacy of care receipt and linking adverse outcomes with inadequate care. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: August 25, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0035

SYSTEM NAME:

Aftercare Evaluation System (AES).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207, (Contact system manager for location of Magnetic Computerized records). Contractor (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare Beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning a patient's name, Health Insurance Claim number, medical diagnosis, conditions, diagnoses and procedures, functional impairments, social and demographic problems in the receipt of services, services (e.g., physical therapy, nursing, meals or wheels), living arrangement (e.g., living alone, with family), and outcomes of aftercare.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

Sections 9305(c), 9305(h), 9305(i), and 9313(d) of Pub. L. 99-509.

PURPOSE OF THE SYSTEM:

To assess the adequacy of the amount of care received, and linking adverse outcomes with inadequate care. To evaluate the methodology to assess the risk of inadequate services and adverse outcomes. To describe the problems of receipt of care. To develop preliminary estimate of the incident of high risk patients and incident of receipt of inadequate services and adverse outcomes for use and development of the national sample design.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made to:

(1) A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

(2) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained.

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law.

(d) Secures a written statement attesting to the information and recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved by the Health Insurance Claim Number.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are adivsed that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards are implemented in accordance with all guidelines required

by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' automated Data Processing Manual, Part 6, "ADP System Security."

RETENTION AND DISPOSAL:

Records are retained for 5 years after the last action on the record.

SYSTEM MANAGER(S) AND ADDRESS:

Director, ORD, Health Care Financing Administration, Room 300 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the Health Insurance Claim Number.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. (These procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e. g., why it is inaccurate, irrelevent, incomplete or not current). (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from the hospital records of which some will be verified by beneficiaries. In addition to these hospital records other information will be obtained from interview with the patients and caregivers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Cyrus Baghelia, System Sciences, Inc., 4330 East-West Highway, Suite 1117, Bethesda, Maryland 20814

George Carcagno, Interprise Business Center, Mathematica Policy Research, 101 Morgan Lane, Plainsboro, New Jersey 08536.

[FR Doc. 87-20092 Filed 9-1-87; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration announces that applications are now being accepted for Fiscal Year 1988 Cooperative Agreements for Area Health Education Center (AHEC) Programs under the authority of section 781(a)(1) of the Public Health Service Act, as amended by Pub. L. 99-129.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that cooperative agreements can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or ostepathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR Part 57, Subpart MM.

Personnel of the Bureau of Health Professions have substantial programmatic involvement with the planning, developing, and administering of the AHEC projects by:

1. Reviewing and approving plans, upon which continuation of the cooperative agreement is contingent, to permit appropriate direction and redirection of activities.

2. Reviewing all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers.

3. Participating with project staff in the development of funding projections.

4. Developing with project staff individual project data collection systems and procedures.

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(e)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

In making awards for Fiscal Year 1988, the following funding preferences are established:

(1) Competing continuation applications

(2) New applications for planning and development projects under section 781(a)(1), and

(3) Supplements to existing awards.

Additional Funding Preferences

Additional funding preferences will be given to:

(1) Applications proposing Centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics; or low-income individuals.

An individual will be deemed to be of "low income" if that individual comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The following income figures determine what constitutes a low income family for purposes of the Area Health Education Centers Program for Fiscal Year 1988.

Size of family [1]	Income level [2]
1	$7,400
2	9,500
3	11,400
4	14,500
5	17,200
6 or more	19,300

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1986, rounded to $100.

An application will be evaluated with respect to other approved applications to determine whether it has a "greater proportion" of the stated minority individuals.

(2) Applications proposing Centers located in primary care health manpower shortage areas designated under section 332 of the Public Health Service Act.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857,Telephone: (301) 443–6857.

Questions regarding programmatic information should be directed to:

Division of Medicine, Area Health Education Center Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6950.

The standard application form PHS 6025–I HRSA Competing Training Grant Application, general instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is November 13, 1987. Applications will be considered as meeting the deadline if they are either;

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: July 31, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87–20102 Filed 9–1–87; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Disability Advisory Council; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting; correction.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces the schedule, proposed agenda, and a change of location of a forthcoming meeting of the Disability Advisory Council (the Council). The Council published a notice of meetings in the **Federal Register** on December 24, 1986 at 51 FR 46724. The notice announced the schedule of regular meetings to be held by the Council. The Council is changing the location of the meeting scheduled for September.

DATES:

September 16, 1987, 10:00 a.m. to 5:00 p.m.;

September 17, 1987, 9:00 a.m. to 5:00 p.m.;

September 18, 1987, 9:00 a.m. to 4:00 p.m.

ADDRESS: Williamsburg Hilton and National Conference Center, 50 Kingsmill Road, Williamsburg, Virginia 23185.

Agenda: Prepare and Review Report.

The Council may hold additional sessions during the evening of September 16 and/or 17, 1987. If the Council decides to hold these evening sessions, the Council will make the announcement during the regularly scheduled sessions.

FOR FURTHER INFORMATION CONTACT: Douglas Badger, Executive Director, Disability Advisory Council, P.O. Box 17064, Baltimore, Maryland 21203, (301) 965–4643.

SUPPLEMENTARY INFORMATION: The Council is established and governed by the provisions of section 12102 of Pub. L. 99–272. The Council is chaired by Dr. John E. Affeldt.

This meeting is open to the public to the extent that space is available. Anyone wishing to submit his or her views and/or questions for consideration by the Council should send them to the Executive Director of the Council at the address shown above.

A transcript of the Council meeting is available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

Date: August 11, 1987.

W. Douglas Badger,

Executive Director, Disability Advisory Council.

[FR Doc. 87–20191 Filed 9–1–87; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–87–1716; FR–2386]

Comprehensive Homeless Assistance Plan; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Notice; correction.

SUMMARY: This document corrects and clarifies HUD's Comprehensive Homeless Assistance Plan Notice, published as Part XI of the August 14, 1987 edition of the **Federal Register** (52 FR 30628).

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telepehone (202) 755–7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: An August 14, 1987 **Federal Register** Notice entitled "Comprehensive Homeless Assistance Plan" informed the public that jurisdictions required to submit Comprehensive Homeless Assistance Plans as a prerequisite to the availability of assistance under several funding programs contained in the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987) had to submit their plans to HUD no later than September 28, 1987.

In the final paragraph in column one, page 30631 of the August 14, 1987 Notice, the September 28, 1987 deadline date for submissions was intended to have been repeated for clarity. Instead, a bracketed instruction to the printer, "[insert date 45 days after publication]", appeared in the published Notice.

The substance of the paragraph, with the appropriate submission deadline date included, is reprinted below:

"Comprehensive Homeless Assistance Plans must be forwarded to the responsible HUD Field Office, and be received or post-marked no later than September 28, 1987. The Department believes that this 45-day Plan preparation period is responsive both to the need to allow jurisdictions adequate time to prepare their Plans, and to the congressional concern evidenced throughout Title IV that amounts appropriated be made available to assist the homeless at the earliest possible time."

Dated: August 26, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-20115; Filed 9-1-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-050-07-4410-08]

Availability of Draft Environmental Assessment; Fiddler Butte Wilderness Study Area, Utah

AGENCY: Bureau of Land Management, Richfield, Utah, Interior.

ACTION: Notice of comment period for the proposed U.S. Geological Survey (USGS) Station Draft EA ending October 9, 1987.

SUMMARY: The EA analyzes the impacts of the proposed action and alternatives of the USGS placing water gaging and weather monitoring equipment adjacent to the Fiddler Butte WSA (UT-050-214).

The DRAFT EA is available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701. For additional information contact Roy Edmonds, Environmental Coordinator, at the above address or call (810) 896-8221.

Donald L. Pendleton,

District Manager.

August 25, 1987.

[FR Doc. 87-20104 Filed 9-1-87; 8:45 am]

BILLING CODE 4410-DQ-M

[AA-620-4211-022-24-10]

Availability of Oil and Gas or Geothermal Lease Bond and Oil and Gas or Geothermal Exploration Bond Forms

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Form 3000-4, "Oil and Gas or Geothermal Lease Bond" and Form 3000-4a, "Oil and Gas or Geothermal exploration Bond".

SUMMARY: The subject forms, numbered 3000-4 and 3000-4a, replace Bureau of Land Management bond forms 3045-3, 3104-1, 3104-2, 3104-8, 3106-4, 3200-11, 3200-12, 3200-13, and 3200-16.

EFFECTIVE DATE: September 2, 1987.

ADDRESS: Bureau of Land Management State Offices, See 43 CFR 1821.2-1 for addresses.

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, Bureau of Land Management, Washington, DC 20240, (202) 653-2190.

SUPPLEMENTARY INFORMATION: To reduce the paperwork burden for the public who file separate Bureau of Land Management approved from for each type of required Federal onshore oil and gas or geothermal resources bond, new bond forms 3000-4 and 3000-4a have been developed to replace nine existing bond forms. The form being replaced are as follows:

3045-3 Oil and Gas Exploration Bond
3104-1 Bond of Oil and Gas Lessee
3104-2 Bond of Oil and Gas Lease Operator
3104-8 State, Nationwide or National Petroleum Reserve in Alaska Oil and Gas Bond
3106-4 Nationwide Personal Oil and Gas Lease Bond
3200-11 Geothermal Resources Exploration Bond
3200-12 General Geothermal Resources Lease Bond
3200-13 Bond of Geothermal Resources Lease Operator
3200-16 Nationwide-Statewide Geothermal Resources Lease Bond

Initially, a draft bond form was developed which combined bonding provisions for both geophysical exploration operations and lease operations. After considering comments received, two separate bond forms were designed, one for lease operations and one for geophysical exploration operations. Form 3000-4 may be used by those desiring either surety or personal bond coverage for individual oil and gas of geothermal lease operations, or operations in any one State or nationwide. The bond will provide coverage for the lessee, the operator, the designated operator or a unit operator. It should be noted that the second provision numbered "1" on the reverse of the form concerning the extension of coverage to assignees is applicable only for individual lease bonds including in NPR-A.

Form 3000-4a may be used by those desiring either surety or personal bond coverage for single oil and gas or geothermal geophysical exploration operations, or such geophysical exploration activities in a single State or nationwide.

All entities that are involved in Federal onshore oil and gas and geothermal resources operations are encouraged to obtain and use the new bond forms for all future bond requirements that may be needed to conduct such operations.

Both bond forms can be used by those individuals desiring bond coverage for the National Petroleum Reserve in Alaska. Copies of the new forms may be obtained from Bureau of Land Management State Offices (see 43 CFR 1821.2-1 for specific office locations). Those bonds currently maintained in any BLM office on any of the forms referenced above are still valid. Valid existing bonds do not require resubmission on the revised forms.

The two bond forms fall within the Office of Management and Budget "Certification Only" designation since the requested information is the minimum required to identify the specific transaction.

Dated: August 25, 1987.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 87-20109 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-84-M

[ES-970-07-4111-11-2411; ES 20420A]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Reinstatement of Terminated Oil and Gas Lease ES 20420A.

SUMMARY: Terminated oil and gas lease ES 20420A located in Wayne County, Mississippi, T. 6 N., R. 9 W., containing 318.89 acres.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Beckham at (703) 274-0150.

SUPPLEMENTARY INFORMATION: Federal oil and gas lease ES 20420A terminated automatically by operation of law on June 1, 1987 (30 U.S.C. 188).

A petition for reinstatement of ES 20420A was filed by Kaneb Operating Company, Ltd. (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The Lessee has met all the following requirements for reinstatement:

(a) $500, Reimbursement of Departmental Administrative Cost.

(b) $1,595, Back Rental Payments.

(c) $136, Publication Cost.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning June 1, 1987.

G. Curtis Jones, Jr.,

State Director

[FR Doc. 87-20143 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-CT-M

[AZ-040-07-4212-11; A 21630]

Realty Action, Recreation and Public Purposes Conveyance of Public Land in Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, Recreation and Public Purposes conveyance of public land in Graham County, Arizona.

SUMMARY: The following lands have been examined and identified as suitable for disposal under the Recreational and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended by the Act of June 4, 1954 (68 Stat. 174; 43 U.S.C. 896), as amended, and the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no cost.

Legal Description	Acres
Gila and Salt River Meridian, Arizona	
T. 7 S., R. 24 E.,	
Sec. 14, SE¼NE¼	40.00
Sec. 24, NW¼NE¼, SE¼NW¼	80.00
Sec. 26, lots 1, 2, 3	111.06
Total	231.06

The land is being offered to the Arizona Game and Fish Commission for recreation and wildlife purposes.

The land is not required for any federal purpose. Conveyance of these parcels would best serve the public interest. This action is consistent with the Bureau's planning recommendations.

The patent issued as the result of the conveyance will be subject to all valid existing rights and reservations of record. It will contain the following reservations:

1. Rights-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals shall be reserved to the United States. Such resources shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as prescribed by the Secretary of the Interior.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining and mineral leasing laws. The segregative effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

DATES: For a period up to October 19, 1987, interested parties may submit comments to the District Manager, 425 E. 4th Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning reservations, conditions, appraised price and other items may be obtained from the Safford District Office or by calling (602) 428–4040 during the office hours 7:45 a.m. to 4:15 p.m. MST.

Dated: August 25, 1987.

Lyle K. Rolston,

Acting District Manager.

[FR Doc. 87–20105 Filed 9–1–87; 8:45 am]

BILLING CODE 4310-32-M

[UT-040-07-4212-14; U-58162]

Realty Action; Sale of Public Lands in Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as Lots 1 and 2 section 31 T. 43 S., R. 4.5 W., SLM, Utah (containing 79.80 acres), is proposed for direct sale to Charles and Carol Compas at the appraised fair market value of $8,000.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments will be accepted until October 23, 1987. The sale will be held on November 6, 1987 at 10:00 A.M.

ADDRESS: Detailed information concerning the sale is available at the Kanab Area Office, 318 North First East, Kanab, Utah 84741, (801) 644–2672. Comments should also be sent to the same address. The sale will be held in the Kanab Area Office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights, including a 66 foot wide county road right-of-way crossing the southeast corner of the 79.80 acre tract, and 2.5 acre right-of-way for a water diversion and dike structure.

Any comments received during the comment period will be evaluated and the State Director may vacate or modify this realty action. In the absence of any objections, this Realty Notice will become the final determination of the Department of the Interior.

Dated: August 25, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87–20106 Filed 9–1–87; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-67194; NM-060-07-4211-02-NCGG]

Realty Action; New Mexico

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following lands comprising 9.488 acres will be made available for direct sale to Mr. George A. Smart.

T. 25 S., R. 24 E., NMPM,

Sec. 27, E½NE¼SW¼NW¼, N½NE¼SE¼SW¼NW¼, W½W¼NW¼SE¼NW¼, W½NW¼NW¼SE¼NW¼.

The lands will be sold at the fair market value of $950.00. The United States Government will reserve all mineral rights, ditches, canals, and access rights. Conditions of the sale are that prior to issuance of patent all unauthorized roads, electric lines, and other utilities will be properly authorized by right-of-way; the boundaries of the subject will be fenced at Mr. Smart's expense; the junk and debris on adjacent public land will be removed; and existing lands classifications will be lifted.

Mineral Reservation

(a) The United States reserves all minerals (or other appropriate wording) in the lands subject to this conveyance, including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act, and the Geothermal Steam Act.

(b) The United States reserves to itself, its permittees, licensees, lessees, and mining claimants the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and such

regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mining, geothermal and mineral leasing, and material disposal laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, open pit, or surface mining operations, storage, and transportation facilities deemed necessary and authorized under law and implementing regulations.

(c) Mining claimants, permittees, licensees, and lessees of the United States shall only be liable for and shall only compensate owners of the surface estate for damages to the extent prescribed by regulations issued by the Secretary of the Interior.

(d) Unless otherwise provided by separate agreement with the surface owner, mining claimants, permittees, licensees, and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior.

(e) By purchase of this land, the owner, pursuant to Section 714 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1304, gives his "surface owner" consent to the United States and its lessees to enter and commence surface mining operations to extract the United States' reserved coal.

(f) All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against mining claimants, permittees, licensees, and lessees of the United States, and the United States shall not be liable for the acts or omissions of its mining claimants, permittees, licensees, and lessees.

SUPPLEMENTARY INFORMATION: 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, P.O. Box 1397, Roswell, New Mexico 88201. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

David L. Mari,

Associate District Manager.

[FR Doc. 87-20144 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-FB-M

[NV-030-07-4212; N-46540]

Realty Action; Modified; Competitive Sale; Public Lands in Washoe County, NV

The following described land, comprising 20 acres, has been identified as suitable for disposal by modified-competitive 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 fair market value:

Mt. Diablo Meridian

T. 19 N., R. 21 E.,
Sec. 10, W½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼.

Aggregating 20 Acres.

The land is hereby segregated from appropriation under the public land laws including the mining laws, but not from sale under the above cited statute. The segregative effect will end upon the issuance of the patent or 270 days from the date of publication of the notice in the **Federal Register**, whichever occurs first.

The sale is consistent with the Bureau's planning system. The land is not needed for support of any resource programs and is not suitable for management by another Federal agency.

In accordance with section 209(b)(1)(l) of Pub. L. 94-579, mineral interests excepting geothermal steam and related resources will be conveyed simultaneously with the surface estate.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. Geothermal steam and related resources together with the right to explore for, and develop the resource.

The patent will also be subject to the following rights-of-way:

1. Those rights for powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by Rights-of-Way CC-021238 & Nev-066082.

2. Those rights for highway purposes granted to Nevada Department of Transportation, its successors or assigns, by Right-of-Way Nev-054977.

3. Those rights for communication purposes which have been granted to Bell Telephone Company of Nevada, its successors or assigns, by Right-of-Way CC-020776.

4. Those rights for access purposes which have been granted to Jay D. Farmer, his successors or assigns, by Right-of-Way N-43688.

The subject parcel lies within Nevada Department of Transportation Material Site Right-of-Way Nev-058707 which would be relinquished prior to consummating the sale.

Bid Information

No bids will be accepted for less than the appraised fair market value. Prior to the sale, a brochure will be made available to the public which contains the appraised fair market value, pertinent information regarding the parcel and sale procedures. Bidders must be either: (1) Citizens of the United States, 18 years of age or older, (2) corporations subject to the laws of any State of the United States, (3) entities such as associations or partnerships capable of holding land or interest therein under the laws of the State within which the land is located, or (4) States, State instrumentalities or political subdivisions authorized to hold title to real property.

Sealed bids may be made by a principal or duly qualified agent. Sealed bids shall be considered only if received at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701, prior to 9:00 a.m., December 1, 1987. The written sealed bids will be opened and publicly declared at the sale, which will be held on December 1, 1987, at 10:00 a.m.

Each bid shall accompanied by a certified check, postal money order or cashier's check made payable to the Department of the Interior-BLM for not less than ten (10) percent of the amount of the bid and the $50.00 filing fee to purchase the mineral interest of no known value shall be enclosed in a sealed envelope marked in the lower left hand corner, Bid for Public Land Sale N-46540, December 1, 1987. In the event identical bids are received, the determination of who is to be considered the highest bidder shall be by supplemental sealed bids.

The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale.

Mr. J.R. Mastelotto, who has a contract of sale to purchase an adjoining private parcel, and in addition has proposed a project which incorporates both private and public lands, will be given a preference right to purchase the property by meeting the high bid within 30 days of the sale. Failure to exercise

this option shall constitute a waiver of such bidding provision.

All bids will be returned, accepted or rejected within 30 days of the sale date.

BLM may accept or reject any and all offers, or withdraw the land from sale, up to the point of receiving the balance of the bid amount if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law.

The land will not be offered for sale for at least 60 days after the date of this notice. 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, Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suit 300, Carson City, Nevada 89701. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action.

Date this 21st day of August 1987.

Norman L. Murray,

Acting District Manager.

[FR Doc. 87-20165 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-HC-M

[WY-060-07-4212-14; W-105860]

Decision on Resource Management Plan Amendment; Platte River Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Decision on Plan Amendment; Platte River Resource Area, Wyoming.

SUMMARY: Notice is given to the public that the Bureau of Land Management has decided to amend the Platte River Resource Area Resource Management Plan. The plan amendment changes decision L1: Land Disposal and the prescription for resource management unit No. 14 by identifying the following parcel for disposal by sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended.

Sixth Principal Meridian, Wyoming

T. 33 N., R. 89 W.
Sec. 15, S½.

The above described parcel aggregates 320.00 acres in Natrona County.

DATES: Protests on the plan amendment may be filed within 30 days from the date of this notice. Consistency review comments from the Governor of Wyoming have been received. This decision will become final 30 days from the date of this notice or upon resolution of any protest.

ADDRESSES: Protests on the plan amendment shall be sent to the Director, Bureau of Land Management, 18th C. Street NW., Washington, D.C. 20240. The environmental assessment prepared for the plan amendment is available at the Platte River Resource Area, 815 Connie Street, P.O. Box 2420, Mills, WY 82644.

FOR FURTHER INFORMATION CONTACT: Bill Mortimer, Platte River Resource Area Manager (307) 261-5191.

August 25, 1987.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 87-20145 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-943-07-4220-10; A-22923]

Proposed Withdrawal of Federal Land; Opportunity for Public Meeting; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 78,670.73 acres of federal land for the protection of a site currently being considered by the State of Arizona for the Department of Energy's Superconducting Super Collider project near Phoenix, Arizona. This notice closes the land for up to 2 years from mining location. The land will remain open to surface entry and mineral leasing.

DATES: Comments and request for a public meeting should be received by December 1, 1987.

ADDRESS: Comments and meeting requests should be sent to Arizona State Director, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM, Arizona State Office, 602-241-5534.

SUPPLEMENTARY INFORMATION: On August 18, 1987 a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described federal land from location under the mining laws, subject to valid existing rights:

Gila and Salt River Meridian

T. 4 S., R. 1 E.,
Sec. 19, W½;
Sec. 31, E½.

T. 5 S., R. 1 E.,
Sec. 7, E½;
Sec. 8, W½;
Sec. 9, W½;
Sec. 16, all (State owned minerals);
Sec. 17, W½;
Sec. 18, lots 3-4, E½, E½SW¼;
Sec. 19, lots 1-4, incl., E½, E½W½;
Sec. 21, all;
Sec. 22, W½;
Sec. 27, W½;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1-4, incl., E½, E½W½;
Sec. 31, lots 1-4, incl., E½, E½W½;
Sec. 32, all (State owned minerals);
Sec. 33, all;
Sec. 34, W½.

T. 6 S., R. 1 E.,
Sec. 3, lot 4, SW¼NW¼, SW¼;
Sec. 4, lots 1-4, incl., S½N½, S½;
Sec. 5, lots 1-4, incl., S½N½, S½;
Sec. 6, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1-2, E½NW¼, NE¼;
Sec. 9, S½, SW¼NW¼;
Sec. 10, W½;
Sec. 15, W½;
Sec. 18, lots 3-4, E½SW¼;
Sec. 19, lots 1-2, E½NW¼;
Sec. 21, N½;
Sec. 27, S½;
Sec. 28, W½NW¼, E½SE¼;
Sec. 29, W½;
Sec. 30, lots 3-4, E½SW¼, SE¼;
Sec. 31, lots 1-4, incl., E½, E½W½;
Sec. 32, all (State owned minerals);
Sec. 33, NW¼.

T. 4 S., R. 1 W.,
Sec. 3, lots 1-4, incl., S½N½, S½;
Sec. 4, lots 1-4, incl., S½N½, S½;
Sec. 5, lots 1-4, incl., S½N½, S½;
Sec. 6, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1-4, incl., E½, E½W½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, W½;
Sec. 13, all;
Sec. 14, all;
Sec. 15, N½;
Sec. 24, SW¼;
Sec. 25, NE¼.

T. 4 S., R. 2 W.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 2, lots 1-4, incl., S½N½, S½;
Sec. 3, lots 1-4, incl., S½N½, S½;
Sec. 4, S½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 14, N½;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1-4, incl., E½W½, E½;
Sec. 19, lots 1-4, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, N½;
Sec. 29, all;
Sec. 30, lots 1-4, incl., E½W½, E½;
Sec. 31, lots 1-4, incl., E½W½, E½.

T. 4 S., R. 3 W.,
Sec. 24, all;
Sec. 25, all;
Sec. 35, all.

T. 5 S., R. 2 W.,
Sec. 6, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;

Sec. 7, lots 1–4, incl., E½W½, E½;
Sec. 18, lots 1–4, incl., E½W½, E½;
Sec. 19, lots 1–4, incl., E½W½, E½;
Sec. 30, lots 1–4, incl., E½W½, E½;
Sec. 31, lots 1–4, incl., E½W½, E½.
T. 5. S., R. 3 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 35, all;
Sec. 36, all (State owned minerals).
T. 6. S., R. 1 W., unsurveyed,
Sec. 25, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all;
T. 6. S., R. 2 W., unsurveyed,
Sec. 6, all;
Sec. 7, all;
Sec. 18, all;
Sec. 19, all;
Sec. 20, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, all;
Sec. 31, all;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
T. 6. S., R. 3 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 2, lots 1–4, incl., S½N½, S½ (State owned minerals);
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
T. 7. S., R. 1 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 3, lots 1–4, incl., S½N½, S½;
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 6, lots 1–4, incl., S½NE¼, SE¼NE¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, incl., E½W½, E½;
Sec. 7, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, W½.
T. 7. S., R. 2 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 3, lots 1–4, incl., S½N½, S½;
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all.

The area described contains 78,670.73 acres in Maricopa County, Arizona. The mineral estate in five of the Federal sections containing 3,201.16 acres is owned by the State of Arizona. The federally-owned mineral estate affected by this application is 75,469.57 acres

In addition to the Federal lands, the area includes approximately 11,500 acres of privately-owned land and 5,100 acres of State-owned fee and mineral estate.

The purpose of the proposed withdrawal is to protect the lands while the site is under consideration by the State of Arizona for the Department of Energy's Superconducting Super Collider Project. The Department of Energy is expected to make the site selection during the two-year protection period afforded by this withdrawal application.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Arizona State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The aplication will be processed in accordance with the regulations set forth in 43 CFR Group 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled prior to that date.

The temporary segregation of the lands in connection with the withdrawal application does not affect administrative jurisdiction over the lands and the segregation shall not affect the authorizing of any use of the land by the Bureau of Land Management.

August 28, 1987.

Dean Stepanek,

Assistant Director, Land and Renewable Resources.

[FR Doc. 87–20227 Filed 9–1–87; 8:45 am]

BILLING CODE 4310-32-M

[CO-940-07-4220-11; C-28324]

Notice of Proposed Continuation of Land Withdrawal; Colorado

August 25, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for the Stone Cellar Ranger Station, be modified and the withdrawal be continued for 20 years insofar as it affects 10 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before December 1, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes the existing withdrawal made by Secretarial Order of December 11, 1908, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

New Mexico Principal Meridian

Rio Grande National Forest

T. 43 N., R. 3 E.,
Sec. 6, NE¼SE¼NW¼.

The area described aggregates 10 acres in Saguache County.

The purpose of this withdrawal is for the administration and protection of the Stone Cellar Ranger Station. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will

determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-20146 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Outer Continental Shelf; Receipt of Proposed Development Operations Coordination Document From Chevron U.S.A., Inc.

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. 14-08-001-6669, 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 August 21, 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: 8:00 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 Sec. 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.

Date: August 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20147 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Receipt of Proposed Development Operations Coordination Document From Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3087, Block 620, Matagorda Island Area, offshore Texas. 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 Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on August 24, 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: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 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.

Date: August 25, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20148 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:00 p.m., Tuesday, September 29, 1987, at the park headquarters, located at 2202 Roosevelt, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95-629, Title II, November 10, 1978. The purpose of the Commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed include:

—Minutes of previous meeting
—Park Operations Update
—Los Compadres Update
—Archdiocesan Report
—City Report
—County Report
—Open Discussion
—Acknowledgment of outgoing members

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 2202 Roosevelt Avenue, San Antonio, Texas 78210 (512) 229-5701.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Mission National Historical Park.

Dated: August 25, 1987.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 87-20128 Filed 9-1-87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

Agency: United States International Trade Commission.

Action: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35,) the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-247, Cost Saving or Other Benefits to U.S. Consumers Resulting from Temporary Duty Suspension in the Trade and Tariff Act of 1984, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

Summary of proposal:

(1) Number of forms submitted: one

(2) Title of form: Questionnaire for Companies Importing and/or Using Products Granted Duty-Free Entry Under Pub. L. 98-573

(3) Type of request: new

(4) Frequency of use: nonrecurring

(5) Description of respondents: Firms which import and/or use products granted duty-free entry under Pub. L. 98-573

(6) Estimated number of respondents: 153

(7) Estimated total number of hours to complete the forms: 24

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from Edmund Cappuccilli (USITC tel. no. 202-523-0490) or Cynthia B. Foreso (USITC tel. no. 202-523-1230). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of comments: Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contracting our TDD terminal on (202) 724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 25, 1987.

[FR Doc. 87-20231 Filed 9-1-87; 8:45 am]

BILLING CODE 7020-02-M

Agency Form Submitted for OMB Review

Agency: United States International Trade Commission.

Action: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-248, The Implications of Foreign-Trade Zones (FTZ's) for U.S. Industries and for Competitive Conditions between U.S. and Foreign Firms (Supplement and Expansion).

Summary of proposals:

(1) Number of forms submitted: 1

(2) Title of forms: Questionnaire for U.S. Producers Operating in Foreign-Trade Zones

(3) Type of Request: new

(4) Frequency of use: non-recurring

(5) Description of respondents: U.S. producers with approval to operate in foreign-trade zones

(6) Estimated number of respondents: 101

(7) Estimated total number of hours to complete the forms: 3,030

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed forms and supporting documents may be obtained from Carl Seastrum (USITC, tel. no. 202-724-1733). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of comments: Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7340. Copies of any comments should be provided to Charles Ervin, United States International Trade Commission, 701 E Street, NW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 26, 1987.

[FR Doc. 87-20232 Filed 9-1-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-287 (Preliminary) and 731-TA-378 (Preliminary)]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela [1]

Determinations

On the basis of the record [2] developed in investigation No. 701-TA-287 (Preliminary), the Commission unanimously determines,[3] pursuant to

[1] For purposes of these investigations the term "electrical conductor aluminum redraw rod" refers to wrought rods of aluminum which are electrically conductive and contain not less than 99 percent of aluminum by weight.

[2] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[3] Chairman Liebeler not participating.

section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Venezuela of electrical conductor aluminum redraw rod, provided for in item 618.15 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Government of Venezuela.

On the basis of the record [2] developed in investigation No. 731–TA–378 (Preliminary), the Commission unanimously determines,[3] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Venezuela of electrical conductor aluminum redraw rod, provided for in item 618.15 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 14, 1987, petitions were filed with the Commission and the Department of Commerce by Southwire Company, Carrollton, Georgia, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of electrical conductor aluminum redraw rod from Venezuela and by reason of LTFV imports of electrical conductor aluminum redraw rod from Venezuela. Accordingly, effective July 14, 1987, the Commission instituted preliminary countervailing duty and antidumping investigations to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 22, 1987 (52 FR 27593). The conference was held in Washington, DC, on August 6, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 28, 1987. The views of the Commission are contained in USITC Publication 2008 (August 1987), entitled "Certain Electrical Conductor Aluminum Redraw Rod from Venezuela: "Determination of the Commission in Investigation No. 701–TA–287 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation," and "Determination of the Commission in Investigation No. 731–TA–378 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the the Commission.

Issued: August 28, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–20234 Filed 9–1–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–260]

Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof; Notice of Commission Decision Not to Review Initial Determination Terminating One Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination terminating the above-captioned investigation as to one respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting a joint motion to terminate the investigation as to respondent Hong Kong Tientsin Fur Co. Ltd. (Tientsin) on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–563–0261.

SUPPLEMENTAL INFORMATION: On November 10, 1986, David Leinoff and David Leinoff, Inc. (Leinoff), filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain feathered fur coats and pelts. On the basis of that complaint, the Commission instituted the above-captioned investigation. The notice of investigation referred to the following unfair acts: (1) alleged infringement of claim 1 of U.S. Letters Patent 3,760,424 (the '424 patent), owed by Leinoff and (2) alleged manufacture abroad by a process which, if practiced in the United States, would infringe claim 5 of the '424 patent, the effect or tendency of which is to destroy or substantially injure an industry, efficently and economically operated, in the United States. 51 FR 46944 (December 29, 1986). The Commission's notice of investigation listed nine respondents that were alleged to be in violation of section 337.

On June 22, 1987, complainants and respondent Tientsin filed a joint motion (Motion No. 260–18) to terminate the investigation as to Tientsin on the basis of a settlement agreement.

On July 30, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 24) granting joint Motion No. 260–18 and terminating the investigation as to Tientsin on the basis of the settlement agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53–.55 (19 CFR 210.53–.55).

Copies of the ID and all other nonconfidental 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 202–523–1626. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: August 28, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–20233 Filed 9–1–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[No. MC–C–30029]

Motor Carriers; Petition for Declaratory Order; Andrews Van Lines, Inc., et al.

August 26, 1987.

A decision in this proceeding, served July 20, 1987, as corrected by notice served August 10, 1987, specified a date of August 10, 1987, for persons intending to participate to so inform the Secretary. It also stated that comments would be due 30 days after issuance of a service list of all interested persons. A notice published on July 21, 1987, in the **Federal Register** (52 FR 27471) and the *ICC Register* erroneously stated that comments are due on or before

September 4, 1987. The purpose of this notice is to clarify this inconsistency and advise that comments will not be due until 30 days after issuance of a service list of all persons intending to participate. Those intending to participate may still so inform the Secretary until September 4, 1987.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20207 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-18573]

Motor Carriers; Continuance in Control Exemption for Elder Moving & Storage Co.; Mayflower Group, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Mayflower Group, Inc. (Group), a noncarrier, has filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for its continuance in control of Elder Moving & Storage Co. (Elder), which has an initial application for authority to transport household goods pending in No. MC-202722.

Group currently controls, with Commission approval, Mayflower Transit, Inc. d/b/a Aero Mayflower Transit Company, Inc. (Transit) (No. MC-2934), a motor carrier of property, and Mayflower Contract Services, Inc. (Contract Services), a noncarrier that owns R. W. Harmon & Sons, Inc. (Harmon) (No. MC-20071), a motor carrier of passengers, which, in turn, owns Dorsey Bus, Inc. (Dorsey) (No. MC-189841), also a motor carrier of passengers.

Elder is affiliated with the following regulated subsidiaries of Transit: AMTC Brokers, Inc. (No. MC-169831), a property broker; and Crest-Mayflower International, Inc. (FF-361), Mayflower Forwarders, Inc. (FF-672), and Mayflower International Forwarding, Inc. (FF-834), household goods freight forwarders whose stock is currently held in a voting trust approved by the Commission.

Group submits that regulation of this transaction is not necessary to carry out the transportation policy of 49 U.S.C. 10101. Elder is seeking authority primarily to handle military traffic and to supplement the authority of Transit and its affiliated companies. Elder's proposed service can be used by Transit's existing network of origin agents at military bases, who are limited to representing not more than three carriers and forwarders. In addition, Elder would be able to provide additional equipment within an established military household goods transportation system, thus promoting safe, adequate, economical, and efficient transportation services. Group also states that regulation is not necessary to protect shippers from abuse of market power because a large number of carriers are competing for the same traffic.

DATES: Comments must be received October 2, 1987.

ADDRESSES: Send comments (an original and 10 copies), referring to No. MC-F-18573, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative: James P. Reichert, P.O. Box 107, Indianapolis, IN 46206-0107

FOR FURTHER INFORMATION CONTACT:

Thomas J. Barry, (202) 275-7540
or
Warren Wood, (202) 275-7977
(TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Petitioners seek an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: August 25, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Chairman Gradison did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20208 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30052]

Petition for Declaratory Order on Transportation of Appliances Within Colorado; RAC Transport Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: RAC Transport Company, Inc. (RAC), a motor carrier, seeks institution of a declaratory order proceeding to determine whether the transporation of home convenience products (mostly appliances such as washers, dryers, refrigerators, and stoves) from Sears' warehouse in Denver, CO, to other Colorado points is interstate or intrastate in nature. Sears, Roebuck & Company (Sears) receives shipments of these products at its Denver distribution facility from manufacturers located at various points outside Colorado. Sears reships the products to customers at other points in Colorado as it receives orders, on average within 2 months. RAC transports the shipments from Denver under interstate operating authority.

DATES: Persons interested in particpating in this proceeding should so advise the Commission in writing by September 16, 1987. A list of interested parties will then be compiled and served. RAC will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional comments. Other parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioner's representative. Petitioner will have 50 days from the service date of the service list to reply.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to No. MC-C-30052 to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioner's representative:

Catherine W. Hansen, Baker & Hostetler, Suite 1100, 303 E. 17th Ave., Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Paul Schach (202) 275-7885 or Andrew L. Lyon (202) 275-7691. TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. Copies of the decision are available from T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or by calling (202) 289-4357, (assistance for the hearing impaired is available through TDD services (202 275-1721 or by pickup from TSI in Room 2229 at Commission headquarters).

Decided: August 24, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissions Sterrett, Andre, and Simmons.

Noreta R. McGee

Secretary.

[FR Doc. 87-20302 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31097]

The Great Western Railway Co.; Trackage Rights Exemption

Union Pacific Railroad Company (UPRR) has agreed to grant overhead trackage rights to The Great Western Railway Company (GWR). GWR will have the right to use rail lines (1) on UPRR's Ft. Collins branch, between milepost 0.04 near Milliken, CO, and milepost 9.10 in Kelim, CO, and (2) on UPRR's Dent branch, between milepost 42.80 in Dent, CO, and milepost 50.6 in La Salle, CO. The trackage rights are effective August 21, 1987.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. (1980).

Dated: August 24, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20209 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31096]

Railroad Operation and Acquisition Exemption; Terre Haute, Brazil & Eastern Railroad; Certain Lines of Consolidated Rail Corp.

The Terre Haute, Brazil & Eastern Railroad (THB&E) has filed a notice of exemption to acquire and operate certain properties of Consolidated Rail Corporation (Conrail). The property includes 28 route miles of rail line in Terre Haute, IN, which was Conrail's former Limedale Secondary trackage located between milepost 30.3 (EOT) and milepost 68.7, the East Yard between the western end of the Limedale Secondary, milepost 68.7 to a point approximately 500 feet west of Twenty Fifth Street, milepost 71.5, and its East Yard running track from milepost 71.5 to milepost 73.0 (EOT).

Any comments must be filed with the Commission and served on John C. Carvey, Carvey & Powers, Suite 500, Inland Building, 156 East Market Street, Indianapolis, IN 46204.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 26, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20200 Filed 9-1-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Hillsborough County, FL

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 19, 1987 a proposed Consent Decree in *United States* v. *Hillsborough County, Florida and the State of Florida*, was lodged with the United States District Court for the Middle District of Florida. That action was brought pursuant to the Clean Water Act for violations of the discharge limitations included in the Federal permit issued to Hillsborough County for its River Oaks Advanced Wastewater Treatment Plant.

The settlement agreement requires Hillsborough County to complete construction of new treatment facilities at the River Oaks Plant and to renovate existing portions of the River Oaks Plant in order to handle the increased flow to the plant and comply with the terms of its permit issued under the Clean Water Act. Hillsborough County is required to complete construction outlined in the Consent Decree and be in full compliance with its permit by May 31, 1988. Until that time, Hillsborough County must meet strict standards regulating its discharge or pay civil penalties for such violations. In addition, Hillsborough County will pay a $180,000 civil penalty to the United States.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Hillsborough County, Florida*, D.J. Ref. 90-5-1-1-2742.

The proposed consent decree may be examined at the office of the United States Attorney, Robert Timberlake Building, 500 Zack Street, Tampa, Florida 33602 and at the Region IV Office of the U.S. Environmental Protection Agency, 345 Courtland Street N.E., Atlanta, Georgia 30365. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW, Washington, DC 20530.

A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the consent decree should be accompanied by a check in the amount of $1.90 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20150 Filed 9-1-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-69)]

NASA Advisory Council, Space and Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC), Informal Executive Advisory Subcommittee.

Date and time: October 1, 1987, 1 p.m.—5 p.m. and October 2, 1987, 8 a.m.—5 p.m.

ADDRESS: Capitol Gallery, Room 770, 600 Maryland Avenue, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space

Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space and Earth Science Advisory Committee's Executive Subcommittee will meet to plan in detail the agenda of the full committee scheduled for November 18-20, 1987 and to discuss possible committee activities to be undertaken during the coming year. The Subcommittee is chaired by Dr. Louis Lanzerotti and is composed of 5 members. The meeting will be open to the public up to the seating capacity of the room (approximately 10 persons including committee members and other participants).

Type of meeting: Open.

Agenda:

October 1, 1987

1 p.m.—Discussion of future Committee activities.

5 p.m.—Adjourn.

October 2, 1987

8 a.m.—Continuation of Committee discussion on future activities.

5 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 27, 1987.

[FR Doc. 87-20094 Filed 9-1-87; 8:45 am]

BILLING CODE 7510-01-M

[Notice (87-68)]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC), Ad Hoc Team on Lunar and Planetary Mission Propulsion.

Date and time: September 23, 1987, 8:15 a.m. to 5 p.m.

ADDRESS: Room 647, Federal Office Building 10B, National Aeronautics and Space Administration Headquarters, Washington, DC 20546.

FURTHER INFORMATION CONTACT: Mr. Robert Wasel, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2855.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the Office of Aeronautics and Space Technology (OAST). Special Ad Hoc Teams were formed to address specific topics. The ad hoc team on Lunar and Planetary Mission Propulsion, chaired by Mr. Robert G. Jahn, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of meeting: Open.

Agenda:

September 23, 1987

8:15 a.m.—Introduction.

8:30 a.m.—Review of NASA propulsion program for lunar and planetary missions.

11 a.m.—Discussion of propulsion program.

5 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 27, 1987.

[FR Doc. 87-20108 Filed 9-1-87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499]

Receipt of Petition for Director's Decision, Houston Lighting & Power Co., et al.

In the matter of Houston Lighting & Power Co.; City Public Service Board of San Antonio, and Central Power and Light Co., City of Austin, TX, South Texas Project, Units 1 and 2.

Notice is hereby given that by Memorandum and Order dated July 24, 1987, the Commission has referred a motion filed by Lanny Sinkin on behalf of Citizens Concerned About Nuclear Power, Inc., on May 29, 1987, with regard to the South Texas Nuclear Plant (STNP) to the NRC staff for consideration under 10 CFR 2.206. In the motion, entitled "Intervenor Citizens Concerned About Nuclear Power, Inc. Motion to Reopen the Record," the Petitioner requested that the record in the STNP licensing hearing be reopened and that fuel loading then scheduled for June 1987 be suspended pending resolution of the matters in the motion. The Petitioner requested that the Licensing Board decisions with regard to STNP should be altered, asserting as a basis for this request that, based on the April 9, 1987, testimony of NRC witnesses before the Senate Committee on Governmental Affairs, there is evidence of intimidation and harassment of NRC personnel in Region IV which sheds doubt on the credibility, accuracy and objectivity of the testimony presented by NRC personnel in the operating license proceeding on which the Licensing Board relied in reaching its decision. The Commission denied the request for the stay of fuel loading and referred the remainder of the motion to the NRC staff for consideration under 10 CFR 2.206. This matter 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.

Copies of the Petition are available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and in the local public document rooms for the facility located at Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77418 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Bethesda, Maryland, this 27th day of August 1987.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-20220 Filed 9-1-87; 8:45 am]

BILLING CODE 7590-01-M

Availability of Publications Concerning the Facts and Implications of the Accident at the Chernobyl Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing for public comment an NRC staff report entitled "Implications of the Accident at Chernobyl for Safety Regulation of Commercial Nuclear Power Plants in the United States," NUREG-1251.

The NRC is also making available for information another publication concerning the April 26, 1986, accident at the Chernobyl Nuclear Power Station in the Soviet Union. This report, entitled "Report on the Accident at the Chernobyl Nuclear Power Station," NUREG-1250, provides information concerning the facts of the accident. NUREG-1250 was prepared collaboratively by the NRC, other United States government agencies, and other groups.

ADDRESS: Comments on NUREG-1251 should be sent to the Rules and

Procedures Branch, Division of Rules and Records, Office of Administration, Room 4000 MNBB, Washington, DC 20555. Copies of NUREG–1250 and NUREG–1251 may be purchased by calling the U.S. Government Printing Office on (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

Both publications will be available for review or copying for a fee in the NRC Public Document Room, located at 1717 H Street, NW., Washington, DC. In addition, single copies of NUREG–1251 may be obtained free of charge upon written request to the Distribution Section, Document Control Branch, Room P–130A, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

DATES: Comments on NUREG–1251 should be submitted by November 2, 1987.

FOR FURTHER INFORMATION CONTACT: George Sege, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–9640.

SUPPLEMENTARY INFORMATION: NUREG–1250, "Report on the Accident at the Chernobyl Nuclear Power Station" reports the results of coordinated, cooperative fact-finding effort of various U.S. Government Agencies and some other groups. The NRC served as general coordinator of the report. Other participating government agencies were the U.S. Department of Energy, the U.S. Environmental Protection Agency, and the Federal Emergency Management Agency. Other participating groups were the Electric Power Research Institute and the Institute of Nuclear Power Operations. The report has eight chapters: Overview, Plant Design, Safety Analysis, Accident Scenario, Role of Operating Personnel, Radionuclide Release and Atmospheric Dispersion and Transport, Emergency Preparedness and Response, and Health and Evironmental Consequences. NUREG–1250 is being made available for information.

NUREG–1251, "Implications of the Accident at Chernobyl for Safety Regulation of Commercial, Nuclear Power Plants in the United States," prepared by the NRC staff, is being issued for comment. The facts of the Chernobyl accident relied on for this assessment have been drawn from NUREG–1250 and its sources. NUREG–1251 presents a general assessment of the implications, supported by detailed assessments with respect to a number of particular issues. The particular U.S. reactor safety regulatory issues selected for evaluation were those that are associated with significant factors which led to or exacerbated the consequences of the Chernobyl accident. The issues covered are in the areas of administrative controls and operational practices, design, containment, emergency planning, and severe accident phenomena.

The Summary of NUREG–1251 is an overall assessment. The detailed assessment for each of the issues states the issue with particular reference to its Chernobyl context, describes current U.S. regulatory practices with respect to the issue and relevant ongoing work, assesses the implications, and draws conclusions and makes recommendations with respect to the issue.

Most of the report, NUREG–1251, focuses on light-water reactor power plants. A final chapter addresses graphite reactors. The scope of the report is limited to reactors subject to NRC regulation; Department of Energy reactors are not covered.

Dated at Washington, DC, this 28th day of August, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk

Secretary of the Commission.

[FR Doc. 87–20222 Filed 9–1–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination; Philadelphia Electric Co., et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company (the licensee) for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 located in York County, Pennsylvania.

The amendment would provide interim relief from the requirement in the Technical Specification plant staff organization chart that either the plant manager or the superintendent of operations shall hold a senior reactor operator's license. These revisions to the Technical Specifications would be made in response to the licensee's application for amendment dated August 10, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Peach Bottom Atomic Power Station, Units 2 and 3 (PBAPS) has been shutdown by NRC Order issued on March 31, 1987 because of the problem of inattentiveness to duties by the plant operation staff. The issuance of the Order was notice in the **Federal Register** on April 8, 1987 (52 FR 11386–11388).

The licensee states that it has completed an analysis to determine the underlying root causes of the problem identified in the order and has developed a plan to assure that the PBAPS will operate safely and in compliance with all requirements. This plan, entitled the "Peach Bottom Commitment to Excellence Action Plan" (CTE) was submitted to the NRC on August 7, 1987. As stated in the CTE Action Plan, the licensee has, in addition to other actions to address the concerns identified in the Order, made changes in the management organization at the plant. These plant management changes include, to date, the replacement of the plant manager with an individual who has many years of nuclear related experience but does not have an SRO license. Also, as noted in section 3.4.1. of the CTE plan, the former Superintendent-Plant Services at PBAPS will become the Superintendent-Operations upon completion of his SRO qualification for PBAPS. The licensee states that although this individual is highly qualified for the position of Superintendent-Operations, he does not yet hold an SRO on PBAPS and therefore cannot yet assume the duties of Superintendent of Operations. The licensee notes that this individual has been undergoing classroom training specific to the Peach Bottom plant to prepare him for SRO written and oral exams to be given by NRC in October 1987. This training was completed in mid-August 1987.

The licensee submits that, on having completed this plant specific training for

the SRO exam in mid-August 1987, it would strengthen and enhance the management of the PBAPS if he could then assume the duties of Superintendent-Operations. Therefore, the licensee requests the temporary relief from the Technical Specification requirement that either the plant manager or the Superintendent-Operations have an SRO license. This relief would be effective only until the individual successfully completes the SRO written and oral exams, which the licensee expects to be in October 1987, and only with the PBAPS in a cold shutdown condition.

The licensee addressed the three standards for determining whether a significant hazards consideration exists in the amendment application by providing the following analyses.

1) The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated because (1) the individual who is intended to succeed the current Superintendent-Operations will have completed the majority of the training required for SRO License prior to the effective date of the temporary Technical Specification relief, (2) the individual has held an SRO License at a similar BWR facility (Limerick Generating Station) within the past few years, and (3) the Operating Engineer maintains an SRO License, thus meeting ANSI N18.1–1971 requirements for managing operations.

2) The proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated because the lack of SRO Licenses on the part of the Plant Manager and the Superintendent-Operations, unlike a procedure or design change, is not a potential new accident precursor.

3) The proposed revision does not involve a significant reduction in a margin of safety because the candidate's training and experience qualifications more than compensate for the lack of certain plant-specific power change and participation requirements required for an SRO License, and adequate compensation is provided through the function of the Operations Engineer who maintains an SRO License as required by the Technical Specifications and by limiting plant status to operations in the cold condition.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, and its consideration of the temporary nature of the requested relief, the support to be provided by the Operations Engineer and the status of the plant in cold shutdown condition during the period of the requested relief, the staff believes that the licensee has met the three standards. Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in the impedance or delay in needed changes identified by the licensee in the management of plant operations. There are numerous changes currently being undertaken by the licensee with respect to plant staff organization leadership and management, staffing, plant procedures, work management systems, etc. as set forth in the CTE Action Plan. In consideration of the critical nature of the activity by the licensee on these tasks during late August, September and October 1987, the staff has determined that the earliest practical implementation of the licensee's proposal to have the new designee assume the duties of Superintendent-Operations will further strengthen and enhance the management of the PBAPS and will therefore contribute to the assurance that the station will be operated in a safe manner.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Walter R. Butler, Director, Project Directorate I–2, by collect call to 301–492–7425 or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. All comments received by September 17, 1987 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room 1717 H Street, NW, Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 28th day of August 1987.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 87–20324 Filed 9–1–87; 8:45 am]

BILLING CODE 7590–01–M

THE PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Extension of Deadline for Accepting Applications

August 25, 1987.

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice of change to later date for acceptance of applications.

SUMMARY: Normally, applications for White House Fellowships must be received between June 1 and November 15 of the current year. The President's Commission on White House Fellowships has extended the deadline to December 1, 1987.

DATE: The closing date for applications for White House Fellowships is December 1, 1987.

FOR FURTHER INFORMATION CONTACT: President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503, (202) 395–4522.

Dated: August 25, 1987.

Ann W. Lavin,

Associate Director, President's Commission on White House Fellowships.

[FR Doc. 87–20196 Filed 9–1–87; 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings; Prospective Payment Assessment Commission

Notice is whereby given of meetings of the Prospective Payment Assessment Commission on Tuesday, September 15 and Wednesday, September 16, 1987, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Washington Room A, on the second concourse at 8:30 a.m. on September 15, 1987. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. In

Washington Room B, also on the second concourse. Both subcommittees' meetings will be held September 15, 1987.

The full Commission will meet at 1:30 p.m. in Washington Rooms A&B, on the second concourse, September 15, 1987, and in the Kennedy/Jefferson/Lincoln rooms on the third floor at 9:15 a.m. on September 16, 1987.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87-20004 Filed 9-1-87; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24449]

Filings Under the Public Utility Holding Company Act; Columbia Gas Transmission Corp., et al.

August 27, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 21, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate), should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas Transmission Corp.; (70-7106)

Columbia Gas Tranmission Corporation ("Transmission"), 20 Montchanin Road, Wilmington, Delaware 19807, a subisidiary of Columbia Gas System, Inc., a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act.

By order dated August 30, 1985 (HCAR No. 23813) Transmission received authorization to enter into a limited recourse loan agreement for $350 million with a group of commercial banks. Under the terms of the agreement, borrowings may be made on a revolving basis to October 15, 1987 ("Revolver Termination Date"), after which any loans outstanding will be converted to term loans and amortized by quarterly payments over a period of five years, with a final maturity of July 15, 1992.

Transmission proposes to amend the Agreement: (a) to extend the Revolver Termination Date to October 15, 1989, and (b) to extend the repayment schedule and the final maturity date to July 15, 1994. All other terms and conditions of the agreement will remain in effect without change.

Jersey Central Power & Light Co., et al. (70-7425)

Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company, 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605 and Pennsylvania Electric Company, 1001 Broad Street, Johnstown, Pennsylvania 15907 (together, "GPU Subsidiaries"), electric utility subsidiaries of General Public Utilities Corporation, a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

The GPU Subsidiaries propose to issue and sell from time to time through March 31, 1989 their respective unsecured short-term promissory notes to dealers in commercial paper. The amount of commercial paper to be issued by each GPU Subsidiary would not exceed $50 million at any one time outstanding, nor would the principal amount issued, when added to other short-term borrowings authorized by order of the Commission dated October 6, 1986 (HCAR No. 24207), exceed the amount of short-term indebtedness permitted by such company's charter to be outstanding at any one time. The GPU Subsidiaries request that the proposed issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

Kingsport Power Co., et al. (70-7441)

Kingsport Power Company ("Kingsport") and Wheeling Electric Company ("Wheeling"), 1 Riverside Plaza, Columbus, Ohio 43215, subsidiaries of American Electric Power Company, Inc., a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act thereunder.

By orders dated January 21, 1980 (HCAR No. 21401) and April 9, 1982 (HCAR No. 22453), Kingsport entered into a term-loan agreement, as amended, with Manufacturers Hanover Trust Company and First American National Bank-Tri-Cities pursuant to which it presently has unsecured borrowings outstanding of $2,000,000 which have a maturity date of December 31, 1987. Kingsport requests authorization to extend the maturity date of the outstanding borrowings to November 1, 1990.

By orders dated October 24, 1979 (HCAR No. 21265) and December 22, 1981 (HCAR No. 22332), Wheeling entered into a term-loan agreement, as amended, with the Bankers Trust Company pursuant to which it presently has unsecured borrowings outstanding of $7,000,000 which have a maturity date of November 1, 1987. Wheeling requests authorization to extend the maturity date of the outstanding borrowings to December 1, 1990.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20217 Filed 9-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24847; File No. SR-NYSE-87-26]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 17, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 13, 1987, the Exchange filed a proposed rule change to modify the settlement pricing of expiring stock index options to the opening prices on expiration Friday.[1] In particular, the Exchange modified the definition of "Current Index Group Value" in Rule 700(b)(17) to permit the Exchange to specify that the value upon exercise of options on the NYSE Composite Index and the NYSE Beta Index on expiration Friday is to be calculated from the opening prices for the constituent stocks on that day. The Exchange made conforming changes to make clear that trading in these options ceases on the Thursday before expiration Friday.

The Temporary Rule Filing was effective only with respect to contracts expiring in June 1987. On April 3, 1987, the Exchange filed a proposed rule change to make permanent the rule change proposed in the Temporary Rule Filing.[2] Thereafter, it became evident that the publication, comment and approval procedures for the permanent Rule Filings would not be completed before the Exchange opened for trading its contracts expiring in July 1987. Accordingly, on April 10, 1987, the Exchange filed a proposed rule change that extended the Temporary Rule Filing to the July expiration date.

On May 15, 1987, the Commission approved the Permanent Rule Filing, but only in relation to contracts expiring in August and September.[3] This was intended to permit the Commission to evaluate the June expiration before deciding on permanent approval. The Exchange understands that the Commission wishes to evaluate the September expiration as well before acting on the Exchange's permanent approval request. Accordingly, the proposed rule change seeks an extension to the December expiration date of the Commission's approval of the permanent filing on a temporary basis.

[1] *See* SR-NYSE-87-06; Letter dated March 16, 1987, to Sharon Lawson, Branch Chief, SEC, from Daniel P. Odell, Assistant Secretary, NYSE (collectively, the "Temporary Rule Filing"); and Release No. 34-24276 (March 27, 1987), 52 FR 10836 (April 3, 1987).)

[2] *See*, SR-NYSE-87-11 and Securities Exchange Release No. 24341 (April 14, 1987), 52 FR April 21, 1987 (the "Permanent Rule Filing").)

[3] *See* File No. SR-NYSE-87-13, Securities Exchange Act Release No. 24369 (April 12, 1987) 52 FR 13894 (April 27, 1987). *See* Securities Exchange Act Release No. 24466 (May 15, 1987), 52 FR 19947 (May 28, 1987).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to ameliorate the impact of the concurrent expiration of index options and futures on the markets for individual stocks and on the stock market as a whole. The Exchange believes that settling index futures and options based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's opening procedures in handling the accompanying stock volume, is the best strategy for addressing widely-held concerns about the actual and potential impact of the derivative products on the pricing mechanism and integrity of the stock market.

The basis under the Act for the proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance on the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, retroactive to July 17, 1987.

As noted above, the Commission's approval on a temporary basis of the Exchange's Permanent Rule Filing permitted the Exchange to change the settlement pricing of expiring stock index options to opening prices only for contracts expiring through September 1987. The Commission's evaluation of the experience with the September expiration cannot be completed before the Exchange opens its October, November and December contracts for trading. Accelerated approval of the proposed rule change will permit the Exchange to open its October, November and December contracts on a timely basis using expiration valuation based upon the opening prices of the underlying stocks. This will maintain the continuity and order of the Exchange's marketplace.

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 and the rules and regulations thereunder. The proposed rule change will enable the Exchange to implement procedures to base settlement of its index products on opening stock prices for the contract months of October, November and December that will open for trading before the Commission is able to evaluate the effects of settlement based on opening prices on the September 18, 1987 expiration. The Exchange believes that index settlement based on the opening prices of constituent stocks, utilizing the Exchange's opening procedures, may best address the actual and potential impact of index expirations.

On certain occasions during the past two years, the concurrent expiration of index futures and options has been accompanied by significant price volatility. This volatility appears to have resulted in part from the liquidation of securities held as part of index arbitrage trading strategies. Many market professionals have chosen to liquidate these positions at the close of trading in order to receive an execution price that will be consistent with the closing value

of the index used in the cash settlement of index futures and options positions.[4]

The Commission believes that the NYSE's revised opening procedures, designed to attract order flow to offset stock order imbalances related to index expirations, may help to ameliorate the price effects of index expirations. The ability to calculate and disseminate imbalance notices and quote indications, in a non-continuous trading environment, increases the accuracy and usefulness of the information. The Exchange believes that both factors allow it to provide investors with a more accurate picture of the market in the affected stocks.

The Commission believes that adequate steps have been taken to inform investors of the change in contract settlements. The Commission recently approved an Options Clearing Corporation ("OCC") supplement to the Options Disclosure Document amending the discussion of settlement procedures for index products. As a result, investors have been notified of the change in procedures. In addition, OCC has effected a rule change to its By-Laws to permit options exchanges to provide by rule that the settlement value of any index on which options are traded on a particular exchange will be determined by reference to the prices of the constitutent stocks at times other than the close of trading. Moreover, the NYSE and broker-dealers have taken steps to fully inform investors of these changes.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because of the Exchange's need to open October, November and December contracts for trading on a timely basis, subject to expiration valuation based upon the opening prices of the underlying stocks. These contracts will be open for trading prior to when the Commission will have reviewed the results of the September expiration and made a determination as to the appropriateness of permanent approval of the proposal. Moreover, the Commission believes that acceleration is appropriate because it will preclude the need to change the settlement time of already outstanding October, November and December NYSE index options contracts. Accordingly, the proposed rule change is hereby approved, retroactive to July 15, 1987.

[4] The liquidation of index arbitrage positions has resulted in increased volatility at expirations [*See* H. Stoll & R. Whaley, *Expiration Day Effects of Index Options and Futures* (March 15, 1986)] Consequently, the Commission, in conjunction with the WYSE, has implemented early order-entry and exposure experiments on the last four expirations (September and December 1986, and March and June 1987). Reduced volatility at these recent expirations may partially be attributed to these procedures.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communicatons relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 23, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 24, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20110 Filed 9-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24852; File No. SR-NYSE-87-23]

Self-Regulatory Organizations; Proposed Rule Change by New York, Stock Exchange, Inc., Automated Submission of Customer and Proprietary Trading Data by Member Firms.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 24, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the required submission by member firms of reports of their customer and proprietary trading data upon request to the Exchange in automated format.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections(A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to enhance the Exchange's ability to surveil customer and member proprietary trading, by requiring that members and member organizations submit upon request, in an automated format prescribed by the Exchange, reports of their customer and proprietary trading data, which is currently required to be submitted to the Exchange in "paper" form.

The Securities Industry Association (SIA), which was requested by the SEC to explore the feasibility of developing a means of providing transaction data in computer format, spear-headed an effort by the self-regulatory organizations to develop this system. As a result of this initiative, the SIA and the self-regulatory organizations have jointly developed a universal format which facilitates the automated transmission of proprietary and customer transaction data.

In many instances member firms would have to make some further programming modifications in order to adapt to the new requirement. However, this initiative should not add any significant additional regulatory burden to the member firms, but would simply ask that the same information that is currently requested by the Exchange be submitted in an automated format prescribed by the Exchange. In fact, as

member organizations adapt to the new reporting system, they will be able to respond to Exchange requests for information more quickly, accurately, and completely, thereby eliminating an otherwise time-consuming, manual task and consequently allowing a more cost-effective use of their resources. The proposed rule will also enable the Exchange to use its resources more effectively, as information submitted by member firms can be processed most efficiently by means of direct input to the Exchange's automated systems.

While large member firms may incur relatively small expense in meeting an automated reporting requirement, smaller firms may find such a requirement somewhat more burdensome. Therefore, paragraph (d) of the proposed rule authorizes the Exchange to grant exceptions to the overall automated reporting requirement in appropriate cases. In addition, an exemption as to the automated reporting of certain specific data elements may be granted on a case-by-case basis for a reasonable period of time, if a firm has sown that it has made a substantial effort to comply with this requirement, but is unable to do so at a particular time in regard to any specific data element. For example, some member firms may have certain of the data elements called for in the proposed rule in disparate automated data bases which are not interlinked, or may have certain of the data elements in an automated data base, with other data elements being retained solely in a manual format. Certainly at the outset of the effectiveness of Rule 410A, the Exchange intends to take a reasonable approach that takes into account the specific operational practices of particular member firms.

The system, once it is fully operational, will be available to market surveillance analysts on the computer terminals at their individual work stations. It will be an automated analytical and investigative tool which will be integrated with the Exchange's existing and future automated data bases. However, it should be noted that the Exchange conducts other surveillance activities which also involve member firm submission of certain information regarding their proprietary trading. Such information is submitted to the Exchange currently in a manual format on Form 82–P (general member firm proprietary trading) and Form 97 (block positioner surveillance). The Exchange expects at some point in the future to require automated submission of the information called for an Forms 82–P and 97 as well.

Therefore, proposed Rule 410A contains a provision that the Exchange may require submission of additional data elements as well. Of course, member firms would be given ample notice of any additional requirements as to automated submission of proprietary trading data that the Exchange may subsequently determine to adopt and such a rule change would be submitted to the Commission under Rule 19b–4.

As part of a separate initiative involving NYSE reporting requirements, the Exchange's Board of Directors recently approved an addition to the list of Exchange rule violations subject to summary fines pursuant to Rule 476A that authorizes the Exchange to impose such fines for failure to comply with NYSE reporting requirements in a timely manner (See SR–NYSE–87–10). The automated reporting requirement of proposed Rule 410A should better enable members and member organizations to fulfill their obligation to submit requested information in a timely manner.

"Solicited Order". Paragraph (b)(2) of proposed Rule 410A calls for a member organization to report whether a transaction effected or caused to be effected for a customer account was based upon a solicited or unsolicited order. Several questions have arisen as to the definition of a "solicited order". For purposes of paragraph (b)(2) of proposed Rule 410A, a "solicited order" shall refer to an order in a particular security entered by a customer following an oral or written communication with a registered employee associated with a member or member organization, or with the member, which was intended to elicit the entry of an order in that security. Clearly, if a broker were to call a customer and specifically recommend the purchase or sale of a particular security, the resulting order should be marked "solicited". Conversely, if a customer were to call his broker in order to place an order in a stock which the customer had already determined to buy or sell, that order should be marked "unsolicited". The Exchange expects members and member organizations to comply with this aspect of the rule on a good faith, best efforts basis.

(2) Statutory Basis for the Proposed Rule Change

By providing an enhanced automated surveillance tool, the proposed rule change will help ensure that the Exchange's regulatory and surveillance capabilities keep pace with the complexity of trading in today's sophisticated market environment, and therefore the proposed rule change is consistent with protecting investors and the public interest, as called for in section 6(b)(5) of the Act. The proposed rule change meets other requirements of section 6(b)(5) in that it will assist in preventing fraudulent and manipulative acts and practices, and thereby promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriation in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not seek written comment on the actual text of proposed Rule 410A. However, the Exchange has provided preliminary detailed computer specifications to 34 of its member firms, which account for about 75% of the trading volume involved in NYSE investigations initiated by the Market Trading Analysis Department of Market Surveillance, informing them of our projected target date of the second half of 1987. These particular firms were approached because of their overall large trading volume. These firms have indicated that they will be reviewing closely the proposed specifications, and their responses to date have been generally favorable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or written such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments,

all written statements with respect to the proposed rule change that are filed with the Commission, and all writtten communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-87-23 and should be submitted by September 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 25, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20112 Filed 9-1-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(b) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American Family Corporation
Common Stock, $0.10 Par Value (File No. 7-0368)
Abitibi-Price Inc.
Common Shares, No Par Value (File No. 7-0369)
GW Utilities Limited
Common Shares, No Par Value (File No. 7-0370)
Gulf Canada Resources Limited
Ordinary Shares, No Par Value (File No. 7-0371)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 18, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20111 Filed 9-1-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0431]

Revocation of License to Operate as a Small Business Investment Company; MRN Capital Co.

Notice is hereby given that MRN Capital Company (MRN), 150 Great Neck Road, Great Neck, New York 11021 has had its license revoked and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act). MRN was licensed by the Small Business Administration on April 23, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the revocation was effective July 2, 1987, and accordingly, all rights, privileges and franchises derived therefrom have been termined.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 24, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-20082 Filed 9-1-87; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:00 a.m., Thursday, October 15, 1987, at the Cortina Inn, Killington, Vermont, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602. (802) 828-4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1987.

[FR Doc. 87-20086 Filed 9-1-87; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, Texas, will hold a public meeting at 8:30 a.m. on Friday, November 13, 1987, at the Quality Inn in Jefferson, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce, Room 3C36, Dallas, Texas 75242 (214) 767-0600

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1987.

[FR Doc. 87-20085 Filed 9-1-87; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 8:00 a.m. on Friday, October 16, 1987, at the Yogo Inn Convention Center, 211 East Main Street, Lewistown, Montana 59457, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449-5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1987.

[FR Doc. 87-20084 Filed 9-1-87; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 10:30 a.m. on Friday, October 9, 1987, at

the Hale Koa Hotel, Banyan Tree Room, 2055 Kalia Road, Honolulu, Hawaii 96815–1998, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850 (808) 541–2990.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 25, 1987.

[FR Doc. 87–20083 Filed 9–1–87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Prince William County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Prince William County, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT) will prepare an environmental impact statement (EIS) on a proposal to construct a new four-lane facility from the intersection of Route 234 to the intersection of relocated Route 641 in Prince William County, Virginia.

The construction will involve the use of existing Route 642 alignment and new location for various segments of the project. The environmental study limits of the project are from the intersection of Route 234 to the intersection of existing Route 641, for a total length of about 6 miles.

The proposed project will improve traffic flow between Route 234 and I–95 (Dale City). It will also help relieve local traffic congestion with the expanding Dale City area.

Alternatives under consideration include: (1) Taking no action; (2) upgrading along the existing alignment; (3) utilizing existing highway and new location on certain segments. Depending on traffic patterns, various typical sections will be incorporated into the project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to organizations and/or citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment.

Following the publication of the Draft EIS, a location and design public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 13372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: August 25, 1987.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 87–20107 Filed 9–1–87; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[BS–Ap–No. 2712]

Consolidated Rail Corp.; Public Hearing

The Consolidated Rail Corporation has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance of the traffic control and automatic block signal systems between Salamanca, New York, and Meadville, Pennsylvania. This proceeding is identified as FRA Block Signal Application No. 2712.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. on November 4, 1987, in the Council Chamber of the Meadville City Building at 984 Water Street in Meadville, Pennsylvania.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on August 25, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–20117 Filed 9–1–87; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Motor Club of America Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24618 to reflect this addition:

Motor Club of American Insurance Company. Business Address: 484 Central Avenue, Newark, New Jersey 07107–2096. Underwriting Limitation [b]: *$2,804,000.* Surety License[c]: All except IL, IA, MN, NH, VA, WV. Incorporated in: New Jersey. Federal Process agents[d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The certificates are subject

to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 23).

A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2214.

Dated: August 27, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 87–20113 Filed 9–1–87; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., September 4, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20257 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 1:30 p.m., September 8, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Commission Interpretation on risk management exemptions from Speculative Limits for Financial and Currency Futures and Options
Consideration of the Chicago Board of Trade's petition for rulemaking—amendment of the Commission's Hedging Definition

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20258 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., September 11, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20259 Filed 8–31–87;10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., September 18, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secreatry of the Commission.
[FR Doc. 87–20260 Filed 8–31–87;10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 10:00 a.m., September 22, 1987.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters
Financial Rule Enforcement Review

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20261 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:15 a.m., September 25, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20262 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 11:30 a.m., September 25, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Reviews

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20263 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., September 29, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters
Rule Enforcement Reviews

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–20264 Filed 8–31–87; 10:57 am]
BILLING CODE 6351–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, September 3, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratification
4. Petitions and Complaints:
   Certain erasable programmable read only memories and products containing such memories (Docket Number 1415).
5. Inv. 701–TA–282 and 731–TA–351 and 353 (Final) (Certain forged steel crankshafts from Brazil, the Federal Republic of Germany, and the United Kingdom)—briefing and vote.
6. Inv. 731–TA–355 (Final) (Certain silica filament fabric from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

August 24, 1987.

[FR Doc. 87–20229 Filed 8–28–87; 5:06 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, September 9, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 701–TA–288, 289 and 731–TA–381, 382 (Preliminary) (Certain Granite from Italy and Spain)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

August 25, 1987.

[FR Doc. 87–20230 Filed 8–28–87; 5:06 PM]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 31, September 7, 14, and 21, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 31

Wednesday, September 2

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Revision to the General Statement of Policy and Procedures for Enforcement Action
b. Shoreham—Intervenor Motion to Admit New Contention on Medical Services for Contaminated Injured Individuals
c. Licensing Board Decision in Radiology Ultrasound Nuclear Consultants, P.A. (Tentative)
d. Review of ALAB–867 (Jurisdiction Over Kress Creek) (Tentative)

Thursday, September 3

2:00 p.m.
Briefing on Status of Decommissioning Activities (Public Meeting)

Week of September 7—Tentative

Wednesday, September 9

2:00 p.m.
Briefing on Performance of Sandia Containment Tests (Public Meeting)

Thursday, September 10

2:00 p.m.
Discussion of Integration of AEOD Reports into the Regulatory Process (Public Meeting)
3:30 p.m. Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 14—Tentative

Monday, September 14

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing on the Status of Peach Bottom (Public Meeting)

Thursday, September 17

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 21—Tentative

Tuesday, September 22

2:00 p.m.
Briefing on the Integrated Safety Assessment Program (ISAP) (Public Meeting)

Thursday, September 24

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

August 27, 1987.

[FR Doc. 87–20223 Filed 8–28–87; 4:33 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 3215-1]

Standards of Performance for New Stationary Sources; Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

Correction

In rule document 87-18598 beginning on page 30674 in the issue of Monday, August 17, 1987, make the following corrections:

PART 60—[CORRECTED]

Appendix A—[Corrected]

1. On page 30679, in the third column, in the last line of the column, "+ 10 percent" should read "± 10 percent".

2. On page 30680, in the third column, in paragraph 5.3, the 10th line should read "to 400-or 400-to 1000-ppm range. If any samples".

3. On page 30681, in the first column, in the second line, insert the word "Equation" after "using".

4. On the same page, Equation 10A-4 should appear as follows:

$$C = C_b (1 - F)$$

5. On the same page, in the second column, under "Bibliography", in paragraph 4., in the second line, "Law" should read "Low".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Wage Coverage

Correction

In rule document 87-18088 beginning on page 29659 in the issue of Tuesday, August 11, 1987, make the following correction:

On page 29663, in the first column, in the **Authority**, in the second line, "215(b)" should read "215(h)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Issuance of Acquiescence Rulings

Correction

In notice document 87-17945 beginning on page 29441 in the issue of Friday, August 7, 1987, make the following corrections:

1. On page 29442, in the second column, in the fifth line, insert "202" after "section".

2. On page 29443, in the first column, under **AR 86-19(11)**, in the first line under paragraph *Issue*, remove "be".

3. On the same page, in the first column, in footnote 6, in the seventh line, "(f) of (g)" should read "(f) or (g)".

4. On the same page, in the second column, in footnote 9, in the fourth line, "had" should read "has".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-07-4322-02]

Meeting; Carson City District Grazing Advisory Board

Correction

In notice document 87-18774 appearing on page 30962 in the issue of Tuesday, August 18, 1987, make the following correction:

In the first column, in the third line of the **SUMMARY**, the date should read "September 16,".

BILLING CODE 1505-01-D

Federal Register

Wednesday
September 2, 1987

Part II

Pension Benefit Guaranty Corporation

29 CFR Parts 2616 and 2617

Distress Terminations of Single-Employer Plans and Standard Terminations of Single Employer Plans; Proposed Rules

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616 and 2617

Distress Terminations of Single-Employer Plans and Standard Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rules.

SUMMARY: These regulations, when adopted, will replace the Pension Benefit Guaranty Corporation's regulations on Notice of Intent to Terminate and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR Parts 2616 and 2617), as modified by the Notice of Interim Procedures, 51 FR 12491 (April 10, 1986). Those regulations were, to a great extent, rendered obsolete by the enactment of the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), which substantially changed the rules governing voluntary terminations of single-employer plans. Among other changes, SEPPAA created two distinct types of voluntary termination, "standard" and "distress". The notice of interim procedures summarized the new termination rules for both types of voluntary plan terminations. The effect of these regulations, when adopted, will be to replace that notice and prescribe, in Part 2617, all of the rules and procedures governing standard terminations and, in Part 2616, all of the rules and procedures for distress terminations.

DATE: Comments must be submitted by November 2, 1987.

ADDRESS: Comments should be addressed to Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (Code 35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1986 the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), amending the Employee Retirement Income Security Act, as amended ("ERISA" or the "Act"), became law. As part of the reform measures aimed at better protecting promised pension benefits and better controlling the costs of the single-employer insurance program under Title IV of ERISA, SEPPAA substantially altered the rules governing voluntary plan terminations. These new rules apply to all terminations initiated (*i.e.*, for which a notice of intent to terminate was filed) on or after January 1, 1986.

Under prior law, a plan administrator was free to terminate a single-employer plan at any time (subject to certain procedural requirements), without regard to the degree to which plan benefits were funded. Upon the termination of an underfunded plan, participants' benefits were protected by Title IV only to the extent of their guaranteed benefits; participants lost their right to any additional benefits to which they were entitled under the plan (*i.e.*, their nonforfeitable benefits) that were not funded.

Moreover, plan termination not only enabled a plan sponsor to cut off its statutory obligation to fund participants' benefits, but also to shift all or a portion of the liability for guaranteed benefits to the single-employer insurance program. Plan sponsors that were able to continue in business and to continue providing pension coverage to their employees found that it was cheaper to terminate their underfunded plans, because their liability for the underfunding was limited by the net worth rule in ERISA section 4062. Thus under prior law, the single-employer insurance program wound up bearing the burdens of plan underfunding, often in cases where the plan sponsor was financially strong enough to sustain the costs of eliminating the underfunding. Further, participants whose nonforfeitable benefits exceeded PBGC guarantees lost benefits unless plan assets were sufficient to cover them.

SEPPAA changed all this and essentially transferred back to plan sponsors the liability for funding promised pension benefits when the plan sponsor is financially able to bear these costs. Under SEPPAA, the right to terminate a defined benefit plan is no longer unrestricted. Instead, most plan sponsors may terminate their plans only if the plans are able to satisfy "benefit commitments", which generally exceed PBGC guaranteed benefits. Failing this, a plan may be terminated only if the contributing sponsor that maintains the plan and the other members of its controlled group can demonstrate that they are in such poor financial condition, or that their costs of maintaining single-employer plans have become so burdensome, that they cannot, realistically, continue to maintain the plan for which termination is sought.

The first kind of plan termination is a "standard" termination, and the second a "distress" termination. Under SEPPAA section 11007, amending ERISA section 4041(a), a single-employer plan may be voluntarily terminated only in a standard or distress termination. Absent qualifying for one of these types of termination, a single-employer plan cannot voluntarily terminate.

It should be kept in mind, however, that SEPPAA does not affect a plan administrator's right to freeze a plan, although SEPPAA does impose certain new notice requirements pertaining thereto. Therefore, in cases where a plan administrator knows that a plan cannot, or is uncertain whether it can, qualify for either a standard or distress termination, the plan administrator may want to consider freezing the plan.

In addition to these very substantial changes to the substantive rules on plan termination, SEPPAA also changes many of the procedural rules. The new rules for standard terminations are set forth in amended ERISA section 4041(b) (amended by SEPPAA section 11008) and the rules for distress terminations are in amended section 4041(c) (amended by SEPPAA section 11009).

In order to reflect these new rules, the Pension Benefit Guaranty Corporation's two principal regulations dealing with the voluntary plan termination process, the rules on Notice of Intent to Terminate and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR Parts 2616 and 2617), need to be totally revised. In keeping with the structure of the SEPPAA amendments, the PBGC is now proposing to promulgate two new termination regulations, one dealing solely with distress terminations and the other with standard terminations. The distress termination rules will be codified in Part 2616 and the standard termination rules in Part 2617.

Most terminations under SEPPAA will be standard terminations. In addition, a number of the rules applicable to distress terminations are merely variants of the standard termination rules. For these reasons, the discussion that follows will deal first with standard terminations.

Standard Terminations—Statutory Rules

One of the goals of the Congress in promulgating the new termination rules was to simplify and expedite the PBGC's review of terminations under which the PBGC would not be called on to pay

guaranteed benefits, thereby permitting the faster distribution of plan assets to participants in those plans, as well as enabling the PBGC to devote more of its resources to those terminations that do impose liabilities on the plan termination insurance program. Thus, sections 11007 and 11008 of SEPPAA greatly reduce the PBGC's role in standard terminations, while at the same time increasing the statutory protections afforded plan participants and beneficiaries and enhancing their ability to protect their own rights. In developing proposed Part 2617, the PBGC has adhered to this Congressional intent and attempted to restrict its role in standard terminations to the minimum consistent with its statutory obligations.

Although the substantive requirements for standard terminations are new, many of the procedural rules are a codification of the PBGC's prior procedures for terminating sufficient plans. Therefore, the termination process described in SEPPAA section 11008, amended ERISA section 4041(b), will be familiar to most pension practitioners. (Statutory references hereinafter are to amended section 4041 unless stated otherwise.)

Pursuant to section 4041(b)(1), a plan may terminate in a standard termination only if:

(A) The plan administrator issues a 60-day advance notice of intent to terminate to affected parties other than the PBGC (as required by section 4041(a)(2));

(B) The plan administrator issues a termination notice to the PBGC and notices of benefit commitments to plan participants and beneficiaries (as required by section 4041(b)(2) (A) and (B));

(C) The PBGC does not issue the plan a notice of noncompliance under section 4041(b)(2)(C); and

(D) When the final distribution of assets occurs, plan assets are sufficient to satisfy all benefit commitments under the plan.

The requirement of a 60-day notice of intent to terminate to plan participants, beneficiaries and collective bargaining representatives derives from, but significantly modifies, the requirement in the PBGC's Notice of Intent to Terminate regulation that the plan administrator notify participants and retirees of a proposed termination on or before the date of filing the notice with the PBGC. Under amended section 4041(a)(2), however, the notice of intent to terminate is not filed with the PBGC and the recipients must receive personal notice. Instead of filing the notice of intent to terminate with the PBGC, the plan administrator must make a subsequent filing with the PBGC, referred to in Part 2617 as the "standard termination notice". The requirements for this notification to the PBGC (contained in section 4041(b)(2)(A)) essentially embody the PBGC's Enrolled Actuary and Plan Administrator Certification Program, making that program mandatory for all standard terminations.

The requirement of the issuance of notices of benefit commitments to plan participants and beneficiaries is new under SEPPAA and is discussed in greater detail later in this preamble. However, it is important at the outset to understand SEPPAA's new concept of "benefit commitments", since this concept is central to many of SEPPAA's most significant reformations of prior law.

"Benefit commitments" are those benefits which: (1) Are guaranteed by the PBGC under section 4022 of the Act; (2) would be guaranteed but for the limitations in section 4022(b); or (3) constitute early retirement supplements or subsidies or plant closing benefits, providing the participant or beneficiary has, prior to the plan termination date, satisfied the plan's conditions for entitlement to the benefit, but for the statutory exceptions (listed in the regulation). The legislative history of this provision indicates that the terms comprising the third portion of the definition are to be liberally construed. Benefit commitments include, for example, "30-and-out" benefits or post-termination cost-of-living adjustments, assuming, in both cases, that all conditions for entitlement to the benefit had been satisfied before plan termination. Benefit commitments do not, however, include benefits related to post-termination service or post-termination shutdowns. Thus, benefit commitments do not include all benefits protected by section 301(a) of the Retirement Equity Act under section 411(d)(6) of the Internal Revenue Code.

Title IV now protects participants' rights to their benefit commitments (although, as will be discussed later in this preamble, this protection is only partial in the case of distress terminations). Under amended section 4041, a "sufficient" plan is one that can satisfy all obligations for benefit commitments, rather than merely guaranteed benefits.

The provision for the PBGC's issuance of a "notice of noncompliance" is new under SEPPAA and constitutes a reversal of prior procedure. The PBGC must issue this notice (normally within 60 days after receipt of the standard termination notice) in order to stop a proposed standard termination, thereby prohibiting a plan administrator from making the final distribution of assets. Contrary to prior law, under SEPPAA the PBGC must take no formal action to authorize a final distribution of plan assets, but instead, must act only if it wishes to stop the distribution. (Of course, the PBGC's taking no action to stop a final distribution of assets does not imply that the termination and distribution satisfy the requirements of the Internal Revenue Code.) The PBGC will issue a notice of noncompliance if it determines that any of the notice requirements was not met, or that there is reason to believe that the plan is not sufficient for benefit commitments (section 4041(b)(2)(C)).

SEPPAA's final prerequisite to a standard termination is a significant departure from prior law, one intended to protect the single-employer insurance program. Previously, if a plan was sufficient for guaranteed benefits as of the proposed termination date and thereafter became insufficient, its earlier status was controlling. Thus, participants received the benefits to which assets were allocated as of the proposed termination date, and the PBGC made up the subsequent shortfall. This liability was borne by the PBGC without any commensurate liability for the plan sponsor.

Under SEPPAA, when a subsequent insufficiency (for benefit commitments) occurs, the proposed termination is nullified, and the plan continues as an ongoing plan. Thus, SEPPAA ensures that the obligation for funding promised benefits stays with the plan sponsor, rather than the insurance program. (As will be discussed later in this preamble, this same principle is incorporated in a slightly modified fashion under the distress termination rules as well.)

Finally, unless the PBGC issues a notice of noncompliance barring the termination, and assuming that the plan can in fact satisfy all benefit commitments, the plan administrator must close out the plan (section 4041(b)(2)(D)) in the same manner as under prior law. The plan administrator must also (as under prior practice) submit a post-distribution certification to the PBGC (section 4041(b)(3)).

Distress Terminations—Statutory Rules

As mentioned above, SEPPAA's restrictions on the termination of insufficient (for benefit commitments) plans constitute a major departure from prior law. In addition to meeting notice requirements similar to those applicable to standard terminations, qualification for a distress termination necessitates

demonstrating the requisite financial hardship.

Specifically, under section 4041(c)(1), a plan may terminate in a distress termination only if:

(A) The plan administrator issues a 60-day advance notice of intent to terminate to affected parties including the PBGC (as required by section 4041(a)(2));

(B) The plan administrator issues a subsequent termination notice to the PBGC, referred to in Part 2616 as the "distress termination notice", (as required by section 4041(c)(2)(A)); and

(C) The PBGC determines that the distress tests are satisfied in accordance with section 404.1(c)(2)(B).

Section 4041(c)(2)(B) both establishes the four statutory distress tests and prescribes their applicability. Under that provision, the contributing sponsor and each substantial member of its controlled group must satisfy at least one of the distress tests; they need not all satisfy the same distress test. The concept of a "substantial member" of a controlled group is new under SEPPAA and is defined as any member of a controlled group whose assets comprise at least five percent of the total assets of the entire controlled group. (It should be kept in mind that this concept of a substantial member of a controlled group is relevant only for purposes of satisfying the statutory distress tests. Employer liability under section 4062 of the Act still runs to all members of the contributing sponsor's controlled group.)

The four distress tests are as follows:

(1) Liquidation in bankruptcy—a person has filed or had filed against it, as of the termination date, a petition seeking liquidation under title 11, United States Code, or under a similar provision of state law, and, as of that date, the petition has not been dismissed.

(2) Reorganization in bankruptcy—a person has filed or had filed against it, as of the termination date, a petition seeking reorganization under title 11, or under a similar state law, or, as of that date, a case described in #1, has been converted to a reorganization proceeding; the case has not been dismissed, as of the termination date; and the plan termination is approved by the bankruptcy court or the appropriate state court.

(3) Inability to continue in business—a person demonstrates that, unless a distress termination occurs, the person will be unable to pay its debts and to continue in business.

(4) Unreasonably burdensome pension costs—a person demonstrates that its costs of providing pension coverage have become unreasonably burdensome solely as a result of declining employment of employees covered under all single-employer plans maintained by that person.

If the PBGC determines that the necessary persons meet at least one of these tests, and the aforementioned notice requirements are also satisfied, the plan may terminate in a distress termination. How this is effected depends on the degree to which plan benefits are funded. Under section 4041(c)(3)(B), the rules for implementing a distress termination are a hybrid of the rules applicable to standard terminations and the rules under prior law applicable to the termination of insufficient (for guaranteed benefits) plans.

If a plan can pay at least all guaranteed benefits, the PBGC will authorize the plan administrator to distribute all plan assets according to the same rules as under a standard termination (sections 4041(c)(3)(B) (i) and (ii)). If the plan assets are not sufficient to satisfy guaranteed benefits, the plan administrator may not take any further actions to implement the plan termination, and the PBGC will act under ERISA section 4042 to have a trustee appointed and will assume the obligation to pay guaranteed benefits (section 4041(c)(3)(B)(iii)).

As alluded to previously, SEPPAA modifies Title IV's employer liability rules in a number of significant ways in order to better protect the termination insurance program and plan participants and beneficiaries. Two of these changes are pertinent to the distress termination process.

First, since in some distress terminations plan administrators will be authorized to distribute plan assets, the possibility exists that a subsequent insufficiency for guaranteed benefits (or, less likely, a subsequent insufficiency for benefit commitments) may occur. When this happens, the original valuations and asset allocation are no longer controlling. Instead, SEPPAA provides for new valuations and a new allocation as of, generally, the date the subsequent insufficiency is discovered (sections 4062 (b)(1)(B) and (c)(1)(B)). Thus, the liability or loss associated with a subsequent shortfall is shared by the contributing sponsor (and its controlled group members), plan participants and the PBGC.

The second employer liability change pertinent to the termination process is the creation of liability for unfunded benefit commitments in excess of guaranteed benefits (section 4062(a)(2)). This liability equals the lesser of 15% of total benefit commitments or 75% of the unfunded benefit commitments in excess of guaranteed benefits. It affords plan participants some protection against a plan's inability to pay the benefits to which participants were entitled. In order to collect this liability and make payments to participants, SEPPAA creates a new "section 4049 trust". (Proposed Part 2616 set forth below does not deal with the establishment and operation of the section 4049 trust. That will be dealt with in a separate regulation.)

Because of the similarities between SEPPAA, particularly its standard termination rules, and prior rules for terminating plans, the discussion of the proposed regulations that follows does not summarize all of the regulations, but rather focuses on the new rules and discusses issues arising from them. It should be kept in mind that a number of the issues raised under the discussion of Part 2617 are applicable to distress terminations, as well.

Finally, the PBGC notes that it is still reviewing these termination regulations, as well as others of its regulations (*e.g.*, Parts 2618 and 2619, dealing with the allocation of plan assets and the valuation of plan benefits, respectively) to determine what changes are necessary to conform the regulations to the requirements of the Retirement Equity Act ("REA"). For this reason, the sections in Parts 2616 and 2617 dealing with the form of benefit that must be provided upon plan termination and with the election of alternative forms have been reserved. Similarly, it should be understood that portions of Part 2619, which is referred to in several places both in this preamble and in Part 2616, will be revised in light of REA (and SEPPAA). The PBGC expects that these revisions will be completed before Parts 2616 and 2617 are made final. (Although, the various REA issues are not specifically addressed in this preamble, the PBGC welcomes public comment on the proper interaction of REA with ERISA Title IV.)

Part 2617—Standard Terminations

Section 2617.2 of the regulation on standard terminations defines several terms new under SEPPAA. The new term "benefit commitments" was discussed above. Also new is the term "affected parties". Among other uses, this term is used to describe the persons to whom a notice of intent to terminate must be issued. Since, in a standard termination, that notice is not given to the PBGC, § 2617.2 omits the PBGC from the statutory list of affected parties. It defines "affected party" as each plan participant, each beneficiary of a deceased participant, each alternate

payee under an applicable qualified domestic relations order, and each employee organization representing plan participants. For purposes of this regulation, "participant" is defined as it is defined under the PBGC's Payment of Premiums regulation (29 CFR Part 2610), except that the definition in § 2617.2 does not include deceased participants. (As under Part 2610, the definition also excludes participants whose benefits have been fully satisfied through the purchase from an insurer of an irrevocable commitment to provide the benefits.)

SEPPAA uses the terms "contributing sponsor" and "members of the contributing sponsor's controlled group" in lieu of the term "employer". For purposes of standard terminations, only the term "contributing sponsor" is relevant, and it is defined as the person who is responsible for meeting the minimum funding standards with respect to a plan. This definition does not deal with paragraph (B) of the statutory definition, which has no relevance to standard termination and is discussed in connection with distress termination.

Part 2617 uses an old term, "proposed termination date", in a slightly different manner than under prior law. The "proposed termination date" is the date so specified in the notice of intent to terminate and the standard termination notice filed with the PBGC. If these dates are different, the date in the standard termination notice is controlling. This might occur when, for example, a plan administrator decides that more time is needed to file the standard termination notice and therefore a later termination date must be proposed in that notice. (See discussion below on the time limits for filing a standard termination notice.) The proposed termination date specified in the termination notice may be later, but never earlier, than the date stated in the notice of intent to terminate.

The term "proposed termination date" is used throughout the regulation, rather than the term "termination date". This is because until the final distribution of assets in satisfaction of all benefit commitments occurs, the plan termination is contingent upon the plan's ability to actually satisfy all benefit commitments under the plan. When this final distribution occurs, then the proposed termination date becomes the actual termination date.

One of the other SEPPAA changes designed to better enable plan participants to protect their rights in the event of a proposed plan termination is set forth in section 4041(a)(3) and implemented by § 2617.5 of this proposed regulation. (Section 4041(a)(3) also applies to distress terminations, and therefore, the discussion that follows is relevant to those terminations as well.) Pursuant to section 4041(a)(3), the PBGC may "not proceed with a plan termination if the termination would violate the terms and conditions of an existing collective bargaining agreement". While the purpose of this provision seems rather straightforward, implementing it raises a host of questions.

By its terms this rule applies only to terminations that would violate "*existing* collective bargaining agreements" (emphasis added). Yet, in many cases when a collective bargaining agreement has expired, the parties continue to be obligated to adhere to the terms of the expired agreement. Should the protection afforded plan participants by section 4041(a)(3) continue to exist in these situations?

Other difficult problems involve the condition "if the termination would violate the . . . collective bargaining agreement". Obviously, whether this is the case will often be subject to dispute. Who is to make this determination? Labor-management relations law provides mechanisms for resolving such disputes, as do many collective bargaining agreements. This suggests that the PBGC should not attempt to make these determinations. But if it does not, does that mean that the PBGC must suspend processing of a plan termination whenever there is an assertion that the termination would violate an existing collective bargaining agreement? (Indeed, is a mere assertion adequate to invoke section 4041(a)(3), or must a party take some formal action, *e.g.*, initiate arbitration or file a lawsuit?) What if a challenge is frivolous on its face? Further, if the PBGC is not to make these determinations, how long may the suspension of a termination last? Must the suspension continue until the challenging party and the contributing sponsor have exhausted their judicial remedies and appeal rights?

The PBGC has considered these questions in developing the rules set forth in proposed § 2617.5 as discussed below (and proposed § 2616.5 in the distress regulation). The PBGC emphasizes, however, that this is a proposal only and urges interested persons to submit their views on these matters.

In brief, § 2617.5(a) of the proposed regulation provides that whenever the PBGC is advised, prior to the expiration of the time within which it may issue a notice of noncompliance, that a formal challenge (as described in § 2617.5(c)) has been initiated asserting that the plan termination violates the terms of an existing collective bargaining agreement, the PBGC will suspend the processing of the termination. The effect of a suspension is to stop the running of all time periods imposed by the Act and this regulation relevant to the termination. The suspension does not, however, nullify the notice of intent to terminate, nor negate its effects. Therefore, the prohibition in § 2617.4 against any distributions pursuant to the plan termination after issuance of the notice of intent to terminate remains in effect, and benefit accruals and vesting cease as of the proposed termination date. (As in any proposed termination, if the PBGC ultimately dismisses or nullifies the termination, accruals and vesting resume as of the proposed termination date.)

The methods of formally challenging a proposed termination described in § 2617.5(c) are methods available under labor relations law. This list is intended to be all inclusive. Whether or not any one of these avenues is available in a particular case depends on the terms of the collective bargaining agreement and/or applicable law. This regulation does not confer any new rights with respect to how or when a party may challenge a proposed plan termination under a collective bargaining agreement.

A suspension under § 2617.5 remains in effect until the final resolution of the challenge as described in § 2617.5(d). As with the types of formal challenges that may be initiated, this list is meant to be all inclusive. If the contributing sponsor prevails and wishes to continue the plan termination, the termination proceeding will be reactivated and all prior actions taken with respect to the termination shall be effective. If the challenge to the termination is sustained, the PBGC shall dismiss the termination proceeding and it shall be void *ab initio*.

Proposed § 2617.6 ("Requirement for annuities") contains a general rule that is very similar to the general rule under the PBGC's old sufficiency regulation. As noted earlier in this preamble, rules on exceptions to the annuity requirement and required annuity form have been reserved until the PBGC determines what changes are necessary to conform the regulation to the requirements under Title I of ERISA and the Internal Revenue Code that were added by the Retirement Equity Act.

Proposed § 2617.7 carries over from the existing regulation, with one important change, the rule permitting a contributing sponsor to make a commitment to make a plan sufficient.

Under a standard termination, of course, that commitment must be to fund all benefit commitments under the plan. However, § 2617.7 provides that if the contributing sponsor is the subject of a bankruptcy liquidation or reorganization proceeding, the commitment will be valid only if it is approved by the court before which the proceeding is pending. The purpose of this rule is to prevent a standard termination from going forward on the basis of a commitment that is not very likely to be honored.

Proposed § 2617.8 contains the rule on what constitutes "filing" of a document with the PBGC under this regulation. Under § 2617.8(a), a document is deemed filed with the PBGC on the date that it is received by the PBGC, providing it is received on a regular business day, no later than 4:00 p.m. Documents received at other times are deemed filed on the next regular business day. This change from prior practice is necessary because the old filing rule (postmark date) proved difficult to administer, and because the PBGC's time for reviewing proposed terminations is shorter under SEPPAA.

Section 4041(a)(2) provides that, at least 60 days prior to the proposed termination date, the plan administrator must provide each affected party with a notice of intent to terminate. This requirement is implemented by § 2617.12, which requires the plan administrator to issue (*i.e.*, either hand deliver or deposit with a mail or courier service) the notices by the stipulated date. (Section 2617.12 also provides that the notices may not be issued more than 180 days prior to the proposed termination date.) In other words, the earliest possible proposed termination date is the date the notices are issued plus 60 days. For example, a plan administrator who wished to terminate a plan on October 31, 1986, would have to issue all notices of intent to terminate no later than September 1, 1986; September 1 plus 60 days is October 31. The PBGC stresses this rule because this requirement cannot be waived. If a standard termination notice filed with the PBGC shows that the proposed termination date stated in the notice of intent to terminate did not comply with this rule, the PBGC will issue a notice of noncompliance voiding the proposed termination. In order to terminate the plan, the plan administrator would then have to begin the process again.

Because of the severity of this rule, § 2617.12(a) requires that the notices be "issued" by the appropriate date. To require actual delivery would, in the PBGC's judgment, place an unreasonable burden on the plan administrator in light of the consequences of noncompliance. The plan administrator is not responsible for the performance of the United States Postal Service or any other established delivery service. To require actual delivery of the notices by the appropriate date would mean that slower delivery than the plan administrator might reasonably have expected could defeat the plan termination. Moreover, the 60-day requirement (increased from 10 days under prior law) ensures that the affected parties will be advised of the proposed termination in time to challenge it if they so desire. (The PBGC notes that plan administrators may choose to use the same mailing for the notice of intent to terminate and the notice to interested parties required under ERISA section 3001, although these notices must be set forth in separate documents.)

Pursuant to section 4041(b)(2)(A), the plan administrator must file the standard termination notice with the PBGC "(a)s soon as practicable" after the issuance of the notices of intent to terminate. Notices of benefit commitments must be issued no later than the date on which the standard termination notice is sent (section 4041(b)(2)(B)). The PBGC is concerned that an "as soon as practicable" rule would be unadministrable, and therefore, § 2617.15(a) requires the plan administrator to file the standard termination notice no later than 60 days after the proposed termination date stated in the notice of intent to terminate (or, if later, the proposed termination date specified in the standard termination notice). For example, if the proposed termination date stated in the notice of intent to terminate was October 31, the standard termination notice would have to be filed with the PBGC no later than December 30; October 31 plus 60 days is December 30. (Tracking the statutory language, § 2617.13(a) requires that the notices of benefit commitments be issued no later than the date on which the standard termination notice is sent to the PBGC.).

The PBGC believes that this 60-day rule is necessary to avoid potential abuse of the termination process. Without the establishment of a fixed time period within which a plan administrator must proceed with a termination, the process could be used to effect a "deep freeze" of the plan (*i.e.*, the cessation of benefit accruals and vesting), while waiting for the most propitious time to carry out the termination and actually distribute plan assets in full satisfaction of all benefit commitments.

The PBGC also believes that this rule provides more than enough time (at least 120 days after issuance of the notices of intent to terminate) for plan administrators to issue the notices of benefit commitments and prepare and file the standard termination notice. The regulation does provide for a limited extension to complete the filing of a standard termination notice submitted within the requisite 60-day period (§ 2617.16(d)). Moreover, if the plan administrator finds that it is impossible to submit the standard termination notice within 60 days after the proposed termination date stated in the notice of intent to terminate, the plan administrator may set a later proposed termination date in the standard termination notice. However, in no event may the new proposed termination date be later than 180 days after the issuance of the notices of intent to terminate.

The PBGC stresses that it will not waive the filing date requirement. Filing a standard termination notice after the 60-day period (or failing to complete the submission within the time specified in § 2617.16(d)) will result in the PBGC's issuing a notice of noncompliance pursuant to § 2617.17.

One more time limit under the regulation bears mentioning. Section 4041(b)(2)(D) requires the plan administrator to begin the final distribution of assets "as soon as practicable" after the expiration of the period within which the PBGC may issue a notice of noncompliance. For the reasons stated in connection with the 60-day rule discussed above, the PBGC has decided that it should establish a fixed time frame for making the distribution. Accordingly, § 2617.18(a) requires the plan administrator to make the final distribution within 30 days after the expiration of the PBGC's review period.

The PBGC finds that the most common reason given by plan administrators for delaying the final distribution is that the plan has not received an IRS determination letter with respect to the termination. The PBGC, therefore, urges plan administrators to file their requests for determination letters early in the termination process, at or about or before the time they issue the notices of intent to terminate.

Where, despite the plan administrator's best efforts, it is not possible to distribute plan assets within the required period, the PBGC may extend the period under § 2617.18(e). A

request for extension must be filed before the expiration of the 30-day period and request an extension of a specific duration not to exceed 45 days. The PBGC will grant the extension only if it finds that the inability to distribute is not caused by the actions or inactions of the plan administrator or contributing sponsor.

In this connection, the PBGC notes that the existence of a claim against the contributing sponsor for due and unpaid contributions is not a valid reason for delaying the final distribution of assets, subject, of course, to the restriction that if the plan administrator cannot distribute assets in full satisfaction of all benefit commitments, the plan administrator may not proceed with the termination. Otherwise, the plan administrator shall make the distribution within the prescribed 30-day period and thereafter pursue the claim for the unpaid contributions. Amounts subsequently collected may be paid to participants and beneficiaries without regard to the annuity requirement in § 2617.6, since these are amounts in excess of benefit commitments.

Failure to distribute within the 30-day (or extended) period shall nullify the proposed termination, and the plan shall be an ongoing plan.

Another significant mechanism introduced by SEPPAA to enable plan participants and beneficiaries to better protect their rights in a plan termination is the requirement that participants and beneficiaries be issued notices of their benefit commitments at least 60 days prior to the final distribution. This notice serves two purposes. First, for benefits that may not or will not be paid in the plan's normal form, the notice must state the normal form under the plan and the factors used to convert to the alternative form (§ 2617.14 (d)–(f)). This will enable participants who have not made their benefit elections to make more informed elections, and it will enable all participants to question whether correct factors and assumptions are being used. In the past, the PBGC has received numerous inquiries from participants concerning a plan's interest assumptions (principally, the rate used for calculating lump sum benefits paid in lieu of annuities). Providing this data to participants before the final distribution of assets will enable participants to direct these concerns to their plan administrators before plan assets are distributed.

The second purpose of the notice of benefit commitments is to enable participants and beneficiaries to verify the personal data upon which the calculation of their benefits was based. Section 2617.14 (d)–(f) mandates that the notice contain the personal data (*e.g.*, participant's age, beneficiary's age, length of service, salary, etc.) used to compute the benefit commitments. Thus, participants will be able to correct any erroneous information prior to the plan's close out.

With respect to benefits of participants (or beneficiaries) in pay status as of the proposed termination date, § 2617.14(d) requires that the personal data be provided only to participants (or beneficiaries) who were in pay status one year or less as of that date. Requiring that this information be provided to all persons in pay status could create a tremendous administrative burden in many plans. Moreover, it seems unlikely that, after one year, there would be outstanding questions as to a person's correct benefit.

Finally, notices of benefit commitments will serve their intended function only if they are written in clear, simple language that the average participant or beneficiary can understand. Section 4041(b)(2)(B) specifically requires this. This rule is reiterated in § 2617.14(a) of the proposed regulation and further implemented by § 2617.14(b), which provides a special rule covering situations where a significant number of plan participants speak only the same non-English language.

The standard termination notice that must be filed with the PBGC under proposed § 2617.15 essentially combines Form 5310 (notice of intent to terminate) and Forms 444 and 445 (enrolled actuary and plan administrator certifications). While the PBGC is continuing the use of those forms (with appropriate modifications) during the start-up period under SEPPAA (although one-stop filing is no longer available), Part 2617 (and Part 2616) when issued in final form will supersede Forms 5310, 444 and 445. The information that must be submitted to the PBGC will be set forth in this regulation (see § 2617.15 (b) and (c)).

The PBGC has endeavored to keep the information requirements for the standard termination notice at the absolute minimum. In brief, the notice requires plan and contributing sponsor identifying information, statements verifying compliance with the notice of intent to terminate and notice of benefit commitments requirements, and data showing that the plan is sufficient for all benefit commitments. Data supporting the enrolled actuary's certification is not required; if the enrolled actuary's determination of sufficiency is incorrect, or for any other reason the plan proves to be unable to satisfy all benefit commitments, the proposed termination will be nullified (§ 2617.18(d)). Similarly, the proposed regulation does not prescribe the valuation methods to be used by the enrolled actuary. The enrolled actuary may use any reasonable methods and assumptions consistently applied that will accurately reflect the plan's ability to pay all benefit commitments on the date of distribution after allocating plan assets in accordance with Part 2618 of this subchapter. In addition, the PBGC notes that the rules in Part 2619 regarding the valuation of benefits to be paid as lump sums will apply.

Plan administrators who expect a termination to result in a reversion of residual assets to the contributing sponsor should bear in mind that certain information relating to such terminations that the PBGC used to request later in the termination process is now required to be submitted as part of the standard termination notice (§ 2617.15(e)). This information is needed so that the PBGC can (among other things) review the termination for consistency with the PBGC/DOL/IRS guidelines on asset reversions and also review any alternative method for allocating the reversion under a contributory plan. (The PBGC notes that its review with regard to the guidelines is limited to Title IV matters and does not extend to questions of compliance with Title I and the Internal Revenue Code.) The PBGC reminds plan administrators that a purported plan termination that is not consistent with the joint guidelines is not a termination under ERISA and the plan is an ongoing plan.

With respect to contributory plans under which the plan administrator proposes to allocate the reversion in a manner other than that prescribed in § 2618.31(b) of the Allocation of Assets regulation, § 2617.15(c)(3) requires that the plan administrator consent to a 60-day extension of the PBGC's time within which to issue a notice of noncompliance. This extension is needed to provide the PBGC with adequate time to review the proposed alternative allocation method. (In this connection, the PBGC notes that plans that are no longer, but once were, contributory plans and still retain any employee contributions are treated as contributory plans for all purposes under the allocation rules of Part 2618 and section 4044 of the Act.)

As mentioned earlier in this preamble, under SEPPAA the PBGC no longer must authorize the final distribution of plan assets in a standard termination, but instead, must prohibit the distribution if the termination does not comply with

the statute and this regulation. Accordingly, the PBGC will notify plan administrators of the date on which the PBGC's 60-day (or 120-day for certain reversion cases involving contributory plans) review period begins to run. Absent a suspension or extension of the 60-day (or 120-day) period, if a notice of noncompliance is not issued before the 61st (or 121st) day, the plan administrator is free to distribute plan assets; the PBGC will not issue anything authorizing the distribution.

If the PBGC issues a notice of noncompliance, the termination is nullified and the plan is an ongoing plan for all purposes (§ 2617.17(b)). However, the plan administrator may appeal the issuance of a notice of noncompliance in accordance with the rules prescribed in Subpart D of Part 2606, and the filing of an appeal automatically stays the effectiveness of the notice of noncompliance until the PBGC issues its decision on the appeal (§ 2617.17(c)). The stay avoids harm to the plan, the contributing sponsor and participants, that could arise from erroneously treating the plan as an ongoing plan if, for example, the plan were required to commence paying benefits to participants whose eligibility depends on plan continuation. If the PBGC revoked the notice of noncompliance and upheld the termination on appeal, recovery of such payments could be costly or impossible for the plan and, if successful, could impose hardship on the participants. The PBGC recognizes that if the appeal were denied, the automatic stay could have resulted in a delay in putting some eligible participants into pay status. The PBGC notes that this problem could be addressed in particular cases by making the notice of noncompliance effective immediately, without a right of appeal, as provided in 29 CFR 2606.23(b). Nevertheless, the PBGC requests comments on the appropriateness of the automatic stay provision.

The PBGC stresses that, even in the absence of a notice of noncompliance, the plan administrator may not make the final distribution if the plan cannot actually satisfy all benefit commitments (§ 2617.18(b)). When such a subsequent insufficiency occurs, the plan administrator must notify the PBGC immediately. If the plan administrator nevertheless makes the final distribution, the plan will be subject to restoration by the PBGC under ERISA section 4047 and an action may be brought against the plan administrator for violating ERISA.

Part 2616—Distress Terminations

Most of the definitions used in Part 2617 are also used in Part 2616, although some terms have slightly different meanings. For purposes of the distress termination regulation, the term "affected parties" includes the PBGC. Therefore, as noted earlier, in a distress termination, the notice of intent to terminate must be issued to the PBGC as well as to participants, beneficiaries and collective bargaining representatives.

The term "contributing sponsor" is defined to include the person responsible for meeting the funding standards with respect to a plan, as well as any person who is a member of the contributing sponsor's controlled group and was responsible for meeting the funding requirements with respect to the plan at a time when the person employed a significant number of the plan participants. The definition parallels the statutory definition and does not attempt to define what constitutes "a significant number of participants" for purposes of paragraph (B) of the statutory definition.

The term "proposed termination date" also is defined somewhat differently under proposed Part 2616. Under this regulation, the proposed termination date specified in the distress termination notice must be the same as the date specified in the notice of intent to terminate. The plan administrator may not move the proposed termination date to a later date. Because in most distress terminations the contributing sponsor and the members of its controlled group will be in bankruptcy or otherwise experiencing severe financial hardship, permitting the plan administrator to change the proposed termination date to a later date would pose a significant risk to the PBGC.

The definition of "substantial member of a controlled group" found in § 2616.2 creates a rebuttable presumption that every member of the contributing sponsor's controlled group as of the termination date is a "substantial member" (*i.e.*, owns five percent or more of the total gross assets of the controlled group) unless the plan administrator can prove otherwise to the PBGC's satisfaction. The PBGC believes that this is a reasonable and appropriate rule since it is the contributing sponsor and its controlled group members who are in possession of the data necessary to prove whether any person is a substantial member of the controlled group.

Moreover, since the determination of "substantiality" is the first major step in the PBGC's processing of a distress termination, it is important that the PBGC be able to make this finding quickly. Establishing this presumption will facilitate that process. As another means of expediting this process, gross assets ordinarily will be determined from book values.

The plan administrator may submit whatever information the plan administrator believes is relevant to the demonstration that a person is not a substantial member. However, at a minimum, this information must include consolidated (for parent/subsidiary controlled groups) or combined (for brother/sister controlled groups) financial statements and financial statements for each controlled group member that the plan administrator asserts is not substantial (§ 2616.14(b)). Proposed § 2616.14(b) also requires that these financial statements be submitted for each of the five years preceding the proposed termination date. This is to enable the PBGC to review the relationship (in terms of gross assets) between the specific controlled group members in question and the whole controlled group during the recent past.

Proposed § 2616.3 basically reiterates the statutory requirements for a distress termination. It should be noted, however, that § 2616.3(d)(1), which describes the first statutory distress test (section 4041(c)(2)(B)(i)), slightly modifies that test. Specifically, the regulatory provision includes both cases begun as bankruptcy liquidations and cases begun as bankruptcy reorganizations and subsequently converted to liquidations. The latter group is not included in the statutory provision. This is an apparent oversight, since the statute does take account of cases begun as bankruptcy liquidations and subsequently converted to reorganizations (section 4041(c)(2)(ii)).

The distress tests, as set forth in § 2616.3(d), require, as does the statute, that a distress test be satisfied as of the plan termination date. Section 2616.14 (the section dealing with the distress termination notice) provides, however, that the plan administrator demonstrate satisfaction of the distress tests as of the proposed termination date. The reason for this is simple: at the time a distress termination notice is filed, the plan termination date will not have been established. This apparent inconsistency or gap in the statute raises a series of difficult questions.

With respect to distress terminations, SEPPAA does not change the statutory rules on establishment of a termination date. Section 4048(a)(2) (former section 4048(a)(1)) provides that in a distress termination, the termination date is "the date established by the plan

administrator and agreed to by the corporation". Section 4048(a)(4) (former section 4048(a)(3)) provides that when "no agreement is reached between the plan administrator and the corporation", the termination date is "the date established by the court". It was clear under prior law that the PBGC did not have to agree to the termination date proposed by the plan administrator. It was also clear that under these rules a "retroactive" termination date (*i.e.*, a termination date earlier than the date 10 days after the filing of a notice of intent to terminate) could be established.

If the PBGC does not agree to the termination date proposed by the plan administrator and another date is agreed to (or established by a court), would this mean that the plan administrator would have to prove satisfaction of the distress tests as of the new termination date? What if the contributing sponsor and the substantial members of its controlled group do not qualify for distress as of the new termination date? Should there, perhaps, be two termination dates in distress terminations: (1) The termination date proposed by the plan administrator, which would be the date used for determining satisfaction of the distress tests; and (2) the termination date established in accordance with section 4048 (a)(2) or (a)(4), which would be the date used for all other purposes, *e.g.*, for establishing participants' benefit commitments and guaranteed benefits?

Also, it may be argued that, although SEPPAA did not change the pertinent provisions of section 4048, the establishment of a retroactive termination date is inconsistent with SEPPAA's greater emphasis on advance notice to plan participants and beneficiaries of a proposed termination. In other words, the greater rights ostensibly afforded participants and beneficiaries by amended sections 4041 (a)(2) and (c)(1)(A) are largely vitiated if those provisions mean only that the date stated in the notices of intent to terminate must be 60 days later than the date the notices are issued, and not that the actual termination date agreed to by the plan administrator and the PBGC must be at least 60 days after the notice.

On the other hand, concluding that section 4048 no longer authorizes the establishment of retroactive termination dates appears inconsistent, not only with the express language of section 4048, but with SEPPAA's purpose of providing greater protection to the termination insurance program. The purpose of establishing a retroactive termination date in any case is to protect the insurance program. The PBGC, therefore, tentatively has concluded that retroactive termination dates continue to be authorized under ERISA in limited circumstances.

The PBGC specifically requests that interested members of the public comment on these questions. The PBGC is considering a wide range of options, including those suggested above, and will consider any others that members of the public might suggest.

Proposed § 2616.5, like its counterpart under proposed Part 2617, provides for the suspension of a distress termination proceeding if there is a challenge under a collective bargaining agreement to the proposed termination. Under § 2616.5, however, the proceeding is only suspended at the point where the PBGC would otherwise issue a notice of inability to determine sufficiency or a distribution notice authorizing a plan administrator to distribute plan assets. Regardless of when a challenge to the termination is initiated, the plan administrator must still perform all actions required by the proposed regulation, up to and including submission of the distress termination notice.

There are a number of reasons for this requirement. Principal among them is that the suspension of a potential distress termination increases the possibility, present in most distress terminations, of harm to participants and of losses to the termination insurance program. Therefore, in such cases the PBGC will need to determine whether it should involuntarily terminate the plan under ERISA section 4042. (The initiation of a challenge to a proposed voluntary termination in no way limits the PBGC's authority under section 4042 to initiate a plan termination proceeding.) Normally, the PBGC would need the information that is submitted as part of the distress termination notice to make this decision.

In addition, this requirement also ensures that during the pendency of the challenge, the plan administrator is not paying benefits in excess of estimated guaranteed, or if greater, estimated Title IV benefits. (Proposed § 2616.4 sets forth the rules concerning benefit payments during the termination proceeding.) This minimizes the risk to retirees of benefit recoupment by the PBGC should the plan termination occur. If the challenge is successful and the plan does not terminate, all withheld amounts will be immediately payable with interest (§ 2616.5(b)(1)).

As under prior law, proposed Part 2616 permits a contributing sponsor to make a commitment to make its plan sufficient for guaranteed benefits (§ 2616.7). However, since the contributing sponsor will frequently be involved in either a bankruptcy liquidation or reorganization, any commitment by such a contributing sponsor must receive the approval of the court. Without the court's approval, a commitment is not valid under § 2616.7. If the contributing sponsor does not honor its commitment, and the PBGC is required to trustee the plan and assume the obligation to pay guaranteed benefits, the PBGC may take any necessary actions to enforce the commitment. The contributing sponsor's obligations under the commitment are distinct from and may be enforced separately from any claims the PBGC might have for unpaid contributions or employer liability under ERISA section 4062.

Section 2616.7 provides for a commitment to make a plan sufficient only for guaranteed benefits, not for all benefit commitments. While a commitment for the greater amount would be permissible under Part 2616, the PBGC does not anticipate that a contributing sponsor that qualifies for a distress termination would have the financial ability to make the plan sufficient for benefit commitments. Moreover, if the contributing sponsor were able to do so, it would be simpler and less costly to terminate the plan in a standard termination under Part 2617.

The PBGC notes in this regard that a plan administrator contemplating a distress termination, who believes that the plan may be able to satisfy all benefit commitments, might want to initiate both a distress and a standard termination. Similarly, if the plan administrator is uncertain whether the distress tests can be satisfied and the contributing sponsor would be willing, if necessary, to fund all benefit commitments, the plan administrator might want to initiate both types of termination. This approach would enable a plan to retain its proposed termination date if it fails to qualify for one type of termination and chooses to proceed with the other. If the PBGC finds that a proposed termination fails to meet the applicable requirements, that termination cannot be "converted" into the other type of termination in order to preserve the original proposed termination date.

The rules discussed under standard terminations pertaining to the issuance of the notice of intent to terminate and the establishment therein of the proposed termination date are the same under proposed Part 2616 (§ 2616.12). The PBGC will review a notice of intent to terminate promptly upon its receipt to

verify compliance with these rules. If, based on the notice, it appears that the rules were not satisfied, the PBGC will advise the plan administrator that the proposed termination is nullified (§ 2616.12(c)). This will enable the plan administrator to avoid some of the expense and effort of completing and filing the distress termination notice.

It is possible, however, that even where the notice of intent to terminate indicates compliance with § 2616.12, this may not, in fact, be true. Therefore, in order to give the other affected parties the opportunity to demonstrate non-compliance to the PBGC, § 2616.12(b) provides that the PBGC's approval of a notice of intent to terminate at this stage of the termination process is merely tentative. The PBGC's final ruling on this issue will be made after submission of the distress termination notice, at which point the PBGC must determine whether all of the requirements for a distress termination have been satisfied.

As with the filing of a standard termination notice and for the same reason, a distress termination notice must be filed no later than 60 days after the proposed termination date (§ 2616.14(a)). The distress termination notice is a combination of the plan administrator and enrolled actuary certifications required for a standard termination and the participant data schedules previously required by Form 5310, plus information evidencing satisfaction of the distress criteria. Even though more information must be submitted for the distress termination notice, the PBGC believes that the 60-day rule provides adequate time to the plan administrator. For one thing, in a distress termination the plan administrator will not have to issue notices of benefit commitments (except in the rare case of a plan that is sufficient for benefit commitments). Further, prior to issuing the notices of intent to terminate, the plan administrator should have ascertained whether the distress criteria could be met and what evidence was available to demonstrate satisfaction of the criteria. Finally, the proposed regulation (§ 2616.14(d)) permits the plan administrator to defer the submission of the participant data schedules until after the PBGC has reviewed the distress termination notice and advised the plan administrator that the plan may terminate.

The information called for under proposed § 2616.14(b) to demonstrate satisfaction of the distress criteria is, with one exception, very similar to the information called for under the PBGC's Notice of Interim Procedures (51 FR 12491 (April 10, 1986)), which prescribes temporary procedures for plan terminations under SEPPAA prior to the promulgation of these new regulations. (The one significant departure from the interim procedures involves the information showing which persons are substantial members of the controlled group. This issue, including the information that must be submitted, was discussed previously.) The PBGC has not as yet had sufficient experience with proposed distress terminations to be able to refine or improve the information requirements. It is hoped that by the time the final Part 2616 is drafted, it will be possible to do so.

The plan data and benefit data that must be submitted under § 2616.14 (c) and (d) are similar to the data called for under prior law, although some additional information reflecting SEPPAA's new provisions is now required. For example, § 2616.14(c)(4) provides that whenever the contributing sponsor or any member of its controlled group is, on or after the proposed termination date, the subject of a proceeding described in § 2616.3(d)(1) or (d)(2), *i.e.*, a bankruptcy liquidation or reorganization proceeding, the plan administrator must submit copies of all motions, memoranda, notices or other filings made in those proceedings with respect to the plan. Prior to termination, a plan administrator is required to file these documents with the PBGC pursuant to the reportable events regulation (29 CFR Part 2615). (The PBGC notes, however, that the reportable events regulation is applicable only until the filing of a notice of intent to terminate. This is inadequate under SEPPAA, since the PBGC no longer receives that notice in a standard termination and the notice of intent to terminate for a distress termination contains little of the information required in a notice of intent to terminate under prior law. Accordingly, the PBGC will soon be amending Part 2615 to make it applicable until the proposed termination date specified in a notice of intent to terminate.)

The most significant changes in the plan and benefit data that must be submitted pertain to information on a plan's benefit commitments. Under SEPPAA, it is necessary in a distress termination for the enrolled actuary to value, and allocate plan assets to, benefit commitments, as well as guaranteed benefits. Likewise, the PBGC must determine whether the plan is funded for guaranteed benefits and for benefit commitments. Complying with these added requirements according to the prior rules and procedures for processing insufficient plan terminations would create substantially more work for both enrolled actuaries and the PBGC. Furthermore, in those cases where a distress termination is actually more like the termination of a sufficient plan (*i.e.*, in those cases where the plan is able to satisfy at least all guaranteed benefits), much of this work would be pointless. Accordingly, the PBGC is proposing rules that are an amalgam of the prior valuation rules for sufficient and insufficient plans and the rules for demonstrating plan sufficiency.

Under proposed § 2616.14(c)(6), which prescribes the rules for the enrolled actuary certification, the valuation date and methods used depend on whether the plan is sufficient for benefits in priority categories 1–4. If the plan is not, then benefits are valued pursuant to Part 2619, Subpart C, as of the proposed termination date. If the enrolled actuary will certify that the plan is sufficient for all benefits in categories 1–4, then benefits may be valued under Subpart B of Part 2619 (*i.e.*, by obtaining a qualifying bid from an insurer), using an assumed distribution date. If the plan, though sufficient for all benefits in categories 1–4, is not sufficient for all benefit commitments, the enrolled actuary will need to value each participant's total benefit commitments, as of the proposed termination date in accordance with Subpart C of Part 2619, so that employer liability for the unfunded benefit commitments can be determined. Nevertheless, permitting the use of a qualifying bid for valuation purposes in the circumstances described will significantly reduce the time required for (and therefore the cost of) plan valuations in a number of distress terminations.

These proposed valuation rules for plans that are sufficient for guaranteed benefits depart from the statutory rules in section 4041(c)(2)(A), which require that all values be computed as of the proposed termination date. Termination date valuations are logical and workable for plans that are insufficient for guaranteed benefits. However, this is not the case with respect to other plans, since other plans make a final distribution of plan assets. Thus, termination date values are unimportant because (as in a standard termination) it is the ability to actually distribute assets, in this case, in satisfaction of all guaranteed benefits, that is controlling. If the plan administrator is unable to do so, there is a subsequent insufficiency, the PBGC will trustee the plan and proceed under section 4042, and the valuation date moves forward to the

date of the subsequent insufficiency, sections 4041(c)(3)(C)(ii) and 4062 (b)(1)(B) and (c)(1)(B). (The rules on subsequent insufficiencies are discussed in greater detail later in this preamble.)

In addition, for plans that the PBGC will not need to trustee, there is really no need to require the time-consuming and expensive calculation of guaranteed benefits. The amount of outstanding benefit commitments (which forms the basis for the calculation of employer liability) is determined by comparing total benefit commitments to benefits to which assets are allocated. (Therefore, where a distribution is made, outstanding benefit commitments should be determined based on the benefits actually distributed.) Moreover, for purposes of the PBGC's determination of whether to issue a distribution notice, a qualifying bid as of a proposed distribution date will normally be better proof of a plan's ability to satisfy all guaranteed benefits as of some future distribution date than would a valuation performed under the PBGC's assumptions as of the proposed termination date. (Of course, eliminating the obligation to submit a valuation of guaranteed benefits does not relieve the plan administrator from the duty to ensure that each participant and beneficiary actually receives full guaranteed benefits.)

For these reasons, the PBGC proposes to adopt the valuation rules discussed above. However, the PBGC specifically requests that interested persons submit their views on this issue.

The requirements pertaining to the participant data schedules (§ 2616.14(d)) parallel the valuation rules. For example, when the enrolled actuary certifies that plan assets are sufficient for all benefits in categories 1–4 and a qualifying bid is obtained, the participant data schedules need not show each participant's guaranteed benefits. Instead, the schedules must show the value of each participant's monthly benefit commitments and monthly benefit to which assets were allocated (*i.e.*, the value of the monthly benefit covered by the qualifying bid). In other respects, the participant data schedules require the same information as under prior practice.

The PBGC emphasizes that if the enrolled actuary certifies that a plan is sufficient through priority category 4, but the plan is not in fact able to distribute assets in satisfaction of all guaranteed benefits, the enrolled actuary will be required to perform another valuation, pursuant to Subpart C of Part 2619, and to prepare new participant data schedules (§ 2616.17(b)(1)).

Finally, in the unlikely event that a plan is sufficient for all benefit commitments, the participant data schedules need not be submitted since neither the PBGC nor a section 4049 trustee will be paying any benefits under the plan. However, since in this event the completion of the plan termination is essentially the same as in a standard termination, the plan administrator will have to issue notices of benefit commitments in accordance with § 2617.13 and 2617.14 (§ 2616.14(e)).

After determining that a plan qualifies for a distress termination (§ 2616.15), the PBGC will instruct the plan administrator as to how the plan is to be closed out (§ 2616.16), based on the enrolled actuary's findings as to the level of the plan's sufficiency. If the plan is insufficient for guaranteed benefits, all the rules and procedures under prior law apply (with potentially greater liability to the PBGC under section 4062(b)), and, in addition the PBGC will decide whether to establish a section 4049 trust and appoint a trustee. This trustee collects for the section 4049 trust any employer liability payments for the unfunded benefit commitments, and the amounts collected are paid to plan participants. Liability to the section 4049 trust is the lesser of 15% of total benefit commitments or 75% of the unfunded benefit commitments in excess of guaranteed benefits (ERISA section 4062(c)) and is paid over time according to negotiated terms. Thus, while the amounts of participants' guaranteed benefits and benefit commitments are fixed as of the plan's termination date, the total payments (if any) participants will receive pursuant to the termination may not be known for several years.

While SEPPAA provides for the establishment of a section 4049 trust in all cases where a plan is insufficient for benefit commitments, the PBGC believes that in some cases it will be obvious from the outset that the purposes of the trust cannot be realized. Since most distress terminations will occur because of the bankruptcy of the contributing sponsor and the other members of its controlled group, the collectibility of amounts due the section 4049 trust pursuant to section 4062(c) is highly speculative. Even where some amounts might be collectible, the costs attendant thereto may be unreasonable. In addition, there will be costs to the PBGC associated with creating the trust and appointing a trustee, and these costs would be reimbursed only if the trustee is able to collect some of the section 4062(c) liability. Therefore, the PBGC is considering whether to establish a section 4049 trust only in those cases where it is reasonable to do so given the likelihood and potential costs of collection. The PBGC specifically requests public comment on this issue.

If the enrolled actuary's certification indicates that a plan can pay at least all guaranteed benefits, the PBGC will, generally, issue a "distribution notice". The exception to this rule is the case in which a plan's sufficiency for guaranteed benefits is dependent on its collecting all or part of a claim against the contributing sponsor for due and unpaid contributions, and the enrolled actuary is unable to certify that, in his or her belief, the necessary amounts will be collected before the proposed distribution date. In this event, the PBGC will trustee the plan without regard to whether it is sufficient for guaranteed benefits. The purpose of this is to enable the PBGC to pursue collection of the claim for unpaid contributions, since it is the PBGC, through its guarantee obligations, that is at risk in the event the claim is not collected. It is emphasized that, for all other purposes, (for example, allocating plan assets or computing employer liability) a claim for due and unpaid contributions is treated as any other plan asset. (As under the standard termination regulation, in a case where a plan administrator is authorized to distribute plan assets and there is an outstanding claim for unpaid contributions, it is the plan administrator's duty to pursue that claim. The distribution of assets, however, should not be delayed pending liquidation of the claim.)

In a distress termination, unlike in a standard termination, a subsequent insufficiency for guaranteed benefits (or, less likely, a subsequent insufficiency for benefit commitments) does not nullify the termination. It does, however, move the valuation date for all purposes forward to the date that the plan administrator notifies the PBGC of the subsequent insufficiency or the date on which the PBGC, on its own initiative, discovers the subsequent insufficiency (§ 2616.17 (b) and (d)). (In the case of a plan that had been sufficient for all benefit commitments, the valuation date becomes the date of distribution.) Thus, during the period between the termination date and the date of distribution, the risk of loss if a plan goes from being sufficient for guaranteed benefits (or benefit commitments) to insufficient for guaranteed benefits (or benefit commitments) is shared by the contributing sponsor, plan participants and beneficiaries and the PBGC.

This rule derives from ERISA section 4062 (b)(1)(B) and (c)(1)(B), which

provides for moving the valuation date forward for purposes of determining employer liability in the case of a subsequent insufficiency. Equitable treatment of all the involved parties suggests that the valuation date used for determining employer liability must also be used for determining the value of guaranteed benefits payable by the PBGC and of benefit commitments payable to participants and beneficiaries.

Finally, a finding by the PBGC that a plan does not qualify for a distress termination nullifies the proposed termination and all actions taken to effect it are void *ab initio*. However, plan sponsors, plan administrators and plan participants should bear in mind that in cases where it appears that benefit payments to retirees are in jeopardy or that the PBGC's risk of loss is increasing, the PBGC may act to terminate a plan involuntarily under ERISA section 4042.

Miscellaneous Amendments to Other PBGC Regulations

Several provisions in these regulations contradict or modify provisions in other PBGC regulations not mentioned earlier. For example, § 2617.17(c) establishes the right of a plan administrator to appeal the issuance of a notice of noncompliance. The PBGC's administrative appeals regulation (Part 2606) currently does not include this authority. Similarly, other provisions in proposed Parts 2616 and 2617 affect Parts 2615 and 2623 of the PBGC's regulations. In the interests of simplicity, all provisions that would require amendments to Parts 2606, 2615 and 2623 are discussed in this document. PBGC expects to make conforming amendments in the other regulations upon issuance of Parts 2616 and 2617 in final form (or perhaps prior thereto).

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that these proposed regulations are not "major rules" for the purposes of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed rules would, if adopted, merely implement the statutory procedures and requirements governing voluntary pension plan terminations.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that these rules will not have a significant economic impact on a substantial number of small entities. Traditionally pension plans with fewer than 100 participants have been treated as small plans. Seventy-five percent of these plans are defined contribution plans and are not covered by PBGC regulations. Only about 88,000 small plans are covered by the PBGC's single-employer insurance program. Of these, about 6 percent (5,600 plans or about 1.5 percent of all small pension plans) terminate each year and would be covered by the proposed regulations.

Public Comments

The PBGC urges interested parties to submit comments and suggestions on these proposed regulations. Comments should be addressed to: Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Comments should include the commenter's name and address, and give reasons for any recommendation. This proposal may be changed in light of the comments received.

List of Subjects in 29 CFR Parts 2616 and 2617

Employee Benefit plans, Pension insurance, Pensions, Reporting requirements.

In consideration of the foregoing, the PBGC proposed to revise Parts 2616 and 2617 of Subchapter C of Chapter XXVI, Title 29 of the Code of Federal Regulations as follows:

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.

2616.1 Purpose and scope.
2616.2 Definitions.
2616.3 Requirements for a distress termination.
2616.4 Administration of plan during pendency of termination proceedings.
2616.5 Challenges to plan termination under a collective bargaining agreement.
2616.6 Requirement for annuities.
2616.7 Contributing sponsor's commitment to make plan sufficient for guaranteed benefits.
2616.8 Filings with the PBGC; time limits.

Subpart B—Distress Termination Process

2616.11 Purpose and scope.
2616.12 Notices of intent to terminate.
2616.13 PBGC review of notice of intent to terminate.
2616.14 Distress termination notice.
2616.15 PBGC determination of compliance with requirements for distress termination.
2616.16 PBGC determination of plan sufficiency/ insufficiency.
2616.17 Verification of plan sufficiency prior to close-out.
2616.18 Closeout of plan.

Appendix—Agreement for Commitment to Make Plan Sufficient for Guaranteed Benefits.

Authority: Secs. 4002(b)(3), 4041 and 4044, Pub. L. 93-406, 88 Stat. 1004, 1020 and 1025, as amended by secs. 403(1), 40(d) and 402(a)(7), Pub. L. 96-364, 94 Stat. 1299, 1301 and 1302, and by secs. 11007 and 11009, Pub. L. 99-272, 100 Stat. 244 and 248 [29 U.S.C. 1302(b)(3), 1341 and 1344].

Subpart A—General Provisions

§ 2616.1 Purpose and scope.

(a) *Purpose.* This regulation sets forth the rules and procedures for terminating a single-employer pension plan in a distress termination. Under the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), a single-employer plan may be voluntarily terminated only in a "standard" or a "distress" termination, and then only if the termination satisfies the statutory requirements for the type of termination sought. The plan termination rules in SEPPAA apply to all plan terminations initiated by the plan administrator or the Pension Benefit Guaranty Corporation ("PBGC") on or after January 1, 1986. This regulation supersedes the PBGC's Notice of Intent to Terminate regulation (29 CFR Part 2616) and includes new rules governing the notice of intent to terminate for distress terminations, as well as other new substantive and procedural requirements pertaining to those terminations. [The rules for the notice of intent to terminate in a standard termination are now included in new Part 2617.] Subpart A of this regulation contains the various general rules and requirements relating to distress terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a distress termination.

(b) *Scope.* This part applies to any single-employer plan covered under ERISA section 4021(a) and not excluded by section 4021(b) that files a notice of intent to terminate in a distress termination on or after [effective date of part].

§ 2616.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement

Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 and the Single-Employer Pension Plan Amendments Act of 1986.

"Affected party" means, with respect to a single-employer plan, each participant, each beneficiary of a deceased participant, each alternate payee (as defined in section 206(d)(3)(K) of the Act) under an applicable qualified domestic relations order (as defined in section 206(d)(3)(B)(i)), each employee organization representing participants, and the PBGC. However, in connection with any notice required under this part, if an affected party has designated in writing another person to receive the notice, then any reference to the affected party shall be deemed to refer to the designated person.

"Benefit commitments" means those benefits that: (1) Are guaranteed under section 4022 of the Act; (2) would be guaranteed but for the limitations in section 4022(b); or (3) constitute early retirement supplements or subsidies or plant closing benefits, provided the participant or beneficiary has, prior to the plan termination date, satisfied all of the conditions under the plan to establish entitlement to the benefits, except for the satisfaction of a formal application, retirement, completion of a required waiting period subsequent to application for benefits, or designation of a beneficiary.

"Contributing sponsor" means, with respect to a single-employer plan, the person responsible for meeting the minimum funding requirements under section 302 of the Act or section 412 of the Internal Revenue Code of 1954, and any person that is a member of the contributing sponsor's controlled group and was responsible for meeting the funding requirements with respect to the plan at a time when the person employed a significant number of the plan participants.

"Distress termination notice" means the notice filed with the PBGC pursuant to section 4041(c)(2)(A) of the Act and § 2616.14 of this part that contains information demonstrating satisfaction of the distress criteria and also provides various plan and participant data including, but not limited to, an enrolled actuary's certification of the level of benefits funded under the plan.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

"Notice of intent to terminate" means the notice to affected parties advising them of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.12 of this part.

"Participant" means any individual who is in employment covered by the plan and is earning or retaining credited service (including an individual who is below the integration level in a plan that is integrated with Social Security); any non-vested individual separated from employment who is earning or retaining credited service, excluding those individuals who have incurred a break in service of one year or the plan's break-in-service period, whichever is greater; and any individual who has retired or separated from employment and is either receiving benefits or entitled to begin receiving benefits in the future, excluding those individuals to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Proposed termination date" means the date specified as such by the plan administrator in a notice of intent to terminate. A proposed termination date may not be earlier than the 60th day after the issuance of the notice of intent to terminate, nor later than the 180th day thereafter. The proposed termination date is used in the distress termination notice as the date for demonstrating satisfaction of the distress criteria, for determining participants' and beneficiaries' benefit commitments and guaranteed benefits, and for valuing plan benefits and assets in some cases.

"SEPPAA" means the Single-Employer Pension Plan Amendments Act of 1986.

"Single-employer plan" means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3)).

"Substantial member of a controlled group" means a member of the contributing sponsor's controlled group whose gross assets (both tangible and intangible), as of the termination date, equal five percent or more of the total gross assets of the controlled group. Any member of the contributing sponsor's controlled group as of the termination date shall be deemed to be a substantial member for all purposes under this part, unless the plan administrator demonstrates to the satisfaction of the PBGC that the person's gross assets equal less than five percent of the controlled group's total gross assets.

"Termination date" means the date established pursuant to section 4048(a)(2) of the Act or, if applicable, section 4048(a)(4). The termination date is the date as of which a contributing sponsor and the substantial members of its controlled group (if any) must satisfy the distress criteria and the date for determining benefit commitments and guaranteed benefits.

§ 2616.3 Requirements for a distress termination.

(a) *Exclusive means of voluntary plan termination.* A plan may be voluntarily terminated by the plan administrator only in a standard termination or a distress termination. For a standard termination to occur, a plan must be able to discharge all of its obligations for benefit commitments and otherwise satisfy the requirements set forth in Part 2617 of this subchapter. A distress termination may occur only if all of the requirements set forth in paragraph (b) of this section are satisfied.

(b) *Requirements.* A plan may terminate in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to affected parties in accordance with § 2616.12 at least 60 days before the proposed termination date;

(2) The plan administrator submits a distress termination notice to the PBGC in accordance with § 2616.14 no later than 60 days after the proposed termination date; and

(3) The PBGC determines that the contributing sponsor and each substantial member of its controlled group satisfy one of the distress criteria set forth in paragraph (d) of this section.

(c) *Effect of failure to satisfy requirements.* If any of the requirements of paragraph (b) of this section is not satisfied, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan for all purposes. A plan administrator who still desires to terminate the plan shall initiate the termination process again from the beginning, starting with the issuance of a notice of intent to terminate. The PBGC retains its authority in any case to initiate a plan termination under section 4042 of the Act.

(d) *Distress criteria.* A contributing sponsor and each substantial member of its controlled group (as defined in § 2616.2) shall satisfy at least one of the following criteria in order for a distress termination to occur. The contributing sponsor and the substantial members of

the controlled group need not all satisfy the same test.

(1) *Liquidation in bankruptcy.* This criterion is met if, as of the termination date, a person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar law of a state or political subdivision of a state, or a case described in paragraph (d)(2)(i) of this section has been converted to such a case, and, as of the termination date, the case has not been dismissed.

(2) *Reorganization in bankruptcy.* This criterion is met if—

(i) As of the termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (d)(1) of this section has been converted to such a case;

(ii) The case has not been dismissed as of the termination date; and

(iii) The bankruptcy court or appropriate state court approves the termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(e) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the criteria contained in paragraph (d) of this section, rather than for a reasonable business purpose, the PBGC shall disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

§ 2616.4 Administration of plan during pendency of termination proceedings.

(a) *Prohibitions after filing notice of intent to terminate.* Beginning on the date that the plan administrator files with the PBGC (as defined in § 2616.8) a notice of intent to terminate, and unless and until the PBGC issues a distribution notice pursuant to § 2616.16 (b) or (c), the plan administrator may not—

(1) Distribute plan assets pursuant to, or take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity;

(3) Use plan assets to purchase irrevocable commitments to provide benefits from an insurer; or

(4) Pay benefits in excess of a participant's benefit commitments under the plan.

(b) *Benefit payments on or after proposed termination date.* Notwithstanding paragraph (a)(4) of this section, beginning on the proposed termination date specified in the notice of intent to terminate, and unless and until the PBGC issues a distribution notice, the plan administrator may not make any benefit payments in excess of the greater of—

(1) A participant's estimated guaranteed benefit, determined pursuant to § 2623.6 of this subchapter; or

(2) A participant's estimated Title IV benefit, determined pursuant to § 2623.7 of this subchapter. For purposes of applying §§ 2623.6 and 2623.7, the term "section 4041(a) date of termination" used therein shall be replaced by the term "proposed termination date".

(c) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 2616.13(c) or § 2616.15(c), that the requirements for a distress termination are not satisfied, any benefits that were not paid pursuant to paragraph (a)(4) or (b) of this section shall be due and payable as of the date of the PBGC's determination, together with interest, from the date (or dates) on which the unpaid amounts were originally due, at the rate prescribed under Part 2610 in effect on that date (or dates).

(d) *Other administrative actions.* Except to the extent specifically limited by this section, the plan administrator shall continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan and investing plan assets.

§ 2616.5 Challenges to plan termination under a collective bargaining agreement.

(a) *Suspension of termination proceeding.* If, prior to the issuance by the PBGC of a notice of inability to determine sufficiency or a distribution notice pursuant to § 2616.16, the PBGC is advised that a formal challenge (as defined in paragraph (c) of this section) has been initiated asserting that the proposed termination violates the terms and conditions of an existing collective bargaining agreement, the PBGC shall suspend the termination proceeding and shall so advise the plan administrator in writing. The effect of the suspension shall be to stay the issuance by the PBGC of a notice of inability to determine sufficiency or a distribution notice. However, nothing in this paragraph relieves the plan administrator of the obligation to comply with § 2616.4 and to file a distress termination notice with the PBGC in the manner and within the time specified in § 2616.14.

(b) *Resolution of challenge.* Immediately upon the final resolution (as defined in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge. If the validity of the proposed termination has been upheld, the plan administrator shall also advise the PBGC of whether the plan administrator wishes to continue the termination.

(1) *Challenge sustained.* If it has been determined that the proposed termination violates the collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan for all purposes. In this event, § 2616.4(c) shall apply, as of the date of the PBGC's dismissal, with respect to any benefits not paid pursuant to § 2616.4 (a)(4) or (b).

(2) *Termination sustained.* If it has been determined that the proposed termination does not violate the collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator. In that event, all actions taken to effect the termination prior to the suspension shall be effective, and the PBGC shall proceed to issue a notice of inability to determine sufficiency or a distribution notice, either with or without first requesting updated information from the plan administrator pursuant to § 2616.14(f).

(c) *Formal challenge to plan termination.* The occurrence of any of the following actions, asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement, shall constitute grounds for the PBGC to suspend the termination proceeding:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement.

(2) The filing of a charge with the National Labor Relations Board alleging an unfair labor practice under section 8 of the National Labor Relations Act.

(3) The commencement of an action under section 301 of the National Labor Relations Act in a court of competent jurisdiction.

(d) *Final resolution of challenge.* For the purposes of this section, a formal challenge to a proposed termination shall be considered finally resolved when the parties involved in the challenge enter into a settlement that resolves the challenge or upon the issuance of a final, non-appealable order, as defined in this paragraph. Depending upon the type of action challenging the termination, any of the following constitutes a final, non-appealable order:

(1) An arbitrator's award that is neither appealed nor is review thereof sought within the time for filing such appeals or requesting review.

(2) An order of the National Labor Relations Board for which the Board does not petition for enforcement nor the person aggrieved petition for review within the time permitted for filing such actions.

(3) An order by a court of competent jurisdiction that is not appealed within the time limit for filing such appeals.

(4) When an appeal is taken from or a request for review is made concerning a decision described in paragraph (d)(1), (d)(2) or (d)(3) of this section, an order by a court of competent jurisdiction finally resolving the dispute.

(e) *Involuntary termination by the PBGC.* Paragraphs (a) and (b) of this section notwithstanding, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

§ 2616.6 Requirement for annuities.

(a) *General rule.* Except as provided in paragraph (b) of this section, when a plan administrator distributes all plan assets pursuant to § 2616.18, any benefit to which assets are allocated pursuant to Part 2618 that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating (except in the case of a plan that is sufficient for all accrued benefits), nonsurrenderable annuity that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions.* [Reserved]

(c) *Required form of annuity.* [Reserved]

§ 2616.7 Contributing sponsor's commitment to make plan sufficient for guaranteed benefits.

At any time prior to the filing with the PBGC of a distress termination notice, a contributing sponsor may make a commitment to contribute any additional sums necessary to make a plan sufficient for all guaranteed benefits, in order to enable the plan to distribute assets in full satisfaction of all guaranteed benefits. The commitment shall be in writing and be signed by the contributing sponsor and shall contain substantially the same provisions as the sample commitment in the appendix to this part. In addition, a commitment by a contributing sponsor that satisfies either the bankruptcy liquidation or reorganization distress criterion (§ 2616.3 (d)(1) or (d)(2)), shall be valid under this section only if it is approved by the court before which the liquidation or reorganization proceeding is pending. A commitment that meets the requirements of this section shall be considered a plan asset for all purposes under this part. In the event that a contributing sponsor fails to honor its commitment, rendering a plan insufficient for guaranteed benefits, the PBGC may bring an action to enforce the commitment.

§ 2616.8 Filings with the PBGC; time limits.

(a) *"Filing" defined.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date it is received at the PBGC, providing it is received on a weekday, other than a Federal holiday, no later than 4:00 p.m. Documents received after 4:00 p.m. or on weekends or Federal holidays shall be deemed filed on the next regular business day.

(b) *How to file.* Any document being filed under this part may be delivered by mail or by hand to the PBGC's Case Classification and Control Division, Control Branch, Room 5300A (Code 25420), 2020 K Street NW., Washington, DC 20006.

(c) *Time limits.* If the last day of any period prescribed by this part for issuing or filing any notices or other documents or taking any other actions falls on a Saturday, Sunday or legal holiday, then the last day of the period shall be the next regular business day.

Subpart B—Distress Termination Process

§ 2616.11 Purpose and scope.

This subpart describes in detail the distress termination process. Sections 2616.12 and 2616.14 prescribe the contents of and the rules for issuing the two statutory notices that plan administrators must issue in a distress termination. The first notice, which is issued to all affected parties to begin the termination process, is the "notice of intent to terminate". The second notice, which is issued only to the PBGC, is the "distress termination notice". Sections 2616.15 and 2616.16 cover the PBGC's review of the proposed termination and the actions that the PBGC may take with respect to it. Sections 2616.17 and 2616.18 apply only to plans that are at least sufficient for guaranteed benefits and describe the actions the plan administrator must take to close out the plan.

§ 2616.12 Notices of intent to terminate.

(a) *General Rule.* At least 60 days and no more than 180 days prior to the proposed plan termination date, the plan administrator shall issue to each affected party (as defined in § 2616.2) a notice of intent to terminate containing all of the information specified in paragraph (d) of this section and, to the extent applicable, paragraph (e) of this section.

(b) *Method of issuance.* Notices of intent to terminate shall be issued individually to each affected party. The notice to the PBGC shall be filed in accordance with § 2616.8. The notices to the other affected parties shall be either hand delivered or delivered by first-class mail or courier service to the affected party's last known address.

(c) *When issued.* The notice of intent to terminate is deemed issued to the PBGC on the date on which it is filed (as defined in § 2616.8) and to the other affected parties on the date on which it is handed to the affected party or deposited with a mail or courier service.

(d) *Contents of notice.* Each notice of intent to terminate shall contain all of the following information (and the notice to the PBGC shall also contain the information described in paragraph (e) of this section):

(1) The name of the plan and of the contributing sponsor.

(2) The Employer Identification Number ("EIN") of the contributing sponsor and the Plan Identification Number ("PN"); if there is no EIN or PN, the notice shall so state.

(3) The name, address and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination.

(4) A statement that the plan administrator expects to terminate the plan on a specified proposed termination date (as defined in § 2616.2).

(5) A statement that the benefits under the plan are guaranteed by the

PBGC, including a brief description of what benefits are guaranteed (*e.g.*, if only a portion of the benefits are guaranteed because of the phase-in rule, this shall be explained), and that participants and beneficiaries may also receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits.

(6) For retirees only, a statement that their monthly (or other periodic) benefit amount may be reduced because of the plan's termination, but not below the amount guaranteed by the PBGC, or, if applicable, that the benefit amount may be reduced below the guarantee level if the benefits are subject to recoupment by the PBGC pursuant to Part 2623 of this subchapter.

(e) *Additional information for notice of intent to terminate filed with PBGC.* In addition to the information required under paragraph (d) of this section, the notice of intent to terminate that is filed with the PBGC shall contain the following:

(1) The name, address and telephone number of the plan administrator and of the plan administrator's duly authorized representative, if any.

(2) If premiums for the plan have been paid under another Employer Identification Number or Plan Identification Number, that EIN or PN.

(3) A statement of whether the plan is a multiple employer plan; if so, the names and EIN's of all contributing sponsors shall be given.

(4) The total number of plan participants (actives and retirees).

(5) The plan year ending date.

(6) The date (or latest date) on which the notices of intent to terminate were (or will be) issued to the other affected parties and a statement that they were (or will be) issued in accordance with § 2616.12.

(7) A statement of whether any participants or beneficiaries in pay status (or entitled to be in pay status) are not receiving their benefits, and whether the plan administrator expects to be able to pay all benefits when due during the 180-day period following issuance of the notices of intent to terminate.

(8) A list of all members of the contributing sponsor's controlled group, with the EIN of each, as of the proposed termination date and a statement of which distress test each is expected to satisfy; (if the plan administrator expects to demonstrate that any of these persons is not a substantial member of the controlled group, as defined in § 2616.2, the list shall so identify those persons and no distress test need be listed for them). If a petition seeking liquidation or reorganization under title 11, United States Code (or under similar law of a state or political subdivision thereof) has already been filed by or against the contributing sponsor or any member of its controlled group, a copy of the filed petition showing the court docket number shall also be submitted.

§ 2616.13 PBGC review of notice of intent to terminate.

(a) *General.* Upon receipt of a notice of intent to terminate, the PBGC shall review the notice to determine whether it was issued in accordance with § 2616.12 and shall advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice. The PBGC shall also review the notice, and may require the submission of additional information pursuant to paragraph (d) of this section, for the purpose of determining whether the PBGC should consider initiating an involuntary termination or the appointment of a trustee without an immediate termination under section 4042 of the Act.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notices of intent to terminate appears to have complied with § 2616.12, it shall notify the plan administrator in writing of this tentative determination of compliance and that this determination will be made final or reversed after the PBGC has reviewed the distress termination notice filed pursuant to § 2616.14. The effect of this tentative determination is to allow the distress termination proceeding to continue.

(c) *Improper notice.* If the PBGC determines that the issuance of the notices of intent to terminate failed to comply with § 2616.12, it shall so notify the plan administrator in writing and advise the plan administrator that the proposed distress termination is null and void and that the plan is an ongoing plan for all purposes. In addition, the PBGC may require the plan administrator to submit the information prescribed by paragaph (d) of this section, in order to enable the PBGC to determine whether it should institute proceedings under section 4042.

(d) *Information on need to institute section 4042 proceedings.* Whenever a notice of intent to terminate indicates that there are currently benefits in pay status (or that should be in pay status) that are not being paid or that this is likely to occur within the 180-day period following the issuance of the notices of intent to terminate, or whenever the PBGC issues a determination under paragraph (c) of this section, or in any other case where the PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of the Act, it may require the plan administrator to submit the following information within a reasonable period of time specified in the request for the information.

(1) A copy of the most recent actuarial valuation of the plan.

(2) A statement of whether any funding waivers under section 303 of the Act or extensions of the amortization period under section 304 have been granted within the five years preceding the proposed termination date, and if so, the amounts involved, and whether any requests for waivers or extensions are currently pending, and if so, the amounts involved.

(3) Any other information that the PBGC determines that it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042.

(e) *Appeal of determination that notice was improper.* A plan administrator may appeal the PBGC's determination under paragraph (c) of this section in accordance with the rules prescribed in Subpart D of Part 2606. The filing of an appeal automatically stays the effectiveness of the determination until the PBGC issues its decision on the appeal. However, a request for information by the PBGC under paragraph (c) of this section is not stayed by the filing of the appeal.

§ 2616.14 Distress termination notice.

(a) *General rule.* Except to the extent permitted by paragraph (d) of this section, no later than 60 days after the proposed termination date specified in the notice of intent to terminate, the plan administrator shall file with the PBGC, in accordance with § 2616.8, a "distress termination notice". The distress termination notice shall be clearly identified as such and shall contain the information described in paragraphs (b)–(d) of this section. Unless otherwise specified, all data and other information submitted shall be as of the proposed termination date.

(b) *Proof of distress.* In order to establish that the plan qualifies for a distress termination, the plan administrator shall submit the following:

(1) If applicable, the name and Employer Identification Number of each member of the contributing sponsor's controlled group that is not a substantial member of the controlled group and evidence demonstrating to the PBGC's satisfaction that such members are not

substantial. Such evidence shall in every case include—

(i) The controlled group's audited (or, if not available, unaudited) consolidated or combined (as applicable) financial statements for the most recent five years ending, prior to the proposed termination date, updated to show any material changes;

(ii) Audited (or, if not available, unaudited) financial statements for the five years ending prior to the proposed termination date (updated to show any material changes) for each member of the controlled group that the plan administrator asserts is not a substantial member; and

(iii) Any other relevant evidence.

(2) Identification of the distress test satisfied by the contributing sponsor and each substantial member (all members need not satisfy the same distress test).

(3) For the contributing sponsor and each substantial member of its controlled group, proof of satisfaction of a distress test, as follows:

(i) For the bankruptcy liquidation and reorganization tests, a copy of the filed petition showing the court docket number (unless this was submitted as part of the notice of intent to terminate), and for the reorganization test only, a copy of the order of the bankruptcy court or the appropriate state court approving the termination.

(ii) For the test of inability to stay in business without plan termination—

(A) Audited (or, if not available, unaudited) financial statements for the three most recent fiscal years ending prior to the proposed termination date, updated to show any material changes; if the person is undergoing (or has undergone) a partial liquidation, the financial statements must specify the data relating to the liquidating portion and estimated liquidation values and the source thereof shall be given;

(B) Projections of future revenues and expenses assuming both the continuation and the termination of the pension plan for which a distress termination is sought, for the next three fiscal years beginning with the year in which the plan would terminate; the projections that assume plan continuation must include estimated minimum funding contributions for each of those three years, and the projections that assume plan termination must include the projected termination liabilities to the PBGC, the section 4042 trustee and the section 4049 trust (amended section 4062 defines these liabilities);

(C) Certification by the person's chief financial officer or chief executive officer that all of the information submitted is accurate and complete to the best of that individual's knowledge, and that the person will not be able to continue in business without the plan termination;

(D) All recent (within the prior three years) financial analyses (if any) done of the person by an outside party, with a certification by the person's chief financial officer that the information on which the analysis was based was accurate and complete;

(E) All submissions (if any) made within the prior three years to a financial institution or investment banker in support of possible outside financing;

(F) A statement of whether any funding waivers under section 303 of the Act or extensions of the amortization period under section 304 have been granted within the five years preceding the proposed termination date, and if so, the amounts involved, and whether any requests for waivers or extensions are currently pending or planned, and if so, the amounts involved; and

(G) Any other relevant information.

(iii) For the test of unreasonably burdensome pension costs—

(A) The name and plan identification number of each single-employer defined benefit plan for which the person is a contributing sponsor;

(B) The latest Form 5500 Schedule B filed for each plan named in paragraph (b)(3)(iii)(A) of this section;

(C) For each plan named in paragraph (b)(3)(iii)(A) of this section, a plan census showing total, active and retired participants for the most recent five plan years ending prior to the proposed termination date; (these data may be provided by submitting the relevant Forms 5500 Schedules B);

(D) Audited (or, if not available, unaudited) financial statements of the person for the most recent five fiscal years ending prior to the proposed termination date, updated to show any material changes, with a breakout of the person's total pension costs (including any defined contribution plans) as a percentage of the person's total wage costs and a statement of the total costs per plan;

(E) A statement of whether any funding waivers under section 303 of the Act or extensions of the amortization period under section 304 have been granted within the five years preceding the proposed termination date, and if so, the amounts involved, and whether any requests for waivers or extensions are currently pending or planned, and if so, the amounts involved; and

(F) any other relevant information.

(c) *Plan data.* The plan administrator shall submit the following documents and information relating to the plan and its level of funding. Each item of information shall be numbered as the items are numbered in this paragraph.

(1) A copy of the executed plan document and any amendments thereto.

(2) A copy of any IRS determination letters.

(3) A statement of whether a formal challenge to the termination, as defined in § 2616.4(c), has been initiated, and if so, what action was initiated, by whom and on what date, and the current status of the challenge.

(4) If, as of the proposed termination date or thereafter, the contributing sponsor or any member of its controlled group is the subject of a proceeding described in § 2616.3 (d)(1) or (d)(2), copies of all motions, memoranda, notices or other filings in that proceeding with respect to the plan.

(5) A summary of plan participants and beneficiaries, showing the total numbers in each of the following categories:

(i) Retirees (including disability retirees) and beneficiaries receiving benefits.

(ii) Active participants eligible for normal retirement.

(iii) Active participants eligible for early (but not normal) retirement.

(iv) All other active participants vested before termination.

(v) All active, non-vested (before termination) participants.

(vi) Participants separated from service with deferred vested benefits.

(6) A certification by an enrolled actuary pursuant to paragraph (c)(6) (i), (ii), (iii) or (iv) of this section, as applicable. All values shall be as of the proposed termination date, except for benefits that are valued in accordance with Part 2619, Subpart B, in which event those benefits shall be valued as of a proposed distribution date that is no earlier than the proposed termination date.

(i) *Plan insufficient for guaranteed benefits.* If the plan is not sufficient for benefits in priority categories 1–4 of section 4044(a) of the Act as of the proposed termination date, the certification shall include the following:

(A) The value of the plan's assets valued in accordance with Part 2620;

(B) The actuarial present value of the plan's benefit commitments valued in accordance with Part 2619, Subpart C;

(C) The actuarial present value of the plan's benefits in priority categories 1–4 of section 4044(a) of the Act valued in accordance with Part 2619, Subpart C; and

(D) A statement that the plan is not sufficient for all benefits in priority categories 1–4.

(ii) *Plan sufficient for guaranteed benefits.* If the plan is sufficient for all benefits in priority categories 1–4 of section 4044(a), the certification shall include the following:

(A) The value of the plan's assets valued in accordance with Part 2620;

(B) The actuarial present value of the plan's benefit commitments valued in accordance with Part 2619, Subpart C;

(C) The actuarial present value of the plan's benefits that can be purchased from an insurer valued in accordance with Part 2619, Subpart B and a copy of the qualifying bid; and

(D) A statement that the plan is sufficient for all benefits in priority categories 1–4.

(iii) *Plan sufficient for benefit commitments.* If the plan is sufficient for all benefit commitments, the certification shall include the following:

(A) The value of the plan's assets valued in accordance with Part 2620;

(B) The actuarial present value of the plan's benefit commitments valued in accordance with Part 2619, Subpart B and a copy of the qualifying bid; and

(C) A statement that the plan is sufficient for all benefit commitments.

(iv) *Special rule for plans with claims for due and unpaid contributions.* Except as provided in the next sentence, if collection of any portion of a claim for due and unpaid contributions is necessary to make the plan sufficient for guaranteed benefits, then the enrolled actuary shall value the plan's assets and benefits in accordance with paragraph (c)(6)(i) of this section. If the enrolled actuary certifies that he or she believes that the amount needed to make the plan sufficient for guaranteed benefits will be collected prior to the proposed distribution date, then the enrolled actuary shall value the plan's assets and liabilities in accordance with paragraph (c)(6)(ii) of this section. In either case described in this paragraph, the certification shall also include a statement by the enrolled actuary of whether or not the plan is sufficient for guaranteed benefits.

(7) If the enrolled actuary certifies that the plan is not sufficient for benefits in priority categories 1–4 of section 4044(a), a description of the plan's funding arrangement, including copies of any executed group annuity or insurance contracts or trust agreements.

(8) A list of all plan assets, including, if applicable, a contributory sponsor's commitment made pursuant to § 2616.7.

(9) A certification by the plan administrator that the information submitted and statements made pursuant to paragraph (b) of this section and this paragraph and the information made available to the enrolled actuary are all accurate and complete.

(d) *Participant data schedules.* Within 20 days after receipt of the PBGC's determination under § 2616.15(b) that the requirements for a distress termination have been satisfied, the plan administrator shall file with the PBGC participant data schedules containing the information prescribed by this paragraph and shall certify that the information is accurate and complete. Each item of information shall be numbered as the items are numbered in this paragraph. (If desired, the plan administrator may submit the data required by this paragraph on computer tape after first obtaining from the PBGC the specifications therefor.)

(1) Name and last known address of each participant and beneficiary, including—

(i) Identification of any such persons who are officers or owner-employees; and

(ii) The percentage of the business owned by each.

(2) Sex and date of birth of each participant and beneficiary.

(3) For each participant, the date on which participation began and the date on which employment terminated, if that date is earlier than the proposed plan termination date.

(4) For each participant (including deceased participants whose beneficiaries are entitled to benefits under the plan), the specific data used to compute the participant's accrued benefit (*e.g.*, credited service, compensation, etc.) Social Security benefits, and the ages of the participant and beneficiary as of the earlier of the date of retirement or the proposed termination date.

(5) If the enrolled actuary has certified that the plan is sufficient for guaranteed benefits, with respect to each participant, the accrued monthly benefit, vesting percentage, amount, form, type (for benefits in pay status) and value of the monthly benefit commitments and the value of the monthly benefits to which assets are allocated pursuant to ERISA section 4044 and Part 2618 of this subchapter; for benefits in pay status, include the benefit commencement date. For purposes of this paragraph and paragraph (d)(6) of this section, benefit "type" means nature of benefit entitlement, *e.g.*, normal, early, or shutdown benefit, and benefit "form" means form of payment or annuity, *e.g.*, lump sum, period certain annuity or joint and survivor annuity. For joint and survivor benefits, include the benefit reduction, if any, for the participant and the percentage of the participant's benefit that continues to the survivor.

(6) If the enrolled actuary has certified that the plan is not sufficient for guaranteed benefits, with respect to each participant, the accrued monthly benefit, vesting percentage, amount, form, type (for benefits in pay status) and value of the monthly guaranteed benefit and of the monthly benefit commitments and the value of the monthly guaranteed benefit to which assets are allocated; for benefits in pay status, include the benefit commencement date, and for joint and survivor benefits, include the benefit reduction, if any, for the participant and the percentage of the participant's benefit that continues to the survivor.

(e) *Special rule for plans sufficient for benefit commitments.* In any case in which the enrolled actuary certifies that the plan is sufficient for all benefit commitments, the plan administrator need not submit the participant data schedules required under paragraph (d) of this section. However, in that event, prior to the date prescribed in paragraph (d) of this section for filing the schedules, the plan administrator shall issue to participants and beneficiaries described in 2617.13(b) notices of benefit commitments in accordance with §§ 2617.13 and 2617.14 and shall file with the PBGC, on or before the date prescribed in paragraph (d) of this section, a certified statement that the notices of benefit commitments were so issued.

(f) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this subpart or to pay benefits pursuant to sections 4061 or 4049 of the Act.

§ 2616.15 PBGC determination of compliance with requirements for distress termination.

(a) *General.* Upon receipt of a distress termination notice, the PBGC shall determine whether the qualifications for a distress termination set forth in § 2616.3(b) have been met and shall notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section. The PBGC's determination shall be based on the information contained in the notice of intent to terminate and the distress termination notice, and on any information submitted by an affected party or otherwise obtained by the PBGC.

(b) *Qualifying termination.* If the PBGC determines that all of the requirements of § 2616.3(b) have been

satisfied, it shall so advise the plan administrator and shall also advise the plan administrator that participant data schedules must be submitted in accordance with § 2616.14(d).

(c) *Non-qualifying termination.* Except as provided in paragraph (c)(1) of this section, if the PBGC determines that the plan administrator failed to issue the notices of intent to terminate or the distress termination notice in accordance with § 2616.12 or § 2616.14, respectively, or that the distress criteria set forth in § 2616.3(d) were not met, it shall notify the plan administrator of this determination and the basis therefor. In addition, the notice shall advise the plan administrator of the effects of this determination, *viz.*, that the proposed termination is null and void, that all actions taken to cause or implement the termination are without effect, and that the plan is an ongoing plan for all purposes.

(1) If the basis for the PBGC's determination of non-qualification is that the plan administrator timely filed an incomplete distress termination notice, the PBGC shall notify the plan administrator of the missing items of information and advise the administrator that the information must be filed with the PBGC no later than the 60th day after the proposed termination date or the 20th day after the date of the PBGC notice, whichever is later.

(2) Failure to comply with the terms of a notice described in paragraph (c)(1) of this section shall nullify the proposed termination, and the PBGC shall so notify the plan administrator in accordance with paragraph (c) of this section.

(d) *Appeal of determination of non-qualification.* A plan administrator may appeal the PBGC's determination under paragraph (c) of this section in accordance with the rules prescribed in Subpart D of Part 2606. The filing of an appeal automatically stays the effectiveness of the determination until the PBGC issues its decision on the appeal.

§ 2616.16 PBGC determination of plan sufficiency/insufficiency.

(a) *General.* Upon receipt of the participant data schedules filed pursuant to § 2616.14(d) (or, where appropriate, the certification of issuance of notices of benefit commitments filed pursuant to § 2616.14(e)), the PBGC shall determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b), (c) or (d) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it shall issue a "notice of inability to determine sufficiency" notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator shall continue to administer the plan under the restrictions imposed by § 2616.4;

(2) The termination shall be completed under section 4042 of the Act; and

(3) Unless the PBGC has determined that all benefit commitments under the plan are guaranteed benefits under section 4022 of the Act, the PBGC will determine whether to establish a section 4049 trust with respect to the plan.

(c) *Sufficiency for guaranteed benefits.* Except as provided in paragraph (e) of this section, if the PBGC determines that a plan is sufficient for guaranteed benefits, but is unable to determine that the plan is sufficient for benefit commitments, it shall issue to the plan administrator a "distribution notice" instructing the plan administrator to distribute all plan assets in accordance with § 2616.18 and advising the administrator that the PBGC will determine whether to establish a section 4049 trust with respect to the plan. The PBGC may also require the plan administrator to submit any additional information needed to verify the amounts of participants' and beneficiaries' benefit commitments.

(d) *Sufficiency for benefit commitments.* If the PBGC determines that a plan is sufficient for benefit commitments, it shall issue to the plan administrator a "distribution notice" instructing the plan administrator to distribute all plan assets in accordance with § 2616.18.

(e) *Special rules for certain plans with claims for due and unpaid contributions.* If the PBGC finds that a plan would become sufficient for guaranteed benefits only if the plan collects all or a portion of a claim for due and unpaid contributions and the enrolled actuary did not certify that he or she believed the necessary amount would be collected prior to the proposed distribution date, the plan shall be treated like a plan described in paragraph (b) of this section.

(f) *Plan records.* The PBGC shall also advise the plan administrator that all records needed to compute the benefit commitments (if any) of each individual who is a plan participant or beneficiary as of the termination date (excluding those individuals who were in pay status for longer than one year as of that date), *e.g.*, records showing a participant's age, marital status, employment history, etc., shall be preserved for six years after the date of the post-distribution certification required under § 2616.18(c). These records shall be retained by either the plan administrator or the contributing sponsor.

§ 2616.17 Verification of plan sufficiency prior to close out.

(a) *General.* Prior to making the final distribution of plan assets, the plan administrator shall verify whether the plan is still sufficient, *i.e.*, is able to pay benefits, at the level determined by the PBGC, *i.e.*, guaranteed benefits or benefit commitments. If the plan administrator finds that the plan is no longer able to pay benefits at the level determined by the PBGC, then paragraph (b) or (c) of this section, as appropriate, shall apply.

(b) *Subsequent insufficiency for guaranteed benefits.* When a plan administrator finds that a plan has become insufficient for guaranteed benefits, the plan administrator shall promptly notify the PBGC in writing of that fact and may take no further action to implement the plan termination, pending the PBGC's determination and notice pursuant to paragraph (b)(1) or (b)(2) of this section.

(1) *PBGC concurrence with finding.* If the PBGC concurs with the plan administrator's finding, the distribution notice shall be void, and the PBGC shall issue the plan administrator a new notice in accordance with § 2616.16(b). In addition, the PBGC shall require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit commitments and guaranteed benefits under the plan valued in accordance with Part 2619, Subpart C, as of the date of the plan administrator's notice to the PBGC.

(2) *PBGC non-concurrence with finding.* If the PBGC does not concur with the plan administrator's finding, it shall so notify the plan administrator in writing, and the distribution notice shall remain in effect.

(c) *Subsequent insufficiency for benefit commitments.* When a plan administrator finds that a plan has become insufficient for benefit commitments, the plan administrator shall immediately notify the PBGC in writing of this fact, but shall continue with the final distribution of assets in accordance with § 2616.18. If the PBGC does not agree with the plan administrator's finding, it shall take no action. If the PBGC does concur with the plan administrator's finding, it shall—

(1) Determine whether to establish a trust pursuant to section 4049 with respect to the plan; and

(2) Require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit commitments valued in accordance with Part 2619, Subpart C, as of the final distribution date, and any additional information needed to verify the amounts of participants' and beneficiaries' benefit commitments.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency has occurred, paragraph (b)(1) or paragraphs (c)(1) and (c)(2) of this section, as appropriate, shall apply. In this event, the benefit commitments and, if applicable, guaranteed benefits shall be revalued as of the date of the PBGC's finding.

§ 2616.18 Close out of plan.

(a) *General.* When a plan administrator receives a distribution notice from the PBGC pursuant to § 2616.16 (c) or (d), and unless the plan administrator or the PBGC makes the finding described in § 2616.17(b), the plan administrator shall, within 30 days after receipt of the distribution notice, make the final distribution of plan assets in accordance with paragraph (b) of this section and thereafter shall file with the PBGC a post-distribution certification in accordance with paragraph (c) of this section.

(b) *Methods of final distribution.* The plan administrator shall distribute plan assets by purchasing annuities from an insurer, in accordance with § 2616.6(a), in satisfaction of all benefits that must be provided in annuity form under § 2616.6 to which assets are allocated in accordance with Part 2618, and by otherwise providing all benefits to which assets are allocated that need not be paid in annuity form under § 2616.6. With respect to annuity benefits, the plan administrator shall give to the participant or beneficiary the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the benefits purchased.

(c) *Post-distribution certification.* Within 30 days after the completion of the final distribution of assets, the plan administrator shall file with the PBGC a post-distribution certification containing the following information:

(1) The name and address of the insurer from which annuity contracts were purchased.

(2) A statement that plan assets were allocated in accordance with Part 2618.

(3) Unless all benefit commitments under the plan were paid, an addendum to the participant data schedules filed pursuant to § 2616.14(d) showing the amounts of the benefit commitments actually distributed to (or with respect to) each participant.

(4) If all benefit commitments under the plan were paid, the place or places where the plan records will be held.

(5) A certified statement that all information provided and statements made pursuant to this paragraph are true and complete.

Appendix—Agreement for Commitment To Make Plan Sufficient for Guaranteed Benefits

This agreement, by and between [title of Company] _____(the "Company") and the Pension Benefit Guaranty Corporation (the "PBGC") shall be effective as of the last date executed.

Whereas, the PBGC is a wholly owned government corporation created by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq* (1982) (amended by Pub. L. No. 99-272 (1986), 100 Stat. 244) (the "Act"); and

Whereas _____ (the "Plan") is an employee pension benefit plan as described in section 3(2)(A) of the Act; and

Whereas the Company is [describe entity; e.g., corporation, partnership]; and

Whereas, the Company is a contributing sponsor of the Plan as described in section 4001(a)(13) of the Act, 29 U.S.C. § 1301(a)(13); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of the Act, 29 U.S.C. § 1301 *et seq;* and

Whereas, the Plan administrator has provided (or intends to provide) to each affected party a Notice of Intent to Terminate the Plan, pursuant to Section 4041(a)(2) of the Act, 29 U.S.C. § 1342(a)(2), and

Whereas, the Company wishes the Plan to be sufficient for all benefits described in section 4044(a) (1)–(4) of the Act, 29 U.S.C. 1344(a) (1)–(4) for purposes of Title IV of the Act, 29 U.S.C. § 1301 et seq; and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding, and the Company does not anticipate that it will become a debtor in such a proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the Plan administrator, the amount necessary, if any, to ensure that, on the date the Plan administrator distributes the assets of the Plan, the Plan is able to provide all benefits described in section 4044(a) (1)–(4) of the Act, 29 U.S.C. § 1344(a) (1)–(4).

2. For the sole purpose of determining whether the plan is sufficient to provide all benefits described in section 4044(a) (1)–(4) of the Act, 29 U.S.C. 1355(a) (1)–(4), an amount equal to the amount described in paragraph 1 shall be deemed to be a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of the Act, 29 U.S.C. § 1344.

3. In the event that the Company fails to honor this commitment, the PBGC may bring an action to enforce the commitment.

4. In the event that the Plan administrator is unable to distribute the assets of the Plan to satisfy all benefits described in section 4044(a) (1)–(4) of the Act, 29 U.S.C. § 1344(a) (1)–(4), the PBGC may proceed to place the Plan into trusteeship in accordance with section 4042 of the Act, 29 U.S.C. § 1342.

5. This Agreement shall in no way relieve the company of its obligations—

(a) to pay contributions under the Plan;

(b) in the event of PBGC trusteeship, to pay any amount due to the PBGC under section 4062(b) of the Act, 29 U.S.C. § 1362; and

(c) in the event a trust is established pursuant to section 4041(c)(3)(B) (ii) or (iii) or section 4041(c)(3)(C) (i) or (ii) of the Act, 29 U.S.C. § 1341 (c)(3)(B) (ii) or (iii) or § 1341(c)(3)(C) (i) or (ii), to pay any amount due to the trust pursuant to section 4062(c) of the Act, 29 U.S.C. § 1362(c).

Date: _____

By: _____

Date: _____

PBGC By: _____

Knowingly and willfully making false, fictitious or fraudulent statements to PBGC is punishable under 18 U.S.C. § 1001.

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

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Appendix—Agreement for Commitment To Make Plan Sufficient for Benefits Commitments.

Authority: Secs. 4002(b)(3), 4041 and 4044, Pub. L. 93-406, 88 Stat. 1004, 1020 and 1025, as amended by secs. 403(1), 40(d) and 402(a)(7), Pub. L. 96-364, 94 Stat. 1299, 1301 and 1302, and by secs. 11007 and 11009, Pub. L. 99-272,

100 Stat. 244 [29 U.S.C. 1302(b)(3), 1341 and 1344].

Subpart A—General Provisions

§ 2617.1 Purpose and scope.

(a) *Purpose.* This regulation sets forth the rules and procedures for terminating a single-employer pension plan in a standard termination. Under the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), a single-employer plan may be voluntarily terminated only in a "standard" or a "distress" termination, and then only if the termination satisfies the statutory requirements for the type of termination sought. The plan termination rules in SEPPAA apply with respect to all plan terminations initiated by the plan administrator or the Pension Benefit Guaranty Corporation ("PBGC"), on or after January 1, 1986. This regulation combines the PBGC's regulations on Notices of Intent to Terminate and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR Parts 2616 and 2617), with appropriate changes to reflect SEPPAA's new rules for standard terminations. Subpart A of this regulation contains the various general rules and requirements relating to standard terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a standard termination.

(b) *Scope.* This part applies to the termination of any single-employer plan covered under ERISA section 4021(a) and not excluded by section 4021(b), for which a notice of intent to terminate is issued (or is required to be issued) on or after [effective date of part] and which is not terminated in accordance with the requirements for a distress termination under section 4041(c) of the Act and Part 2616 of this subchapter.

§ 2617.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 and the Single-Employer Pension Plan Amendments Act of 1986.

"Affected party" means, with respect to a single-employer plan, each participant, each beneficiary of a deceased participant, each alternate payee (as defined in section 206(d)(3)(K) of the Act) under an applicable qualified domestic relations order (as defined in section 206(d)(3)(B)(i)), and each employee organization representing participants. However, in connection with any notice required under this part, if an affected party has designated in writing another person to receive the notice, then any reference to the affected party shall be deemed to refer to the designated person.

"Benefit commitments" means those benefits that: (1) Are guaranteed under section 4022 of the Act; (2) would be guaranteed but for the limitations in section 4022(b); or (3) constitute early retirement supplements or subsidies or plant closing benefits, provided the participant or beneficiary has, prior to the plan termination date, satisfied all of the conditions under the plan to establish entitlement to the benefit, except for the submission of a formal application, retirement, completion of a required waiting period subsequent to application for benefits or designation of a beneficiary.

"Contributing sponsor" means, with respect to a single-employer plan, the person responsible for meeting the minimum funding requirements under section 302 of the Act or section 412 of the Internal Revenue Code of 1954.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

"Notice of benefit commitments" means the notice to participants and beneficiaries required by section 4041(b)(2)(B) of the Act and §§ 2617.13 and 2617.14 of this part that advises them of the minimum benefit entitlement of each in the event of a standard termination.

"Notice of intent to terminate" means the notice to affected parties advising them of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2617.12 of this part.

"Notice of noncompliance" means a notice issued to a plan administrator by the PBGC pursuant to section 4041(b)(2)(C) of the Act and § 2617.17 of this part advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan may not terminate.

"Participant" means any individual who is in employment covered by the plan and is earning or retaining credited service (including an individual who is below the integration level in a plan that is integrated with Social Security); any non-vested individual separated from employment who is earning or retaining credited service, excluding those individuals who have incurred a break in service of one year or the plan's break-in-service period, whichever is greater; and any individual who has retired or separated from employment and is either receiving benefits or entitled to begin receiving benefits in the future, excluding those individuals to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Proposed distribution date" means the date chosen by the plan administrator as the tentative date for the final distribution of plan assets pursuant to a standard termination and the date used by the enrolled actuary for valuing plan assets and benefits. A proposed distribution date may never be earlier than the day following the last day of the PBGC's review period, as described in § 2617.16(b), nor later than the 30th day following the expiration of the review period.

"Proposed termination date" means the date specified as such by the plan administrator in a notice of intent to terminate or, if different, in the standard termination notice. If a plan terminates in a standard termination, this date becomes the termination date, and this is the date used by the enrolled actuary for determining participants' accrued benefits and benefit commitments under a plan. A proposed termination date may not be earlier than the 60th day after the issuance of the notice of intent to terminate, nor later than the 180th day thereafter.

"Single-employer plan" means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3)).

"Standard termination" means the termination, in accordance with section 4041(b) of the Act and this part, of a single-employer plan that is able to pay all its benefit commitments.

"Standard termination notice" means the notice filed with the PBGC pursuant to section 4041(b)(2)(A) of the Act and § 2617.15 of this part advising the PBGC of a proposed standard termination and providing various plan data including, but not limited to, an enrolled actuary's certification of the plan's sufficiency for benefit commitments.

§ 2617.3 Requirements for a standard termination.

(a) *Exclusive means of voluntary plan termination.* Unless all the requirements for a distress termination set forth in section 4041(c) of the Act and Part 2616 are satisfied, a plan may be voluntarily terminated by the plan administrator

only in a standard termination. A standard termination may occur only if it meets all of the requirements set forth in paragraph (b) of this section.

(b) *Requirements.* A plan may terminate in a standard termination only if—

(1) The plan administrator issues a notice of intent to terminate to affected parties in accordance with § 2617.12 at least 60 days before the proposed termination date;

(2) The plan administrator files a standard termination notice with the PBGC in accordance with § 2617.15 no later than 60 days after the proposed termination date;

(3) The plan administrator issues notices of benefit commitments to plan participants and beneficiaries in accordance with §§ 2617.13 and 2617.14 no later than the date that the standard termination notice is sent to the PBGC;

(4) The PBGC does not issue a notice of noncompliance to the plan administrator pursuant to § 2617.17; and

(5) The plan administrator makes the final distribution of plan assets in accordance with § 2617.18, thereby satisfying all plan obligations for benefit commitments.

(c) *Effect of failure to satisfy all requirements.* If any of the requirements of paragraph (b) of this section are not satisfied, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan for all purposes. A plan administrator who still desires to terminate the plan shall initiate the termination process again from the beginning, starting with the issuance of a notice of intent to terminate.

§ 2617.4 Administration of plan during pendency of termination proceedings.

Beginning on the date that the plan administrator issues the notice of intent to terminate and ending upon the expiration of the PBGC's review period referred to in § 2617.16(a) (generally 60 days after the filing with the PBGC of a complete standard termination notice), the plan administrator may not make any distributions to participants pursuant to or in furtherance of the plan's termination. This does not prohibit the plan administrator from carrying out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan and investing plan assets.

§ 2617.5 Challenges to plan termination under a collective bargaining agreement.

(a) *Suspension of termination proceeding.* If, prior to the expiration of the PBGC's review period referred to in § 2617.16(a), the PBGC is advised that a formal challenge (as defined in paragraph (c) of this section) has been initiated asserting that the proposed termination violates the terms and conditions of an existing collective bargaining agreement, the PBGC shall suspend the termination proceeding. The effect of the suspension shall be to stop the running of all time periods specified in Title IV of ERISA or under this part relevant to the termination. However, the restriction prescribed by § 2617.4 shall continue in effect during the period of suspension. The PBGC shall notify the plan administrator in writing of the suspension.

(b) *Resolution of challenge.* Immediately upon the final resolution (as defined in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge. If the validity of the proposed termination has been upheld, the plan administrator shall also advise the PBGC of whether the plan administrator wishes to continue or withdraw the proposed termination.

(1) *Challenge sustained.* If it has been determined that the proposed termination violates the collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan for all purposes.

(2) *Termination sustained.* If it has been determined that the proposed termination does not violate the collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator. In that event, the termination proceeding shall continue from the point where it was suspended, and all actions taken to effect the termination prior to the suspension shall be effective. Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding, and any time periods that had fewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice.

(c) *Formal challenge to plan termination.* The occurrence of any of the following actions, asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement, shall constitute grounds for the PBGC to suspend the termination proceeding:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement.

(2) The filing of a charge with the National Labor Relations Board alleging an unfair labor practice under section 8 of the National Labor Relations Act.

(3) The commencement of an action under section 301 of the National Labor Relations Act in a court of competent jurisdiction.

(d) *Final resolution of challenge.* For the purposes of this section, a formal challenge to a proposed termination shall be considered finally resolved when the parties involved in the challenge enter into a settlement that resolves the challenge or upon the issuance of a final, non-appealable order, as defined in this paragraph. Depending upon the type of action challenging the termination, any of the following constitutes a final, non-appealable order:

(1) An arbitrator's award that is neither appealed nor is review thereof sought within the time for filing such appeals or requesting review.

(2) An order of the National Labor Relations Board for which the Board does not petition for enforcement or the person aggrieved petition for review within the time permitted for filing such actions.

(3) An order by a court of competent jurisdiction that is not appealed within the time limit for filing such appeals.

(4) When an appeal is taken from or a request for review is made concerning a decision described in paragraph (d)(1), (d)(2) or (d)(3) of this section, an order by a court of competent jurisdiction finally resolving the dispute.

(e) *Involuntary termination by the PBGC.* Paragraphs (a) and (b) of this section notwithstanding, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

§ 2617.6 Requirement for annuities.

(a) *General rule.* Except as provided in paragraph (b) of this section, when a plan is closed out under § 2617.18, any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating (except in the case of a plan that is sufficient for all accrued benefits), nonsurrenderable annuity that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions.* [Reserved]

§ 2617.7 Contributing sponsor's commitment to make plan sufficient.

At any time prior to the filing with the PBGC of a standard termination notice, a contributing sponsor may make a commitment to contribute any additional sums necessary to make a plan sufficient for all benefit commitments, in order to enable the plan to terminate in a standard termination. The commitment shall be in writing and be signed by the contributing sponsor, shall contain substantially the same provisions as the sample commitment in the appendix to this part, and shall be made to the plan. In addition, a commitment by a contributing sponsor that is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 2616.3 (d)(1) or (d)(2), shall be valid under this section only if it is approved by the court before which the liquidation or reorganization proceeding is pending. A commitment that meets the requirements of this section shall be considered a plan asset for all purposes under this part.

§ 2617.8 Filings with the PBGC; time limits.

(a) *"Filing" defined.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date that it is received at the PBGC, providing it is received on a weekday, other than a Federal holiday, no later than 4:00 p.m. Documents received after 4:00 p.m. or on weekends or Federal holidays shall be deemed filed on the next regular business day.

(b) *How to file.* Any document being filed under this part may be delivered by mail or by hand to the PBGC's Case Classification and Control Division, Control Branch, Room 5300A (Code 25420), 2020 K Street NW., Washington, DC 20006.

(c) *Time limits.* If the last day of any period prescribed by this part for issuing or filing any notices or other documents or taking any other actions falls on a Saturday, Sunday or legal holiday, then the last day of the period shall be the next regular business day.

§ 2617.9 Maintenance of plan records.

All records (including the plan document) needed to compute the benefit commitments (if any) of each individual who is a plan participant or beneficiary as of the proposed termination date, excluding those individuals who have been in pay status for longer than one year as of that date, shall be preserved for six years after the date of the post-distribution certification required under § 2617.18(f). These records shall be retained by either the plan administrator or the contributing sponsor.

Subpart B—Standard Termination Process

§ 2617.11 Purpose and scope.

This subpart describes in detail the standard termination process. Sections 2617.12–2617.14 prescribe the contents of and the rules for issuing the two statutory notices that plan administrators must give to participants and beneficiaries in a standard termination. The first notice, which is issued to begin the termination process, is the "notice of intent to terminate." The second notice, which is issued prior to the PBGC's review of the termination request, is the "notice of benefit commitments." Section 2617.15 deals with the filing made with the PBGC, the "standard termination notice." Sections 2617.16 and 2617.17 cover the PBGC's review of the proposed termination and the actions that the PBGC may take with respect to it. Finally § 2617.18 prescribes the rules for closing out a plan in the absence of a notice of noncompliance.

§ 2617.12 Notice of intent to terminate.

(a) *General rule.* At least 60 days and no more than 180 days prior to the proposed plan termination date, the plan administrator shall issue to each affected party (as defined in § 2617.2) a notice of intent to terminate containing all of the information specified in paragraph (d) of this section. Failure to comply with this rule shall nullify the proposed termination.

(b) *Method of issuance.* The notice of intent to terminate shall be issued individually to each affected party. The notice shall be either hand delivered or delivered by first-class mail or courier service to the affected party's last known address.

(c) *When issued.* The notice of intent to terminate is deemed issued on the date in which it is handed to the affected party or deposited with a mail or courier service.

(d) *Contents of notice.* The notice of intent to terminate shall contain all of the following information:

(1) The name of the plan and of the contributing sponsor.

(2) The Employer Identification Number ("EIN") of the contributing sponsor and the Plan Identification Number ("PN"); if there is no EIN or PN, the notice shall so state.

(3) The name, address and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination.

(4) A statement that the plan administrator expects to terminate the plan on a proposed termination date (as defined in § 2617.2) that is either—

(i) A specific date set forth in the notice; or

(ii) A date to be determined that is dependent on the occurrence of some future event (such as the merger of the contributing sponsor with another entity). When an unspecified date is used, the notice shall state what the event is, generally when it is expected to occur, and when the termination will occur in relation to the other event.

(5) A statement that if the termination does not occur, the plan administrator will notify the affected parties of that fact.

(6) A statement that each affected party, other than the employee organization that represents plan participants, will be receiving a written notification of the benefits that the person will receive.

(7) For retirees only, a statement that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination.

§ 2617.13 Issuance of notices of benefit commitments.

(a) *General rule.* No later than the date on which the plan administrator sends the standard termination notice to (or, if hand-delivered, files it with) the PBGC, as required by § 2617.15, the plan administrator shall issue to each plan participant and beneficiary described in paragraph (b) of this section a notice of that person's benefit commitments under the plan. The notice shall be in the form and contain the information specified in § 2617.14. Failure to comply with this rule shall nullify the proposed termination.

(b) *Persons entitled to notice.* A notice of benefit commitments shall be issued to all persons who, as of the proposed termination date, are participants in the terminating plan, and, in the case of a spin-off/termination, participants in the continuing plan. A notice of benefit commitments shall also be issued to all persons who are, as of that date, under the terminating plan or the continuing plan, beneficiaries of deceased participants or alternate payees under an applicable qualified domestic relations order. With respect to all other beneficiaries, notice to the participant shall constitute notice to that participant's beneficiary(ies).

(c) *Method of issuance.* A notice of benefit commitments shall be issued individually to each person described in paragraph (b) of this section. The notice shall be either hand-delivered or

delivered by first-class mail or courier service to the person's last known address.

(d) *When issued.* A notice of benefit commitments is deemed issued on the date it is handed to the recipient or deposited with a mail or courier service.

§ 2617.14 Form and contents of notices of benefit commitments.

(a) *Form.* A notice of benefit commitments shall be written in plain, non-technical English that is likely to be understood by the average participant or beneficiary. When technical terms must be used, their meaning shall be explained in non-technical language.

(b) *Foreign languages.* In the case of any plan described in paragraph (b)(1) or (b)(2) of this section, in addition to complying with paragraph (a) of this section, the notice of benefit commitments shall contain a statement, prominently displayed, in the foreign language (or languages) common to the non-English speaking plan participants advising them of how they may obtain assistance in understanding the notice. The assistance need not involve written materials, but shall be adequate to reasonably ensure that the participants and beneficiaries understand the information contained in their notices, and shall be provided through media and at times and places that are reasonably accessible to the participants and beneficiaries.

(1) *Small plans.* A plan described in this paragraph is any plan that covers fewer than 100 participants as of the proposed termination date, in which at least 25 percent of the participants speak only the same non-English language.

(2) *Other plans.* A plan described in this paragraph is any plan that covers 100 or more participants as of the proposed termination date, in which the lesser of 500 or 10 percent of the participants speak only the same non-English language.

(c) *Contents.* Each notice of benefit commitments shall contain the information specified in this paragraph. In addition, a notice shall contain the information described in paragraphs (d) through (f) of this section, depending on whether the benefit is in pay status and whether the participant has elected a benefit form as of the proposed termination date. If, as of the proposed termination date, the plan administrator is certain that the plan will be able to pay full accrued benefits to all participants, the information set forth in the notices may be for accrued benefits rather than benefit commitments, and each notice shall so state.

(1) The name of the plan and the Employer Identification Number ("EIN"); if there is no EIN, the notice shall so state.

(2) The name, address and telephone number of the person who may be contacted to answer questions concerning a participant's or beneficiary's benefit.

(3) The proposed termination date and, if applicable, a statement that this date is later than the proposed termination date given in the notice of intent to terminate.

(4) A statement that the amount of the benefit commitments set forth in the notice is an estimate, that under the proposed termination benefits paid will in no event be less than the estimate, and (where applicable) greater benefits may be paid if plan assets are adequate.

(d) *Benefits of persons in pay status.* A notice of benefit commitments to a participant or beneficiary in pay status as of the proposed termination date shall state—

(1) The amount and form of benefit payable as of the proposed termination date;

(2) The amount (if any) and form of benefit payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur (or that has already occurred) after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) For benefits of participants (or beneficiaries) in pay status for one year or less as of the proposed termination date, the specific personal data used to calculate the benefit commitments described in paragraphs (d)(1) and (d)(2) of this section, *e.g.*, participant's age at retirement, spouse's age, participant's length of service, etc., and including for Social Security offset benefits, the participant's actual or, if unknown, estimated Social Security benefit and for an estimated benefit, the assumptions used for the participant's earnings history.

(e) *Benefits of participants not in pay status but form and starting date known.* For benefit commitments payable with respect to a participant who is not in pay status as of the proposed termination date, but who has, as of that date, elected to retire, a notice of benefit commitments shall state—

(1) The amount and form of the benefit commitments payable as of the projected benefit starting date, and what that date is;

(2) The amount (if any) and form of benefit payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) If the age at which or form in which the benefit commitments will be paid differ from the age or form in which the participant's accrued benefit at normal retirement age is stated in the plan, the age or form stated in the plan and the age or form adjustment factors, including in the case of a lump sum benefit the interest rate, used to convert to the benefit described in paragraph (e)(1) of this section, with a reference to the pertinent plan provision;

(4) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the benefit commitments (other than a lump sum benefit) described in paragraphs (e)(1) and (e)(2) of this section, and, with respect to a benefit payable as a lump sum, the personal data used to calculate the underlying annuity; and

(5) When the benefit commitments will be paid in a lump sum, an explanation of how the interest rate is used to calculate the lump sum, a statement that the higher the interest rate used, the smaller the lump sum amount, and (if applicable) a statement that the lump sum amount given pursuant to paragraph (e)(1) of this section is an estimate because the applicable interest rate may change before the distribution date.

(f) *All other benefits of participants not in pay status.* With respect to all deferred benefits, other than those described in paragraph (e) of this section, a notice of benefit commitments shall state—

(1) The amount and form of the participant's benefit commitments at normal retirement age in the plan's normal form;

(2) The availability of any alternative benefit forms, including those payable to a beneficiary upon the participant's death either before or after retirement, and for any benefits to which the participant is entitled as of the proposed termination date that would be payable before normal retirement age, the amount and earliest benefit commencement date of such benefit and whether the benefit would be subject to future reduction;

(3) If the benefit commitments may be paid in a lump sum without the participant's consent, the amount of the lump sum and the interest rate used to calculate it;

(4) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the benefit commitments described in paragraph

(f)(1) of this section, and, with respect to a benefit that may be paid in a lump sum without the participant's consent, the personal data used to calculate the underlying annuity; and

(5) When the benefit commitments may be paid in a lump sum without the participant's consent, an explanation of how the interest rate is used to calculate the lump sum, a statement that the higher the interest rate used, the smaller the lump sum amount, and a statement that the lump sum amount given pursuant to paragraph (f)(3) of this section is an estimate because the applicable interest rate may change before the distribution date.

§ 2617.15 Standard termination notice.

(a) *General rule.* No later than 60 days after the proposed termination date specified in the notice of intent to terminate (or, if later, the proposed termination date specified in the notice required by this paragraph), the plan administrator shall file with the PBGC a "standard termination notice" containing the information prescribed in this section.

(b) *Contents of notice.* A standard termination notice shall be clearly identified as such and shall contain all of the information specified in this paragraph and, if the plan administrator expects the termination to result in the reversion of residual assets to the contributing sponsor, the information specified in paragraph (c) of this section, as well. Each item of information shall be numbered as the items are numbered in this paragraph and in paragraph (c) of this section.

(1) The name of the plan and of the contributing sponsor.

(2) The Employer Identification Number ("EIN") of the contributing sponsor and the Plan Identification Number ("PN"); if there is no EIN or PN, the notice shall so state; if premiums have been paid by the plan under another EIN or PN, that EIN or PN shall be given as well.

(3) The name, address and telephone number of the plan administrator and of the plan administrator's duly authorized representative, if any.

(4) A statement of whether the plan is a multiple employer plan; if so, the names and EIN's of all contributing sponsors must be given.

(5) The total number of plan participants (actives and retirees).

(6) The plan year ending date.

(7) The proposed termination date of the plan and, if earlier, the proposed termination date specified in the notice of intent to terminate.

(8) The date (or latest date) on which the notices of intent to terminate were issued and a statement that they were issued to each affected party in accordance with § 2617.12.

(9) The proposed distribution date.

(10) A statement that notices of benefit commitments were issued and the date or dates thereof, in accordance with §§ 2617.13 and 2617.14, to each person entitled to receive the notice pursuant to § 2617.13.

(11) A statement of whether a formal challenge to the termination, as defined in § 2617.4(c), has been initiated, and if so, what action was initiated, by whom and on what date, and the current status of the challenge.

(12) A statement of whether the contributing sponsor has made a commitment to make the plan sufficient, pursuant to § 2617.7.

(13) A statement of whether the termination will result in the reversion of residual assets to the contributing sponsor; if so, the information required by paragraph (c) of this section must also be submitted.

(14) A certification by an enrolled actuary of the information specified in this paragraph. The certification shall be signed by the enrolled actuary and shall show the enrolled actuary's identification number. All valuations done pursuant to this paragraph shall utilize reasonable methods and assumptions consistently applied, and all values given shall be as of the proposed distribution date, as defined in § 2617.2.

(i) The projected value of plan assets.

(ii) The projected actuarial present value of all benefit commitments (determined as of the proposed termination date).

(iii) A statement that the plan is projected to be sufficient for all benefit commitments.

(iv) A statement of whether the plan is projected to be sufficient for all accrued benefits and, if so, the projected actuarial present value of all accrued benefits (determined as of the proposed termination date).

(v) A statement of whether the termination is projected to result in a reversion of residual assets to the contributing sponsor, and if so, the projected amount of the reversion.

(15) A certification by the plan administrator that the information given and statements made pursuant to paragraphs (b)(1)–(b)(13) and, if applicable, paragraph (c) of this section and the information made available to the enrolled actuary are all accurate and complete.

(c) *Additional information for terminations resulting in asset reversions.* In any termination that will result in the reversion of residual assets to the contributing sponsor, the standard termination notice shall contain the following:

(1) A statement that the plan provides for a reversion of any residual assets to the contributing sponsor.

(2) A statement of whether the plan was involved in a spin-off or other transfer of assets or liabilities within the 36-month period preceding the proposed termination date.

(3) A statement of whether the contributing sponsor intends to cover substantially the same employees participating in the terminating plan in another (new or existing) defined benefit plan.

(4) With respect to a contributory plan, a statement of whether the plan administrator is requesting PBGC approval of an allocation method other than that prescribed in § 2618.31(b) of the PBGC's regulations; if so, the proposed allocation method must be submitted and the plan administrator shall consent to a 60-day extension of the PBGC's review period referred to in § 2617.16(a).

(5) A statement of whether the contributing sponsor intends to cover substantially the same employees participating in the terminating plan in a new or existing defined contribution plan.

(6) If an affirmative answer is made with respect to paragraph (c)(2) or (c)(3) of this section, a copy of the contributing sponsor's most recent annual report or audited financial statement.

§ 2617.16 PBGC action upon receipt of standard termination notice.

(a) *General.* Upon the filing of a standard termination notice containing all of the information required by § 2617.15 (b) and (c), the PBGC has (except as provided in paragraph (b) or (e) of this section or in § 2617.5) 60 days (or, in the case of a contributory plan involving a reversion of residual assets with respect to which the plan administrator proposes to use an allocation method other than that described in 29 CFR 2618.31(b), 120 days) to review the standard termination notice, determine whether or not to issue a notice of noncompliance pursuant to § 2617.17, and issue any such notice. If the PBGC does not issue a notice of noncompliance within this period, the plan administrator shall proceed to close out the plan in accordance with § 2617.18. The consequences of the issuance of a notice of noncompliance are set forth in § 2617.17.

(b) *Review period.* The 60-day (or 120-day) period referred to in paragraph (a)

of this section begins on the day following the filing of a complete standard termination notice and includes the 60th (or 120th) day. The PBGC and the plan administrator may agree in writing, prior to the expiration of the review period, to extend the period for an additional 60 days. More than one such extension may be made. Any extension may be made upon whatever terms and conditions are agreed to by the PBGC and the plan administrator.

(c) *Acknowledgment of complete standard termination notice.* Upon receipt of a standard termination notice containing all of the information required by § 2617.15 (b) and (c), the PBGC shall notify the plan administrator in writing of the date on which the notice was filed, so that the plan administrator may determine when the PBGC's review period will expire.

(d) *Incomplete standard termination notice.* Upon receipt of a standard termination notice that does not contain all of the information required by § 2617.15 (b) and (c), the PBGC shall return the notice and advise the plan administrator in writing of the missing items of information and that the complete standard termination notice must be filed no later than the 60th day after the proposed termination date or the 20th day after the date of the PBGC notice, whichever is later.

(e) *Authority to request additional information.* Whenever the PBGC has reason to suspect that any of the requirements of §§ 2617.12–2617.15 were not complied with, or in any case that will result in a reversion of residual assets to the contributing sponsor, the PBGC may require the submission of information supplementing that furnished pursuant to § 2617.15. A request for additional information under this paragraph shall be in writing and shall suspend the running of the PBGC's review period specified in paragraph (a) of this section. That period shall begin running again on the day following the filing of the requested information. If a plan administrator or contributing sponsor fails to submit information requested under this paragraph within the period specified in the PBGC's request, the PBGC may issue a notice of noncompliance in accordance with § 2617.17.

§ 2617.17 Notice of noncompliance.

(a) *General.* The PBGC shall issue to the plan administrator a written notice of noncompliance, within the period prescribed by § 2617.16(a), whenever it makes one of the determinations set forth in this paragraph. Any such determination shall be based on the information contained in the standard termination notice or in any supplemental submission under § 2617.16(e), or on information provided by any affected party or otherwise obtained by the PBGC.

(1) A determination that the plan administrator failed to issue notices of intent to terminate in accordance with § 2617.12.

(2) A determination that the plan administrator failed to issue notices of benefit commitments in accordance with §§ 2617.13 and 2617.14.

(3) A determination that the standard termination notice was not filed in compliance with § 2617.15.

(4) A determination that, as of the proposed distribution date, plan assets will not be sufficient to satisfy all benefit commitments under the plan.

(b) *Effect of notice of noncompliance.* The issuance of a notice of noncompliance terminates a standard termination proceeding. The effect of the notice is to nullify all actions taken to effect the plan termination and to render the plan an ongoing plan for all purposes. The notice of noncompliance is effective upon the expiration of the period within which the notice may be appealed under Part 2606 ("Rules for Administrative Review of Agency Decisions"). However, once the notice is issued, the plan administrator may take no further actions to terminate the plan until the notice is revoked pursuant to a decision by the PBGC on an appeal.

(c) *Appeal of notice of noncompliance.* A plan administrator may appeal the issuance of a notice of noncompliance in accordance with the rules prescribed in Subpart D of Part 2606. The filing of an appeal automatically stays the effectiveness of the notice of noncompliance until the PBGC issues its decision on the appeal.

(d) *Notice to affected parties.* Upon a decision by the PBGC on an appeal affirming the issuance of a notice of noncompliance or upon the expiration of the period within which the issuance of a notice of noncompliance may be appealed, the plan administrator shall notify the affected parties in writing that the plan is not going to terminate. The notices shall be delivered by first-class mail or by hand to the employee organization representing plan participants and to participants and beneficiaries who are in pay status. The notices to other participants and beneficiaries shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in an employee organization newsletter or newspaper of general circulation in the area or areas where participants and beneficiaries reside.

§ 2617.18 Close out of plan.

(a) *General rule.* Except as provided in paragraph (b) of this section, if the PBGC does not issue a notice of noncompliance within the period specified in § 2617.17, the plan administrator shall, within 30 days after the expiration of that period, make the final distribution of plan assets in accordance with paragraph (c) of this section. Thereafter, the plan administrator shall file with the PBGC the post-distribution certification required under paragraph (f) of this section.

(b) *Inability to pay all benefit commitments.* Prior to making the final distribution of plan assets, the plan administrator shall determine that plan assets are in fact sufficient to satisfy all benefit commitments under the plan. The plan administrator may not make any distribution of assets to effect the plan's termination if the assets are not sufficient. In the event of an insufficiency, the plan administrator shall promptly notify the PBGC.

(c) *Methods of final distribution.* The plan administrator shall distribute plan assets by purchasing annuities from an insurer, in accordance with § 2617.6(a), in satisfaction of all benefit commitments (or, if greater, benefits to which assets are allocated in accordance with Part 2618) that must be provided in annuity form under § 2617.6, and by otherwise providing all benefit commitments (or, if greater, benefits to which assets are allocated) that need not be paid in annuity form under § 2617.6. With respect to annuity benefits, the plan administrator shall give to the participant or beneficiary the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

(d) *Failure to distribute within 30-day period.* Except as provided in paragraph (e) of this section, failure to make the final distribution of assets in accordance with paragraph (a) of this section, because of an insufficiency of plan assets as described in paragraph (b) of this section or for any other reason, shall nullify the termination. All actions taken to effect the plan's termination shall be null and void, and the plan shall be an ongoing plan for all purposes.

(e) *Extension of time for distribution.* If the plan administrator is unable to make the final distribution of plan

assets within the 30-day period for any reason other than an insufficiency described in paragraph (b) of this section, the plan administrator may make a written request to the PBGC for an extension of time within which to make the distribution. The request shall be filed with the PBGC prior to the expiration of the 30-day period, state the reason for the request, and provide a date certain no later than 45 days after the end of the 30-day period by which the distribution will be made if the extension is granted. The PBGC will grant an extension only if it is satisfied that the delay in making the distribution is not due to the actions or inactions of the plan administrator or the contributing sponsor, and that the distribution can in fact be complete by the date requested. In no event will the PBGC grant an extension of greater than 45 days.

(f) *Post-distribution certification.* Within 30 days after the completion of the final distribution of assets, the plan administrator shall file with the PBGC a post-distribution certification containing the following information:

(1) The name and address of the insurer from which annuity contracts were purchased.

(2) The place or places where the plan records will be held.

(3) A statement that plan assets were allocated in accordance with Part 2618.

(4) A statement that assets were distributed in accordance with paragraph (c) of this section.

(5) A certified statement that all information provided and statements made pursuant to this paragraph are true and complete.

Appendix—Agreement for Commitment To Make Plan Sufficient for Benefits Commitments

This agreement, by and between [title of company] _____ (the "Company") and _____ [title of plan] (the "Plan") shall be effective as of the last date executed.

Whereas, _____ (the "Plan") is an employee pension benefit plan as described in section (3)(2)(A) of the Act; and

Whereas the company is [describe entity; e.g., corporation, partnership]; and

Whereas, the company is a contributing sponsor of the Plan as described in section 4001(a)(13) of the Act, 29 U.S.C. § 1301(2)(13); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of the Act, 29 U.S.C. 1301 et seq.; and

Whereas, the Plan administrator has issued or intends to issue to each affected party a Notice of Intent to Terminate the Plan, pursuant to section 4041(a)(2) of the Act, 29 U.S.C. § 1341(a)(2), and

Whereas, the Company wishes the Plan to be sufficient for benefit commitments, as described in section 4001(a)(16) of the Act, 29 U.S.C. § 1301(a)(16), for purposes of Title IV of the Act, 29 U.S.C. § 1301 et seq.; and

Whereas, the parties understand that if the Plan is not able to satisfy all its obligations for benefit commitments it will not be able to terminate in a standard termination under section 4041(b) of the Act, 29 U.S.C. § 1341(b); and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding, and the Company does not anticipate that it will become a debtor in such a proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the Plan administrator, the amount necessary, if any, to ensure that, on the date the Plan administrator distributes the assets of the Plan, the Plan is able to provide all benefit commitments.

2. For the sole purpose of determining whether the Plan is sufficient to provide all benefit commitments, an amount equal to the amount described in paragraph 1 shall be deemed a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of the Act, 29 U.S.C. § 1344.

3. This Agreement shall in no way relieve the Company of its obligations to pay contributions under the Plan.

Date: _____

By: _____

Company: _____

By: _____

Plan: _____

Issued in Washington, DC, this 25th day of August, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 886

Ophthalmic Devices; General Provisions and Classifications of 109 Devices; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 78N-3128]

Ophthalmic Devices; General Provisions and Classifications of 109 Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 109 generic types of ophthalmic devices. The preamble to this final rule responds to comments received on the proposed regulations classifying these devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7320.

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A. Background

In the **Federal Register** of January 26, 1982 (47 FR 3694), FDA published proposed regulations containing general provisions applicable to the classification of ophthalmic devices and individual proposed regulations to classify 119 ophthalmic devices into one or more of three regulatory classes: class I (general controls), class II (performance standards), and class III (premarket approval). Of the 119 ophthalmic devices that were the subjects of the proposed regulations, FDA proposed to classify 45 devices into class I, 51 devices into class II, 4 devices into class III, and 19 devices into either class I or class II depending upon their construction.

In this final rule, FDA is classifying 109 devices, with 65 devices in class I, 33 in class II and 11 in class III. FDA has withdrawn the proposed regulation classifying one device, the fluorescein strip (Docket No. 78N-3150; 51 FR 40396) because the agency is regulating the fluorescein strip as a drug. Further, FDA is codifying the statutory classification into class III of nine transitional devices that were not required to be the subjects of proposed classification rules. FDA is also postponing classifications of certain devices that were the subjects of the proposed regulations. See the discussion below under "D. Devices Not Being Classified at This Time."

Elsewhere in this issue of the **Federal Register**, FDA is proposing to grant 55 ophthalmic devices an exemption from the requirement of premarket notification.

Classification of medical devices in commercial distribution is required by section 513 of the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c). The effect of classifying a device into class I is to require that the device meet the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. For a class III device not considered a new drug before the amendments that either was in commercial distribution before May 28, 1976, or that is substantially equivalent to a device that was in commercial distribution before that date, each application for premarket approval must be submitted to FDA on or before March 30, 1990, or within 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. Devices that FDA previously regulated as new drugs, or newly offered devices that are not substantially equivalent to a device that was in commercial distribution before the amendments, are classified by statute into class III and already are required to have in effect an approved application for premarket approval. See section 520(1) of the act (21 U.S.C. 360j(1)).

The preamble to the proposed regulations described the development of the general provisions and the proposed regulations classifying ophthalmic devices and the activities of the Ophthalmic Devices Panel, an FDA advisory committee that makes recommendations to FDA concerning the classification of ophthalmic devices.

FDA provided a period of 60 days, later extended to 240 days (March 19, 1982; 47 FR 11879), for interested persons to submit written comments on the proposed regulations on ophthalmic devices. Summaries of the comments received and FDA's responses are discussed below.

In April 1985, H.R. 2177 (99th Cong., 1st Sess.) was introduced in the U.S. House of Representatives. The bill was a legislative proposal of the Department of Health and Human Services. Among other things, the bill would have (1) amended the act to eliminate the statutory category of class II, (2) made the establishment of a performance standard one of the several general controls that may be made applicable to a device, and (3) streamlined the procedure for establishing standards required by section 514 of the act. If legislation comparable to this bill becomes law, there would be only two categories of devices, class I (general controls) and class II (premarket approval, currently class III). Class II devices would be redesignated as class I devices. Because the proposed legislation contains transitional provisions that convert classifications under the current law to classifications under the proposed law, FDA is continuing to issue classification rules under the current law.

B. FDA's Priorities for Establishing Performance Standards

In the **Federal Register** of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement. Class II Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. At this time, however, FDA does not have the resources to establish performance standards for all of the devices already classified (or being classified) in class II. Under the amendments, FDA is using the regulatory controls of class I to regulate a device classified into class II until a

performance standard is established under section 514 of the act (21 U.S.C. 360d) for the class II device.

In that notice, FDA announced it will consider the following factors when setting priorities for establishing performance standards for class II devices.

a. The seriousness of questions concerning the safety and effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device.

b. The recommendations of FDA's advisory committees.

c. The impact of an FDA guideline or recommendation.

d. The effect of a Federal standard or other regulatory controls under an authority other than the act.

e. The impact of voluntary standards.

f. The impact of activities authorized under the general controls provisions of the act.

g. The effect of dissemination of information and education efforts.

h. The sufficiency of voluntary corrective actions.

i. Valid scientific evidence developed since classification.

j. The existence of a petition for reclassification.

k. The impact of any other factors that affect a device's safety or effectiveness.

C. Changes in the Name of the Ophthalmic Device Advisory Committee

FDA has periodically reorganized its advisory panels for device classification. Most recently, on April 14, 1984, FDA established the Ophthalmic Devices Panel (the Panel) (see 49 FR 17446; April 24, 1984). The new panel performs the same functions with respect to ophthalmic devices as did its predecessors, the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel (1978–1984) and the Ophthalmic Devices Classification Panel (1976–1978).

D. Devices not Being Classified at This Time

FDA is postponing classification of certain, or all, versions of 36 proposed generic types of ophthalmic devices.

Although FDA proposed to classify the eye pad (Docket No. 78N–3265) (§ 886.4650) with ophthalmic devices, FDA intends to classify the device with general and plastic surgery devices using the same docket number. Thus, FDA is not classifying the eye pad at this time.

FDA proposed to classify the polymethylmethacrylate (PMMA) contact lens (Docket No. 78N–3277) (§ 886.5400) into class II. FDA is postponing the classification of the polymethylmethacrylate (PMMA) contact lens to obtain additional information on the device. After reopening the comment period on this proposed classification and reviewing available information, FDA will classify the device in a future issue of the **Federal Register.**

FDA is postponing the classification of the 34 ophthalmic devices listed below to review additional data on electrical safety. FDA is considering classifying each of these 34 devices into class I. FDA proposed to classify the battery-powered or manual versions of certain ophthalmic devices into class I and the AC-powered versions of each of the same devices into class II. FDA identified the manual or battery-powered and AC-powered versions of these proposed devices with the same docket number and same proposed section number. FDA is postponing the classification of the AC-powered version of each of 18 devices, but is classifying into class I the battery-powered or manual version of each of the 18 devices. Accordingly, when FDA publishes regulations classifying the 18 AC-powered ophthalmic devices whose classifications are being postponed, the agency intends to use the same docket numbers and section numbers to identify these classifications.

Section No.	Device
886.1050	Adaptometer (biophotometer).
886.1070	Anomaloscope.
886.1090	Haidinger brush.
886.1120	AC-powered ophthalmic camera.
886.1140	Ophthalmic chair (AC-powered).
886.1160	Color vision plate illuminator.
886.1250	Euthyscope (AC-powered).
886.1290	AC-powered fixation device.
886.1300	Afterimage flasher.
886.1340	Haploscope.
886.1350	Keratoscope (AC-powered).
886.1425	AC-powered lens measuring instrument.
886.1430	Ophthalmic contact lens radius measuring device.
886.1435	AC-powered Maxwell spot.
886.1450	Corneal radius measuring device.
886.1605	Perimeter (AC-powered).
886.1680	Ophthalmic projector.
886.1690	Pupillograph.
886.1700	Pupillometer (AC-powered).
886.1780	Retinoscope (AC-powered).
886.1810	Tangent screen (campimeter) (AC-powered).
886.1860	Ophthalmic instrument stand (AC-powered).
886.1870	Stereoscope (AC-powered).
886.1910	Spectacle dissociation test system (AC-powered).
886.1940	Tonometer sterilizer.
886.1945	Transilluminator (AC-powered).
886.4070	Powered corneal burr (AC-powered).
886.4250	Ophthalmic electrolysis unit (AC-powered).
886.4335	Operating headlamp (AC-powered).
886.4370	Keratome (AC-powered).
886.4855	Ophthalmic instrument table (AC-powered).
886.5820	Closed-circuit television reading system.
886.5900	Electronic vision aid (AC-powered).
886.5915	Optical vision aid (AC-powered).

Although the devices identified above are not classified in this final rule, for clarity these devices are listed below under "G. List of Ophthalmic Devices."

E. Safety of Light Emitted From Certain Ophthalmic Devices

FDA is aware of published data concerning possible risks of retinal damage from light emitted by the battery-powered and AC-powered ophthalmoscope (§ 886.1570), and the AC-powered slitlamp biomicroscope (§ 886.1850) devices (Refs. 9, 10, and 11). The agency believes that a need may exist for a range of light intensities to be available from these ophthalmic instruments to accommodate the differing needs of patients with clear ocular media and those of patients with hazy ocular media. The agency is currently conducting research to determine if the high levels of light intensity that may be needed to examine eyes of patients with hazy ocular media may exceed the existing safety guidelines for patients with clear ocular media (Ref. 12). When the results of this research are available and being prepared for publication, FDA will propose any appropriate actions necessary to provide reasonable assurance of the safety and effectiveness of these two light-emitting ophthalmic devices.

F. Changes in Classifications of Devices

Based on the comments received and on additional consideration of all information before the agency, FDA has placed eight devices in different classes from those originally proposed: the visual acuity chart (§ 886.1150), the ophthalmoscope (battery-powered) (§ 886.1570), the vitreous aspiration and cutting instrument (§ 886.4150), the phacofragmentation system (§ 886.4670), the magnifying spectacles (§ 886.5840), the spectacle frame (§ 886.5842), the prescription spectacle lens (§ 886.5844), and sunglasses (nonprescription) (§ 886.5850). If FDA's final classification of a device differs from FDA's proposed classification, the name of the device is identified with an asterisk (*) below under "G. List of Ophthalmic Devices."

FDA proposed that the battery-powered ophthalmoscope be in class I and the AC-powered ophthalmoscope be in class II (§ 886.1570). FDA has become aware of published data concerning possible risks of retinal damage from the ophthalmoscope, whether battery-powered or AC-powered. (See "E. Safety of Light Emitted from Certain Ophthalmic Devices.") Because of these possible risks, in this final rule FDA is classifying the battery-powered ophthalmoscope into class II. FDA now believes that the general controls of class I are insufficient to provide reasonable

assurance of the safety and effectiveness of the battery-powered ophthalmoscope and that establishment of a performance standard is necessary to provide such assurance. FDA believes that sufficient information is available to establish a performance standard for the battery-powered ophthalmoscope. FDA's reasons for changing the classification of the other seven devices are discussed below under "H. Summaries of Comments on Classification and FDA's Responses" (see paragraphs 3a, 4, 6, and 7). FDA does not believe that it is necessary to issue new proposed regulations concerning these decisions. The purpose of publishing a proposal and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal, the agency may be persuaded that its proposed classification is incorrect. Persons interested in the classification process should, therefore, anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed general regulation for ophthalmic devices (see 47 FR 3694; January 26, 1982). Persons who disagree with the final classification of a device may petition for reclassification of the device under Subpart C of 21 CFR Part 860.

G. List of Ophthalmic Devices

The list below shows the section of the Code of Federal Regulations at which the device classification is being codified, the docket number of the corresponding proposed classification regulation, the classification of each device in the final rule, and an identification (yes or no) of whether public comments were received on the proposed classification regulation. If no comments were received, FDA is adopting the proposed regulation without a change in classification, unless specified otherwise in this rule. As mentioned above, the names of eight devices on this list whose final classifications are different from the classifications proposed for these devices are identified by asterisks (*).

Each of 36 devices whose final classification is being postponed is identified below as follows: The section number is in parentheses; the name of the device is identified with footnote "1"; and no classification is provided. (See "D. Devices Not Being Classified at this Time" for a description of FDA's reasons for postponing classification of these 36 devices.) Nine transitional devices identified below with footnote "2" were not the subjects of proposed regulations. FDA is codifying the statutory classification of these devices into class III. (See the discussion below under "K. Codification of Transitional Devices.")

SUBPART B—DIAGNOSTIC DEVICES

Section	Device name	Docket No.	Class	Comments
886.1040	Ocular esthesiometer	78N-3129	I	No.
(886.1050)	Adaptometer (biophotometer) [1]	78N-3130		Yes.
(886.1070)	Anomaloscope [1]	78N-3132		Yes.
(886.1090)	Haidinger brush [1]	78N-3133		Yes.
(886.1120)	AC-powered ophthalmic camera [1]	78N-3135		Yes.
886.1140	Ophthalmic chair	78N-3137	I	Yes.
(886.1140)	Ophthalmic chair (AC-powered) [1]	78N-3137		Yes.
886.1150	Visual acuity chart*	78N-3139	I	Yes.
(886.1160)	Color vision plate illuminator [1]	78N-3140		Yes.
886.1170	Color vision tester	78N-3141	I	No.
886.1190	Distometer	78N-3142	I	No.
886.1200	Optokinetic drum	78N-3143	I	No.
886.1220	Corneal electrode	78N-3144	II	Yes.
886.1250	Euthyscope	78N-3145	I	Yes.
(886.1250)	Euthyscope (AC-powered) [1]	78N-3145		Yes.
886.1270	Exophthalmometer	78N-3147	I	No.
(886.1290)	AC-powered fixation device [1]	78N-3148		No.
(886.1300)	Afterimage flasher [1]	78N-3149		Yes.
886.1320	Fornixscope	78N-3151	I	No.
886.1330	Amsler grid	78N-3152	I	No.
(886.1340)	Haploscope [1]	78N-3295		Yes.
886.1350	Keratoscope	78N-3153	I	Yes.
(886.1350)	Keratoscope (AC-powered) [1]	78N-3153		Yes.
886.1360	Visual field laser instrument	78N-3155	II	Yes.
886.1375	Bagolini lens	78N-3156	I	No.
886.1380	Diagnostic condensing lens	78N-3157	I	No.
886.1385	Polymethylmethacrylate (PMMA) diagnostic contact lens	78N-3158	II	Yes.
886.1390	Flexible diagnostic Fresnel lens	78N-3159	I	No.
886.1395	Diagnostic Hruby fundus lens	78N-3160	I	No.
886.1400	Maddox lens	78N-3161	I	No.
886.1405	Ophthalmic trial lens set	78N-3162	II	Yes.
886.1410	Ophthalmic trial lens clip	78N-3163	I	No.
886.1415	Ophthalmic trial lens frame	78N-3164	I	No.
886.1420	Ophthalmic lens guage	78N-3165	I	No.
(886.1425)	AC-powered lens measuring instrument [1]	78N-3166		Yes.
(886.1430)	Ophthalmic contact lens radius measuring device [1]	78N-3167		Yes.
(886.1435)	AC-powered Maxwell spot [1]	78N-3168		Yes.
(886.1450)	Corneal radius measuring device [1]	78N-3169		Yes.
886.1460	Stereopsis measuring instrument	78N-3170	I	No.
886.1500	Headband mirror	78N-3171	I	No.

SUBPART B—DIAGNOSTIC DEVICES—Continued

Section	Device name	Docket No.	Class	Comments
886.1510	Eye movement monitor	78N-3172	II	Yes.
886.1570	Ophthalmoscope*	78N-3175	II	Yes.
886.1605	Perimeter	78N-3178	I	Yes.
(886.1605)	Perimeter (AC-powered) [1]	78N-3178		Yes.
886.1630	AC-powered photostimulator	78N-3181	II	Yes.
886.1640	Ophthalmic preamplifier	78N-3182	II	Yes.
886.1650	Ophthalmic bar prism	78N-3184	I	No.
886.1655	Ophthalmic Fresnel prism	78N-3185	I	No.
886.1660	Gonioscopic prism	78N-3186	I	No.
886.1665	Ophthalmic rotary prism	78N-3187	I	No.
886.1670	Ophthalmic isotope uptake probe	78N-3188	II	Yes.
(886.1680)	Ophthalmic projector [1]	78N-3189		Yes.
(886.1690)	Pupillograph [1]	78N-3190		Yes.
886.1700	Pupillometer	78N-3191	I	Yes.
(886.1700)	Pupillometer (AC-powered) [1]	78N-3191		Yes.
886.1750	Skiascopic rack	78N-3193	II	Yes.
886.1760	Ophthalmic refractometer	78N-3194	II	Yes.
886.1770	Manual refractor	78N-3195	I	No.
886.1780	Retinoscope	78N-3196	I	Yes.
(886.1780)	Retinoscope (AC-powered) [1]	78N-3196		Yes.
886.1790	Nearpoint ruler	78N-3198	I	No.
886.1800	Schirmer strip	78N-3199	I	No.
886.1810	Tangent screen (campimeter)	78N-3200	I	Yes.
(886.1810)	Tangent screen (campimeter) (AC-powered) [1]	78N-3200		Yes.
886.1840	Simulatan (including crossed cylinder)	78N-3206	I	No.
886.1850	AC-powered slitlamp biomicroscope	78N-3207	II	Yes.
886.1860	Ophthalmic instrument stand	78N-3208	I	Yes.
(886.1860)	Ophthalmic instrument stand (AC-powered) [1]	78N-3208		Yes.
886.1870	Stereoscope	78N-3210	I	Yes.
(886.1870)	Stereoscope (AC-powered) [1]	78N-3210		Yes.
886.1880	Fusion and stereoscopic target	78N-3212	I	No.
886.1905	Nystagmus tape	78N-3213	I	No.
886.1910	Spectacle dissociation test system	78N-3214	I	Yes.
(886.1910)	Spectacle dissociation test system (AC-powered) [1]	78N-3214		Yes.
886.1930	Tonometer and accessories	78N-3218	II	Yes.
(886.1940)	Tonometer sterilizer [1]	78N-3220		Yes.
886.1945	Transilluminator	78N-3221	I	Yes.
(886.1945)	Transilluminator (AC-powered) [1]	78N-3221		Yes.
	Subpart D—Prosthetic Devices			
886.3100	Ophthalmic tantalum clip	78N-3224	II	Yes.
886.3130	Ophthalmic conformer	78N-3225	II	Yes.
886.3200	Artificial eye	78N-3226	II	Yes.
886.3300	Absorbable implant (scleral buckling method)	78N-3227	II	Yes.
886.3320	Eye sphere implant	78N-3228	II	Yes.
886.3340	Extraocular orbital implant	78N-3229	II	Yes.
886.3400	Keratoprosthesis	78N-3230	III	No.
886.3600	Intraocular lens [2]		III	
886.3800	Scleral shell	78N-3231	II	Yes.
886.3920	Eye valve implant	78N-3232	III	No.
	Subpart E—Surgical Devices			
886.4070	Powered corneal burr	78N-3233	I	Yes.
(886.4070)	Powered corneal burr (AC-powered) [1]	78N-3233		Yes.
881.4100	Radiofrequency electrosurgical cautery apparatus	78N-3235	II	Yes.
886.4115	Thermal cautery unit	78N-3237	II	Yes.
886.4150	Vitreous aspiration and cutting instrument*	78N-3239	II	Yes.
886.4170	Cryophthalmic unit	78N-3241	II	Yes.
886.4230	Ophthalmic knife test drum	78N-3243	I	No.
886.4250	Ophthalmic electrolysis unit	78N-3244	I	Yes.
(886.4250)	Ophthalmic electrolysis unit (AC-powered) [1]	78N-3244		Yes.
886.4300	Intraocular lens guide	78N-3250	I	No.
886.4270	Intraocular gas [2]		III	
886.4275	Intraocular fluid [2]		III	
886.4280	Intraocular pressure measuring device [2]		III	
886.4335	Operating headlamp	78N-3252	I	Yes.
(886.4335)	Operating headlamp (AC-powered) [1]	78N-3252		Yes.
886.4350	Manual ophthalmic surgical instrument	78N-3253	I	No.

SUBPART B—DIAGNOSTIC DEVICES—Continued

Section	Device name	Docket No.	Class	Comments
886.4360	Ocular surgery irrigation device	78N-3254	I	No.
886.4370	Keratome	78N-3255	I	Yes.
(886.4370)	Keratome (AC-powered) [1]	78N-3255		Yes.
886.4390	Ophthalmic laser	78N-3257	II	Yes.
886.4400	Electronic metal locator	78N-3258	II	Yes.
886.4440	AC-powered magnet	78N-3259	II	Yes.
886.4445	Permanent magnet	78N-3260	I	No.
886.4570	Ophthalmic surgical marker	78N-3261	I	No.
886.4610	Ocular pressure applicator	78N-3264	II	Yes.
(886.4650)	Eye pad [1]	78N-3265		Yes.
886.4670	Phacofragmentation system*	78N-3266	II	Yes.
886.4690	Ophthalmic photocoagulator	78N-3267	II	Yes.
886.4750	Ophthalmic eye shield	78N-3268	I	No.
886.4770	Ophthalmic operating spectacles (loupes)	78N-3269	I	No.
886.4790	Ophthalmic sponge	78N-3270	II	Yes.
886.4855	Ophthalmic instrument table	78N-3272	I	Yes.
(886.4855)	Ophthalmic instrument table (AC-powered) [1]	78N-3272		Yes.
	Subpart F—Therapeutic Devices			
886.5100	Ophthalmic beta radiation source	78N-3273	II	Yes.
886.5120	Low-power binocular loupe	78N-3274	I	No.
(886.5400)	Polymethylmethacrylate (PMMA) contact lens [1]	78N-3277		Yes.
886.5420	Contact lens inserter/remover	78N-3278	I	No.
886.5540	Low-vision magnifier	78N-3281	I	No.
886.5600	Ptosis crutch	78N-3282	I	No.
886.5800	Ophthalmic bar reader	78N-3283	I	No.
886.5810	Ophthalmic prism reader	78N-3284	I	No.
(886.5820)	Closed-circuit television reading system [1]	78N-3285		Yes.
886.5840	Magnifying spectacles*	78N-3286	I	Yes.
886.5842	Spectacle frame* (proposed as § 886.5270)	78N-3276	I	Yes.
886.5844	Prescription spectacle lens* (proposed as § 886.5450)	78N-3279	I	Yes.
886.5850	Sunglasses (nonprescription)*	78N-3287	II	Yes.
886.5870	Low-vision telescope	78N-3288	I	No.
886.5900	Electronic vision aid	78N-3290	I	Yes.
(886.5900)	Electronic vision aid (AC-powered) [1]	78N-3290		Yes.
886.5910	Image intensification vision aid	78N-3292	I	No.
886.5915	Optical vision aid	78N-3293	I	Yes.
(886.5915)	Optical vision aid (AC-powered) [1]	78N-3293		Yes.
886.5916	Rigid gas permeable contact lens [2]		III	
886.5918	Rigid gas permeable contact lens solution [2]		III	
886.5925	Soft (hydrophilic) contact lens [2]		III	
886.5928	Soft (hydrophilic) contact lens solution [2]		III	
886.5933	Contact lens heat disinfection unit [2]		III	

[1] Classification postponed.
[2] Not proposed; statutory classification.

H. Summaries of Comments on Classification and FDA's Responses to Comments

To clarify the final rule and save printing costs, FDA is responding once to comments that apply to more than one ophthalmic device.

1. FDA proposed that all AC-powered ophthalmic devices be classified into class II. Comments argued that manufacturers have complied with voluntary electrical design and construction standards for AC-powered ophthalmic devices. Comments said that compliance with such standards has provided reasonable assurance of the safety of these devices. Further, comments questioned whether the risks to health FDA identified in the proposed regulation for each of the devices–justified establishment of a performance standard for the device. The comments recommended that FDA classify AC-powered ophthalmic devices in class I instead of class II.

FDA agrees in part and disagrees in part with the comments. FDA now is considering classifying 34 AC-powered ophthalmic devices into class I where the only risk to health is electrical shock or leakage current. To allow time for FDA to review additional data on safety of AC-powered devices, FDA is postponing classification of these 34 AC-powered ophthalmic devices. The 34 devices are listed above under "D. Devices Not Being Classified at this Time."

However, where an AC-powered ophthalmic device presents risks to health in addition to the risk of electrical shock or leakage current, FDA believes that the general controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA is classifying the AC-powered ophthalmic devices listed below into class II as proposed. FDA believes that performance standards are necessary for these AC-powered devices to control the risks to health identified below for each device, and that sufficient information is available to establish such standards.

Section 886.1220 *Corneal electrode.* The materials used in the device should be biocompatible to prevent adverse tissue reactions. Design and construction should be controlled to prevent surface roughness that may cause corneal abrasion. Electrical properties should be controlled to prevent burns.

Section 886.1360 *Visual field laser.* The design and construction should be controlled to (1) ensure detection (diagnosis) of any defects in a patient's visual field to prevent inappropriate therapy and (2) prevent exposure to unnecessary laser radiation.

Section 886.1510 *Eye movement monitor.* The materials used in the device should be biocompatible to prevent adverse tissue reactions. Design and construction should be controlled to prevent surface roughness that may cause corneal abrasions. Electrical properties should be controlled to prevent burns.

Section 886.1570 *Ophthalmoscope.* The design and construction of the AC-powered and battery-powered ophthalmoscope should be controlled to regulate the intensity of light to prevent eye damage. See "E. Safety of Light Emitted from Certain Ophthalmic Devices" above for further information on this issue.

Section 886.1630 *AC-powered photostimulator.* The intensity of light emitted should be controlled to prevent retinal damage.

Section 886.1640 *Ophthalmic reamplifier.* The design and construction of the AC-powered and battery-powered ophthalmic preamplifier should be controlled to ensure accuracy of measurement functions (diagnosis) to prevent inappropriate therapy. Labeling should provide users with precise information regarding accuracy, reproducibility, and any limitations on performance.

Section 886.1670 *Ophthalmic isotope uptake probe.* The design and construction should be controlled to ensure (1) the accuracy of measurements (diagnosis) to prevent need for repeat examinations which may result in exposure of the patient to unnecessary radiation and (2) the device's capability of being sterilized to prevent infection.

Section 886.1760 *Ophthalmic refractometer.* The design and construction should be controlled to ensure accuracy of measurements of refraction (diagnosis) to prevent inappropriate therapy. Labeling should provide users with precise information regarding accuracy, reproducibility, and any limitations on performance.

Section 886.1850 *AC-powered slitlamp biomicroscope.* The design and construction should be controlled to (1) ensure accuracy of diagnosis to prevent inappropriate therapy and (2) regulate the intensity of light emitted to prevent eye damage. See "E. Safety of Light Emitted from Certain Ophthalmic Devices" above for further information on the latter issue.

Section 886.1930 *Tonometer and accessories.* The design and construction should be controlled to ensure (1) the accuracy of measurements (diagnosis) to prevent inappropriate therapy and (2) the device's capability of being sterilized to prevent infection. Labeling should provide users with precise information regarding accuracy, reproducibility, and any limitations on performance.

Section 886.4100 *Radiofrequency cautery apparatus.* The design and construction should be controlled to ensure that (1) the level of electrical current or heat delivered by the device provides precise, reproducible tissue coagulation or arrest of bleeding without unwanted effects, (2) the electrodes are capable of being sterilized to prevent infection, and (3) the electronic radiation is controlled to prevent interference with other nearby devices. There also is a risk of fire or explosion if the device is used in the presence of flammable anesthetic gases.

Section 886.4115 *Thermal cautery unit.* The risks are the same as for the radiofrequency cautery apparatus above, except that the risk that electronic radiation may interfere with other nearby devices does not apply.

Section 886.4170 *Cryophthalmic unit.* The design and construction should be controlled to ensure (1) that the operating tip can withstand appropriate levels of refrigerant gas pressure without bursting, (2) that the temperature provided at the tip is predictable and reproducible, and (3) that the device does not produce excessively cold temperatures that could injure the eye.

Section 886.4390 *Ophthalmic laser.* The design and construction should be controlled to prevent exposure of the patient to excessive intensity of laser radiation resulting in unnecessary tissue damage or prevent any unnecessary laser radiation exposure of the patient or user.

Section 886.4400 *Electronic metal locator.* The design and construction should be controlled to ensure that the device is capable of being sterilized to prevent infection. Labeling should provide users with precise information regarding accuracy, reproducibility, and any limitations on performance.

Section 886.4440 *AC-powered magnet.* The design and construction of the operating tip should be controlled to prevent burns to the eye.

Section 886.4690 *Ophthalmic photocoagulator.* The design and construction should be controlled to prevent (1) power surges that could cause unwanted tissue destruction in the eye, (2) malfunction of the filter that may result in burns to the eye of the operator, and (3) injury from explosion of the xenon tube.

Accordingly, FDA is adopting the 18 proposed regulations identified above with minor clarifying changes.

2. FDA proposed that each of the devices below in paragraphs a. through i. be classified into class II. Comments questioned whether the risks to health that FDA identified in the proposed regulation for each device are sufficient to justify promulgation of a performance standard for the device. Comments suggested that the devices be classified into class I instead of class II.

FDA disagrees with the comments. FDA believes that the general controls of class I are insufficient to provide reasonable assurance of the safety and effectiveness of these devices. FDA believes that performance standards are necessary for the devices to control the risks to health identified below for each device and that sufficient information is available to establish such standards.

a. Sections 886.3100 *Ophthalmic tantalum clip;* 886.3300 *Absorbable implant (scleral buckling method);* 886.3320 *Eye sphere implant;* and 886.3340 *Extraocular orbital implant.* The materials used in each of the devices should be biocompatible to prevent adverse tissue reactions. The design and construction of each of the devices should be controlled to prevent breakage or erosion and to ensure that the devices are capable of being sterilized to prevent infection. The design and construction of the eye sphere implant should be controlled to prevent extrusion. Further, the four devices above are intended to be implanted. Section 513(d)(2)(B) of the act (21 U.S.C. 360c(d)(2)(B) requires that FDA classify a device intended to be implanted into class III unless the agency determines that classification of the device in this class is unnecessary to provide reasonable assurance of its safety and effectiveness. Although FDA believes that the safety and effectiveness of the four implanted devices listed above can be assured by a performance standard, FDA believes that insufficient evidence of safety and effectiveness is available at this time for any of these devices to support its classification into class I.

b. Sections 886.1405 *Ophthalmic trial lens set* and 886.1750 *Skiascopic rack.* The design and construction should be controlled to ensure that each lens in the sets of lenses has the necessary performance characteristics, such as lens power, centration, front curve, thickness, additive sphere, cylindrical powers at a constant vertex distance, and axis alignment for cylindrical lenses, to prevent inaccurate measurements of refraction (misdiagnosis) and inappropriate therapy.

c. Section 886.1385 *Polymethylmethacrylate (PMMA) diagnostic contact lens.* The design and construction should be controlled to ensure that the device is capable of being sterilized to prevent infection and, for a vacuum diagnostic contact lens, prevent suction of the aqueous that could result in angle closure glaucoma.

d. Section 886.3130 *Ophthalmic conformer.* The material used in the device should be biocompatible and not leach components or ingredients into adjacent tissues to prevent adverse tissue reactions.

e. Section 886.3200 *Artificial eye.* The materials used in the device should be biocompatible, nonallergenic, noncarcinogenic, and nonantigenic to prevent adverse tissue reactions. The device should be capable of being sterilized to prevent infections.

f. Section 886.3800 *Scleral shell.* The material used in the device should be biocompatible to prevent adverse tissue reactions. The surface finish of the device should be controlled to prevent corneal abrasion.

g. Section 886.4610 *Ocular pressure applicator.* The design and construction should be controlled to prevent excessive pressure being applied to the eye to prevent injury to tissues.

h. Section 886.4790 *Ophthalmic sponge.* The design and construction should be controlled to ensure (1) that the device does not shed particles of device material into the eye that may become intraocular foreign bodies or cause adverse tissue reactions, (2) that the device is capable of being sterilized to prevent infections, and (3) that materials used in the device are biocompatible to prevent adverse tissue reactions. See also paragraph 6 below for further discussion of the ophthalmic sponge.

i. Section 886.5100 *Ophthalmic beta radiation source.* The materials used to make the device should be controlled to ensure biocompatibility to prevent adverse tissue reactions. Radiation properties should be controlled to prevent exposure of the patient or user to excessive or unnecessary radiation to prevent adverse effects.

Accordingly, FDA is adopting the 13 proposed regulations identified above in paragraphs a. through i. with minor clarifying changes.

3. Sections 886.1150; Visual acuity chart; proposed class II and 886.5850; Sunglasses (nonprescription); proposed class II.

Comments argued that experience has shown that the visual acuity chart and sunglasses are safe and effective under current levels of regulatory control and that any additional performance standards that would be established following classification of the devices into class II are unnecessary. Comments questioned whether the risks to health identified in the proposed regulation for each device are sufficient to justify establishment of performance standards for the devices. Further, a comment suggested that FDA grant an exemption from the requirements of the current good manufacturing practice (CGMP) regulations for sunglasses (nonprescription).

a. *Visual acuity chart.* FDA agrees with the comments. FDA now believes that the device meets the criteria in section 513(a)(1)(A)(i) of the act (21 U.S.C. 360c(a)(1)(A)(i) for devices to be classified into class I. FDA believes that the general controls of class I would provide reasonable assurance of the safety and effectiveness of the visual acuity chart, and that establishment of a performance standard for the device is unnecessary. Accordingly, FDA is classifying the visual acuity chart into class I instead of class II as proposed and with minor clarifying changes.

The agency also recognizes that the Committee on Optics and Visual Physiology of the American Academy of Ophthalmology is currently working on a voluntary standard for the visual acuity chart.

b. *Sunglasses (nonprescription).* FDA believes that these devices meet the criteria in section 513(a)(1)(A)(i) of the act (21 U.S.C. 360c(a)(1)(A)(i)) for devices to be classified into class I. FDA agrees that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of the device and that the establishment of performance standards is unnecessary. FDA believes that its present regulations requiring use of spectacle lenses that have successfully passed the impact resistance tests in 21 CFR 801.410 ensure that the devices are impact resistant to prevent trauma to the eye following lens breakage.

Concerning the risk of flammability, the Federal Hazardous Substances Act, enacted in 1960 (15 U.S.C. 1261, et seq.), and administered by the Consumer Product Safety Commission, provides that agency the authority to regulate nonprescription sunglasses that contain flammable materials that may cause substantial injury. Thus, performance standards under section 514 of the act are unnecessary to control the risk of flammability of the device.

Also, manufacturers generally follow the voluntary standards for spectacle lenses that have been developed by the American National Standards Institute (Z–80).

Accordingly, FDA is classifying sunglasses (nonprescription) in class I instead of class II as proposed.

4. Section 886.4150; Vitreous aspiration and cutting instrument; proposed class III and 886.4670; Phacofragmentation system; proposed class III.

Comments requested that FDA classify both devices into class II instead of class III as proposed. Comments argued that the experience with these two devices has shown that the general controls of class I with performance standards established following classification of the devices in class II would be sufficient to provide reasonable assurance of the safety and effectiveness of the devices.

FDA agrees with the comments urging classification of these devices into class II. FDA has reconsidered the information available on both devices and concluded that sufficient information is available to establish performance standards for the vitreous aspiration and cutting instrument and the phacofragmentation system and that establishing such standards would provide reasonable assurance of their safety and effectiveness. FDA believes that both devices have been shown through experience to be safe and effective for their intended uses. FDA now believes that the two devices do not present any greater potential for illness or injury than similar devices classified into class II, e.g., the ophthalmic laser (§ 886.4390) used in eye surgery. Therefore, premarket approval is unnecessary for these devices.

Establishing performance standards for the design and construction of the vitreous aspiration and cutting instrument would (1) reduce the risk of any malfunction causing destruction of the retina, choroid, or iris, (2) prevent particles or shavings shedding from the operating tip into the eye causing adverse tissue reactions, (3) prevent emission of unwanted levels of ultrasonic energy causing tissue damage, (4) ensure that the device is capable of being sterilized to prevent

infection, and (5) ensure that electrical properties of the device are controlled to prevent electrical injury.

Establishing performance standards for the design and construction of the phacofragmentation system would (1) prevent emission of unwanted levels of ultrasonic energy causing tissue damage, (2) prevent a reduced flow rate of irrigation solution that could cause overheating of the device or burns to eye tissue, (3) ensure that the device is capable of being sterilized to prevent infection; and (4) ensure that the electrical properties of the device are controlled to prevent electrical injury.

FDA believes that the general controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of the vitreous aspiration and cutting instrument and the phacofragmentation system and that establishing performance standards for the devices is necessary to provide such assurance. FDA now believes that classification of these devices into class III is unnecessary. Accordingly, FDA is classifying the two devices into class II, with minor clarifying changes, instead of class III as proposed.

5. Section 886.4790; Ophthalmic sponge; proposed class II.

a. A comment suggested that the identification of the device should be changed to include use of materials other than cellulose to make the device.

FDA has changed the identification of the device to show that various materials can be used to make the device, subject, of course, to the requirements of section 510(k) of the act and implementing regulations (21 CFR Part 807, Subpart E).

b. A comment suggested that the labeling of the device include a warning against cutting or trimming the device, to reduce hazards from shedding of particulate matter.

FDA agrees with the comment. The labeling should warn against cutting or trimming the device and should identify the materials used in the device.

c. A comment agreed with FDA's proposed regulation classifying the device into class II and recommended that a standard be established to ensure the biocompatibility of the materials used in the device.

FDA agrees with the comment. Accordingly, FDA is adopting the proposed regulation for the ophthalmic sponge with minor clarifying changes. See also paragraph 2h. above for a further discussion of the ophthalmic sponge.

6. Section 886.5270; Spectacle frame; proposed class II.

a. A comment suggested that the spectacle frame be classified as an accessory to a prescription spectacle lens rather than as a separate generic type of device.

FDA disagrees with the comment. Because the spectacle frame is made of different materials using different manufacturing procedures and presents different risks to health, FDA believes that it should be classified as a generic type of device separate from the prescription spectacle lens.

b. Comments suggested that the spectacle frame be classified into class I because establishment of a performance standard for the device is unnecessary.

FDA believes that the device meets the criteria in section 513(a)(1)(A)(i) of the act (21 U.S.C. 360c(a)(1)(A)(i)) for devices to be classified into class I. FDA agrees that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of the spectacle frame and that establishment of a performance standard for the device is unnecessary. Thus, FDA believes that the general controls of class I are sufficient to control the risks to health presented by the device: (1) That the materials used in the device do not cause dermatitis, (2) that the design of the device does not interfere with a patient's vision, and (3) that the design or construction of the device prevents breakage of the device or the lens used with the device. Concerning the risk of flammability, the Federal Hazardous Substances Act, enacted in 1960 (15 U.S.C. 1261, et seq.), and administered by the Consumer Product Safety Commission, provides that agency authority to ban spectacle frames intended for children, and to require precautionary labeling on spectacle frames intended for adults, where such spectacle frames contain flammable materials that may cause substantial injury. Thus, performance standards under section 514 of the act are unnecessary to control the risk of flammability of the device. Also, manufacturers generally follow the voluntary standards for the device that have been developed by the American National Standards Institute (Z-80).

Accordingly, FDA is classifying the spectacle frame in class I, with minor clarifying changes, instead of class II as proposed. Although FDA proposed to codify the spectacle frame at § 886.5270, in the final rule FDA is codifying the device at § 886.5842, to place the device next to the prescription spectacle lens (§ 886.5844).

7. Sections 886.5450; Prescription spectacle lens; proposed class II and 886.5840; Magnifying spectacles; proposed class II.

a. A comment suggested that the identification of the prescription spectacle lens be broadened to include the raw glass spectacle lens blanks as well as the finished prescription spectacle lens.

FDA disagrees with the comment. FDA believes that it is unnecessary to broaden the identification of prescription spectacle lens to include raw glass spectacle lens blanks, which are simply components.

b. One comment agreed with FDA's proposed regulations classifying the prescription spectacle lens and the magnifying spectacle lens into class II. Other comments questioned whether the risks to health that FDA identified in the proposed regulations for these devices are sufficient to justify establishment of performance standards for the devices. These comments suggested that each of these devices be classified into class I instead of class II.

FDA now believes that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of the two devices and that establishment of performance standards is unnecessary. FDA believes that its present regulations requiring use of spectacle lenses that have successfully passed the impact resistance tests in 21 CFR 801.410 ensure that the devices above are impact resistant to prevent trauma to the eye following lens breakage. FDA also believes that these devices meet the criteria in section 513(a)(1)(A)(i) of the act (21 U.S.C. 360c(a)(1)(A)(i)) for devices to be classified into class I. FDA now believes that performance standards are not necessary for these two devices. Also, manufacturers generally follow the voluntary standards for spectacle lenses that have been developed by the American National Standards Institute (Z-80).

Accordingly, FDA is classifying the prescription spectacle lens and magnifying spectacles into class I, with minor clarifying changes, instead of class II as proposed. Although FDA proposed to codify the prescription spectacle lens at § 886.5450, in the final rule FDA is codifying the device at § 886.5844, to place the device next to sunglasses (nonprescription) (§ 886.5850).

I. Exemptions for Class I Devices

8. FDA proposed to exempt 29 devices from most requirements of the current good manufacturing practice (CGMP) regulations in 21 CFR Part 820. Comments requested that exemptions from CGMP requirements be granted for all class I ophthalmic devices.

The agency is granting exemptions from most CGMP requirements for 49

generic types of class I ophthalmic devices. FDA is exempting manufacturers of these 49 devices from all of the CGMP requirements with the exception of §§ 820.180 and 820.198 relating to records and complaint files. As stated in the proposed regulations, the agency has determined that exemption of manufacturers of any device from requirements in §§ 820.180 and 820.198 of the CGMP regulations would not be in the public interest. Moreover, compliance with these sections is not unduly burdensome for device manufacturers. The complaint file requirements of § 820.198 ensure that device manufacturers have adequate systems for complaint investigation and followup. The general requirements concerning records in § 820.180 ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective actions are adequate, and can determine whether an exemption from other sections of the CGMP regulations, if one has been granted, is still appropriate. Also, for reasons given in the proposed regulations, these exemptions do not apply to devices that are labeled or otherwise represented as sterile.

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device CGMP regulations. The agency announced the availability of these guidelines in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671). The guidelines assist petitioners in complying with the provisions of section 520(f)(2) of the act (21 U.S.C. 360j(f)(2)). Section 513(d)(2)(A) of the act allows FDA to approve an exemption for a device from a requirement if the agency determines that compliance with such requirement is not required to assure that the device will be safe and effective and otherwise in compliance with the act.

Exemptions from premarket notification procedures. Many comments requested that exemptions from premarket notification procedures in section 510(k) of the act and Subpart E of 21 CFR Part 807 be granted for all class I ophthalmic devices.

Elsewhere in this issue of the **Federal Register**, FDA is proposing to grant an exemption from the requirement of premarket notification for each of 55 class I ophthalmic devices. FDA is explaining in that proposed rule its recently developed policy on granting such exemptions.

J. Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel name	Publication date in Federal Register
Circulatory Systems Devices Panel	March 9, 1979; 44 FR 13284–13434 (proposals); February 5, 1980; 45 FR 7904–7971 (final regulations).
Clinical Chemistry and Clinical Toxicology Devices Panel.	February 2, 1982; 47 FR 4802–4929 (proposals); May 1, 1987; 52 FR 16102–16138 (final regulations).
Hematology and Pathology Devices Panel	September 11, 1979; 44 FR 52950–53063 (proposals); September 12, 1980; 45 FR 60576–60651 (final regulations).
General Hospital and Personal Use Devices Panel.	August 24, 1979; 44 FR 49844–49954 (proposals); October 21, 1980; 45 FR 69678–69737 (final regulations).
Gastroenterology-Urology Devices Panel	January 23, 1981; 46 FR 7562–7641 (proposals); November 23, 1983; 48 FR 53012–53029 (final regulations).
Immunology Devices Panel	April 22, 1980; 45 FR 27204–27359 (proposals); November 9, 1982; 47 FR 50814–50840 (final regulations).
Microbiology Devices Panel	April 22, 1980; 45 FR 27204–27359 (proposals); November 9, 1982; 47 FR 50814–50840 (final regulations).
Obstetrics-Gynecology Devices Panel	April 3, 1979; 44 FR 19894–19971 (proposals); February 26, 1980; 45 FR 12682–12720 (final regulations).
Radiologic Devices Panel	January 29, 1982; 47 FR 4406–4451 (proposals).
Ophthalmic Devices Panel	January 26, 1982; 47 FR 3694–3749 (proposals); September 2, 1987 (final regulations).
Ear, Nose, and Throat Devices Panel	January 22, 1982; 47 FR 3280–3325 (proposals); November 6, 1986; 51 FR 40378 (final regulations).
Dental Devices Panel	December 30, 1980; 45 FR 85962–86168 (proposals); August 12, 1987; 52 FR 30082–30106 (final regulations).
Anesthesiology and Respiratory Therapy Devices Panel.	November 2, 1979; 44 FR 63292–63426 (proposals); July 16, 1982; 47 FR 31130–31150 (final regulations).
Neurological Devices Panel	November 23, 1978; 43 FR 54640–55732 (proposals); September 4, 1979; 44 FR 51726–51778 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Physical Medicine Devices).	August 28, 1979; 44 FR 50458–50537 (proposals); November 23, 1983; 48 FR 53032–53054 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Orthopedic Devices).	July 2, 1982; 47 FR 29052–29140 (proposals).
General and Plastic Surgery Devices Panel	January 19, 1982; 47 FR 2810–2853 (proposals).

K. Codification of Transitional Devices

The amendments include transitional provisions applicable to devices intended for human use that were declared to be new drugs before enactment of the amendments. (See section 520(1)(1)(E) of the act (21 U.S.C. 360j(1)(1)(E)).) The transitional provisions assure that devices formerly regarded as new drugs continue to be subject to needed regulatory controls as the amendments are being implemented. Thus, a device previously considered a new drug is classified into class III unless the agency in response to a petition has reclassified it into class I or class II. FDA is codifying the statutory classification into class III of the following nine commercially distributed transitional ophthalmic devices. Most of these devices were the subject of a **Federal Register** notice (see 42 FR 63472; December 16, 1977) on their former status as new drugs, and certain of these

devices were the subject of subsequent Federal Register documents concerning the classification of rigid gas permeable contact lenses (see 48 FR 56778; December 23, 1983) and soft (hydrophilic) contact lenses (see 49 FR 17523; April 24, 1984).

In this final rule, FDA is codifying the statutory classification of solutions that are accessories to contact lenses as three separate generic types of devices: rigid gas permeable contact lens solution (§ 886.5918), soft (hydrophilic) contact lens solution (§ 886.5928), and contact lens heat disinfection unit (§ 886.5933).

Section	Transitional device
886.3600	Intraocular lens.
886.4270	Intraocular gas.
886.4275	Intraocular fluid.
886.4280	Intraocular pressure measuring device.
886.5916	Rigid gas permeable contact lens.
886.5918	Rigid gas permeable contact lens solution.
886.5925	Soft (hydrophilic) contact lens.
886.5928	Soft (hydrophilic) contact lens solution.
886.5933	Contact lens heat disinfection unit.

L. Minor Changes or Clarifications

Occasionally, the agency has made minor changes in the name of a generic type of device or its identification to clarify the final regulation. The agency is adding new § 886.3 in Subpart A to explain the various effective dates for premarket approval requirements for devices classified into class III. FDA also is adding a new paragraph (c) in the classification regulation for each device classified into class III to declare, where applicable, the effective date for premarket approval requirements for the device.

M. References

The following information has been placed on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Pitts, D.G., L.L. Cameron, J. Jose, S. Lerman, E. Moss, S.D. Varma, S.D. Zigler, S. Zigman, and J. A. Zuclich, "Cataracts and Optical Radiation" in *Optical Radiation and Visual Health*, M. Waxler and V.M. Hitchins (Eds.), CRC Press, Inc., in press, 1986.

2. Ederer, F., "Epidemiologic Considerations," ibid.

3. Ham, W.T., Jr., R.G. Allen, L. Feeney-Burns, M.F. Marmor, L. Parver, P.H. Proctor, D.H. Sliney, and M.L. Wolbarsht, "Retinal Pigment Epithelial Damage Induced By Optical Radiation," ibid.

4. Massof, R.W., S.A. Sykes, L. Rapp, W.G. Robison, Jr., H. Zwick, and B. Hochheimer, "Photoreceptor Damage Induced By Optical Radiation," ibid.

5. Newsome, D.A., E. Berson, H.G. Sperling, M.O.M. Tso, T. Lawwill, M. LaVail, R. Bonner, L. Hyman, and M.A. Mainster, "Possible Role of Optical Radiation in Retinal Degenerations," ibid.

6. Sliney, D.H., "Sunglasses May Not Provide Best Protection for Retinas," *Ophthalmology Times*, 8(9):13, 1983.

7. Pike, A., "Protecting Your Human Camera, Your Eyes," *Let's LIVE*, July 1984, pp. 66–69.

8. *Proceedings of the Workshop on Long-Term Visual Health and Optical Radiation*, September 26, 1983, Rockville, MD, pp. 243–245.

9. Calkins, J.L., and B.F. Hochheimer, "Retinal Light Exposure from Ophthalmoscopes, Slit Lamps, and Overhead Surgical Lamps—An Analysis of Potential Hazards," *Association for Research in Vision and Ophthalmology, Inc.*, 19(9):1009–1015, 1980.

10. Hochheimer, B.F., S.A. D'Anna, and J.L. Calkins, "Retinal Damage from Light," *American Journal of Ophthalmology*, 88(6):1039–1044, 1979.

11. Delori, F.C., O. Pomerantzeff, and M.A. Mainster, "Light Levels in Ophthalmic Diagnostic Instruments," SPIE, 229 (Ocular Effects of Non-Ionizing Radiation) pp. 154–160, 1980.

12. American Conference of Governmental Industrial Hygienists: "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment," ACGIH, 6500 Glenway Ave., Cincinnati, OH 45211, 1985–1986.

N. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

O. Economic Impact

The agency has carefully analyzed the economic effects of this final rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the agency has carefully analyzed the impact of this final rule and has determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo: These devices are now subject only to the general controls provisions of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and under the final rule would remain subject only to such controls either in their entirety or with certain exemptions. Devices classified into class II would also remain subject only to the general controls provisions of the act unless and until an applicable performance standard was established. Similarly, devices classified into class III remain subject only to the general controls provisions of the act until an additional regulation is promulgated under section 515(b) of the act (21 U.S.C. 360e(b)) requiring that such devices have in effect approved applications for premarket approval. In accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), devices classified by regulation into class III may remain in commercial distribution without an approved premarket approval application for 30 months following the effective date of classification of the device into class III, or for 90 days following the promulgation of a regulation under section 515(b) of the act, whichever occurs later. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

List of Subjects in 21 CFR Part 886

Ophthalmic devices; Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 886, to read as follows:

PART 886—OPHTHALMIC DEVICES

Subpart A—General Provisions

Sec.

886.1 Scope.
886.3 Effective dates of requirement for premarket approval.

Subpart B—Diagnostic Devices

886.1040 Ocular esthesiometer.
886.1140 Ophthalmic chair.
886.1150 Visual acuity chart.
886.1170 Color vision tester.
886.1190 Distometer.
886.1200 Optokinetic drum.
886.1220 Corneal electrode.
886.1250 Euthyscope.
886.1270 Exophthalmometer.
886.1320 Fornixscope.
886.1330 Amsler grid.
886.1350 Keratoscope.
886.1360 Visual field laser instrument.
886.1375 Bagolini lens.
886.1380 Diagnostic condensing lens.
886.1385 Polymethylmethacrylate (PMMA) diagnostic contact lens.
886.1390 Flexible diagnostic Fresnel lens.
886.1395 Diagnostic Hruby fundus lens.
886.1400 Maddox lens.
886.1405 Ophthalmic trial lens set.
886.1410 Ophthalmic trial lens clip.
886.1415 Ophthalmic trial lens frame.
886.1420 Ophthalmic lens gauge.
886.1460 Stereopsis measuring instrument.
886.1500 Headband mirror.

Sec.
886.1510 Eye movement monitor.
886.1570 Ophthalmoscope.
886.1605 Perimeter.
886.1630 AC-powered photostimulator.
886.1640 Ophthalmic preamplifier.
886.1650 Ophthalmic bar prism.
886.1655 Ophthalmic Fresnel prism.
886.1660 Gonioscopic prism.
886.1665 Ophthalmic rotary prism.
886.1670 Ophthalmic isotope uptake probe.
886.1700 Pupillometer.
886.1750 Skiascopic rack.
886.1760 Ophthalmic refractometer.
886.1770 Manual refractor.
886.1780 Retinoscope.
886.1790 Nearpoint ruler.
886.1800 Schirmer strip.
886.1810 Tangent screen (campimeter).
886.1840 Simulatan (including crossed cylinder).
886.1850 AC-powered slitlamp biomicroscope.
886.1860 Ophthalmic instrument stand.
886.1870 Stereoscope.
886.1880 Fusion and stereoscopic target.
886.1905 Nystagmus tape.
886.1910 Spectacle dissociation test system.
886.1930 Tonometer and accessories.
886.1945 Transilluminator.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

886.3100 Ophthalmic tantalum clip.
886.3130 Ophthalmic conformer.
886.3200 Artificial eye.
886.3300 Absorbable implant (scleral buckling method).
886.3320 Eye sphere implant.
886.3340 Extraocular orbital implant.
886.3400 Keratoprosthesis.
886.3600 Intraocular lens.
886.3800 Scleral shell.
886.3920 Eye valve implant.

Subpart E—Surgical Devices

886.4070 Powered corneal burr.
886.4100 Radiofrequency electrosurgical cautery apparatus.
886.4115 Thermal cautery unit.
886.4150 Vitreous aspiration and cutting instrument.
886.4170 Cryophthalmic unit.
886.4230 Ophthalmic knife test drum.
886.4250 Ophthalmic electrolysis unit.
886.4270 Intraocular gas.
886.4275 Intraocular fluid.
886.4280 Intraocular pressure measuring device.
886.4300 Intraocular lens guide.
886.4335 Operating headlamp.
886.4350 Manual ophthalmic surgical instrument.
886.4360 Ocular surgery irrigation device.
886.4370 Keratome.
886.4390 Ophthalmic laser.
886.4400 Electronic metal locator.
886.4440 AC-powered magnet.
886.4445 Permanent magnet.
886.4570 Ophthalmic surgical marker.
886.4610 Ocular pressure applicator.
886.4670 Phacofragmentation system.
886.4690 Ophthalmic photocoagulator.
886.4750 Ophthalmic eye shield.
886.4770 Ophthalmic operating spectacles (loupes).
886.4790 Ophthalmic sponge.
Sec.
886.4855 Ophthalmic instrument table.

Subpart F—Therapeutic Devices

886.5100 Ophthalmic beta radiation source.
886.5120 Low-power binocular loupe.
886.5420 Contact lens inserter/remover.
886.5540 Low-vision magnifier.
886.5600 Ptosis crutch.
886.5800 Ophthalmic bar reader.
886.5810 Ophthalmic prism reader.
886.5840 Magnifying spectacles.
886.5842 Spectacle frame.
886.5844 Prescription spectacle lens.
886.5850 Sunglasses (nonprescription).
886.5870 Low-vision telescope.
886.5900 Electronic vision aid.
886.5910 Image intensification vision aid.
886.5915 Optical vision aid.
886.5916 Rigid gas permeable contact lens.
886.5918 Rigid gas permeable contact lens solution.
886.5925 Soft (hydrophilic) contact lens.
886.5928 Soft (hydrophilic) contact lens solution.
886.5933 Contact lens heat disinfection unit.

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

Subpart A—General Provisions

§ 886.1 Scope.

(a) This part sets forth the classification of ophthalmic devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provision of a regulation in this part but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an ophthalmic device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed in one subpart only.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 886.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act, FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(l) of the act is automatically classified by statute into class III and must have an approval

under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

Subpart B—Diagnostic Devices

§ 886.1040 Ocular esthesiometer.

(a) *Identification.* An ocular esthesiometer is a device, such as a single-hair brush, intended to touch the cornea to assess corneal sensitivity.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1140 Ophthalmic chair.

(a) *Identification.* An ophthalmic chair is a manual device with adjustable positioning in which a patient is intended to sit or recline during ophthalmological examination or treatment.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1150 Visual acuity chart.

(a) *Identification.* A visual acuity chart is a device that is a chart, such as a Snellen chart with block letters or other symbols in graduated sizes, intended to test visual acuity.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1170 Color vision tester.

(a) *Identification.* A color vision tester is a device that consists of various colored materials, such as colored yarns or color vision plates (multicolored plates which patients with color vision deficiency would perceive as being of one color), intended to evaluate color vision.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1190 Distometer.

(a) *Identification.* A distometer is a device intended to measure the distance between the cornea and a corrective lens during refraction to help measure the change of the visual image when a lens is in place.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1200 Optokinetic drum.

(a) *Identification.* An optokinetic drum is a drum-like device covered with alternating white and dark stripes or pictures that can be rotated on its handle. The device is intended to elicit and evaluate nystagmus (involuntary rapid movement of the eyeball) in patients.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1220 Corneal electrode.

(a) *Identification.* A corneal electrode is an AC-powered device, usually part of a special contact lens, intended to be applied directly to the cornea to provide data showing the changes in electrical potential in the retina after electroretinography (stimulation by light).

(b) *Classification.* Class II.

§ 886.1250 Euthyscope.

(a) *Identification.* A euthyscope is a device that is a modified battery-powered ophthalmoscope (a perforated mirror device used to inspect the interior of the eye) that projects a bright light encompassing an arc of about thirty degrees on the fundus of the eye. The center of the light bundle is blocked by a black disk covering the fovea (the central depression of the macular retinae where only cones are present and blood vessels are lacking). The device is intended for use in the treatment of amblyopia (dimness of vision without apparent disease of the eye).

(b) *Classification.* Class I.

§ 886.1270 Exophthalmometer.

(a) *Identification.* An exophthalmometer is a device, such as a ruler, gauge, or caliper, intended to measure the degree of exophthalmos (abnormal protrusion of the eyeball).

(b) *Classification.* Class I.

§ 886.1320 Fornixscope.

(a) *Identification.* A fornixscope is a device intended to pull back and hold open the eyelid to aid examination of the conjunctiva.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1330 Amsler grid.

(a) *Identification.* An Amsler grid is a device that is a series of charts with grids of different sizes that are held at 30 centimeters distance from the patient and intended to rapidly detect central and paracentral irregularities in the visual field.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1350 Keratoscope.

(a) *Identification.* A keratoscope is a battery-powered device intended to measure and evaluate the corneal curvature of the eye. Lines and circles within the keratoscope are used to observe the corneal reflex. This generic type of device includes the photokeratoscope which records corneal curvature by taking photographs of the cornea.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1360 Visual field laser instrument.

(a) *Identification.* A visual field laser instrument is an AC-powered device intended to provide visible laser radiation that produces an interference pattern on the retina to evaluate retinal function.

(b) *Classification.* Class II.

§ 886.1375 Bagolini lens.

(a) *Identification.* A Bagolini lens is a device that consists of a plane lens containing almost imperceptible striations that do not obscure visualization of objects. The device is placed in a trial frame and intended to determine harmonious/anomalous retinal correspondence (a condition in which corresponding points on the retina have the same directional values).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1380 Diagnostic condensing lens.

(a) *Identification.* A diagnostic condensing lens is a device used in binocular indirect ophthalmoscopy (a procedure that produces an inverted or reversed direct magnified image of the eye) intended to focus reflected light from the fundus of the eye.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1385 Polymethylmethacrylate (PMMA) diagnostic contact lens.

(a) *Identification.* A polymethylmethacrylate (PMMA) diagnostic contact lens is a device that is a curved shell of PMMA intended to be applied for a short period of time directly on the globe or cornea of the eye for diagnosis or therapy of intraocular abnormalities.

(b) *Classification.* Class II.

§ 886.1390 Flexible diagnostic Fresnel lens.

(a) *Identification.* A flexible diagnostic Fresnel lens is a device that is a very thin lens which has its surface a concentric series of increasingly refractive zones. The device is intended to be applied to the back of the spectacle lenses of patients with aphakia (absence of the lens of the eye).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1395 Diagnostic Hruby fundus lens.

(a) *Identification.* A diagnostic Hruby fundus lens is a device that is a 55 diopter lens intended for use in the examination of the vitreous body and the fundus of the eye under slitlamp illumination and magnification.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1400 Maddox lens.

(a) *Identification.* A Maddox lens is a device that is a series of red cylinders that change the size, shape, and color of an image. The device is intended to be handheld or placed in a trial frame to evaluate eye muscle dysfunction.

(b) *Classification.* Class I. The device is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1405 Ophthalmic trial lens set.

(a) *Identification.* An ophthalmic trial lens set is a device that is a set of lenses of various dioptric powers intended to be handheld or inserted in a trial frame for vision testing to determine refraction.

(b) *Classification.* Class II.

§ 886.1410 Ophthalmic trial lens clip.

(a) *Identification.* An ophthalmic trial lens clip is a device intended to hold prisms, spheres, cylinders, or occluders on a trial frame or spectacles for vision testing.

(b) *Classification.* Class I. The device is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1415 Ophthalmic trial lens frame.

(a) *Identification.* An opthalmic trial lens frame is a mechanical device intended to hold trial lenses for vision testing.

(b) *Classification.* Class I. The device is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1420 Ophthalmic lens gauge.

(a) *Identification.* An ophthalmic lens gauge is a calibrated device intended to manually measure the curvature of a spectacle lens.

(b) *Classification.* Class I.

§ 886.1460 Stereopsis measuring instrument.

(a) *Identification.* A stereopsis measuring instrument is a device intended to measure depth perception by illumination of objects placed on different planes.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1500 Headband mirror.

(a) *Identification.* A headband mirror is a device intended to be strapped to the head of the user to reflect light for use in examination of the eye.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1510 Eye movement monitor.

(a) *Identification.* An eye movement monitor is an AC-powered device with an electrode intended to measure and record ocular movements.

(b) *Classification.* Class II.

§ 886.1570 Ophthalmoscope.

(a) *Identification.* An ophthalmoscope is an AC-powered or battery-powered device containing illumination and viewing optics intended to examine the media (cornea, aqueous, lens, and vitreous) and the retina of the eye.

(b) *Classification.* Class II.

§ 886.1605 Perimeter.

(a) *Identification.* A perimeter is a manual device intended to determine the extent of the peripheral visual field of a patient. The device projects light on various points of a curved surface, and the patient indicates whether he or she sees the light.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1630 AC-powered photostimulator.

(a) *Identification.* An AC-powered photostimulator is an AC-powered device intended to provide light stimulus which allows measurement of retinal or visual function by perceptual or electrical methods (e.g., stroboscope).

(b) *Classification.* Class II.

§ 886.1640 Ophthalmic preamplifier.

(a) *Identification.* An ophthalmic preamplifier is an AC-powered or battery-powered device intended to amplify electrical signals from the eye in electroretinography (recording retinal action currents from the surface of the eyeball after stimulation by light), electrooculography (testing for retinal dysfunction by comparing the standing potential in the front and the back of the eyeball), and electromyography

(recording electrical currents generated in active muscle).

(b) *Classification.* Class II.

§ 886.1650 Ophthalmic bar prism.

(a) *Identification.* An ophthalmic bar prism is a device that is a bar composed of fused prisms of gradually increasing strengths intended to measure latent and manifest strabismus (eye muscle deviation) or the power of fusion of a patient's eyes.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1655 Ophthalmic Fresnel prism.

(a) *Identification.* An ophthalmic Fresnel prism is a device that is a thin plastic sheet with embossed rulings which provides the optical effect of a prism. The device is intended to be applied to spectacle lenses to give a prismatic effect.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1660 Gonioscopic prism.

(a) *Identification.* A gonioscopic prism is a device that is a prism intended to be placed on the eye to study the anterior chamber. The device may have angled mirrors to facilitate visualization of anatomical features.

(b) *Classification.* Class I.

§ 886.1665 Ophthalmic rotary prism.

(a) *Identification.* An ophthalmic rotary prism is a device with various prismatic powers intended to be handheld and used to measure ocular deviation in patients with latent or manifest strabismus (eye muscle deviation).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1670 Ophthalmic isotope uptake probe.

(a) *Identification.* An ophthalmic isotope uptake probe is an AC-powered device intended to measure, by a probe which is placed in close proximity to the eye, the uptake of a radioisotope (phosphorus 32) by tumors to detect tumor masses on, around, or within the eye.

(b) *Classification.* Class II.

§ 886.1700 Pupillometer.

(a) *Identification.* A pupillometer is a manual device intended to measure by reflected light the width or diameter of the pupil of the eye.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180 with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1750 Skiascopic rack.

(a) *Identification.* A skiascopic rack is a device that is a rack and a set of attached ophthalmic lenses of various dioptric strengths intended as an aid in refraction.

(b) *Classification.* Class II.

§ 886.1760 Ophthalmic refractometer.

(a) *Identification.* An ophthalmic refractometer is an automatic AC-powered device that consists of a fixation system, a measurement and recording system, and an alignment system intended to measure the refractive power of the eye by measuring light reflexes from the retina.

(b) *Classification.* Class II.

§ 886.1770 Manual refractor.

(a) *Identification.* A manual refractor is a device that is a set of lenses of varous dioptric powers intended to measure the refractive error of the eye.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1780 Retinoscope.

(a) *Identification.* A retinoscope is a battery-powered device intended to measure the refraction of the eye by illuminating the retina and noting the direction of movement of the light on the retinal surface and of the refraction by the eye of the emergent rays.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1790 Nearpoint ruler.

(a) *Identification.* A nearpoint ruler is a device calibrated in centimeters intended to measure the nearpoint of convergence (the point to which the visual lines are directed when convergence is at its maximum).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1800 Schirmer strip.

(a) *Identification.* A Schirmer strip is a device made of filter paper or similar material intended to be inserted under a patient's lower eyelid to stimulate and evaluate formation of tears.

(b) *Classification.* Class I.

§ 886.1810 Tangent screen (campimeter).

(a) *Identification.* A tangent screen (campimeter) is a battery-powered device that is a large square cloth chart with a central mark of fixation intended to map on a flat surface the central thirty degrees of a patient's visual field. This generic type of device includes projection tangent screens, target tangent screens and targets, felt tangent screens, and battery-powered stereo campimeters.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1840 Simulatan (including crossed cylinder).

(a) *Identification.* A simulatan (including crossed cylinder) is a device that is a set of pairs of cylinder lenses that provides various equal plus and minus refractive strengths. The lenses are arranged so that the user can exchange the positions of plus and minus cylinder lenses of equal strengths. The device is intended for subjective refraction (refraction in which the patient judges whether a given object is clearly in focus, as the examiner uses different lenses).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1850 AC-powered slitlamp biomicroscope.

(a) *Identification.* An AC-powered slitlamp biomicroscope is an AC-powered device that is a microscope intended for use in eye examination that projects into a patient's eye through a

control diaphragm a thin, intense beam of light.

(b) *Classification.* Class II.

§ 886.1860 Ophthalmic instrument stand.

(a) *Identification.* An ophthalmic instrument stand is a nonpowered device intended to store ophthalmic instruments in a readily accessible position.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1870 Stereoscope.

(a) *Identification.* A stereoscope is a battery-powered device that combines the images of two similar objects to produce a three-dimensional appearance of solidity and relief. It is intended to measure the angle of strabismus (eye muscle deviation), evaluate binocular vision (usage of both eyes to see), and guide a patient's corrective exercises of eye muscles.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1880 Fusion and stereoscopic target.

(a) *Identification.* A fusion and stereoscopic target is a device intended for use as a viewing object with a stereoscope (§ 886.1870).

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1905 Nystagmus tape.

(a) *Identification.* Nystagmus tape is a device that is a long, narrow strip of fabric or other flexible material on which a series of objects are printed. The device is intended to be moved across a patient's field of vision to elicit optokinetic nystagmus (abnormal and irregular eye movements) and to test for blindness.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1910 Spectacle dissociation test system.

(a) *Identification.* A spectacle dissocation test system is a battery-powered device, such as a Lancaster test system, that consists of a light source and various filters, usually red or green filters, intended to subjectively measure imbalance of ocular muscles.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.1930 Tonometer and accessories.

(a) *Identification.* A tonometer and accessories is a manual device intended to measure intraocular pressure by applying a known force on the globe of the eye and measuring the amount of indentation produced (Schiotz type) or to measure intraocular tension by applanation (applying a small flat disk to the cornea). Accessories for the device may include a tonometer calibrator or a tonograph recording system. The device is intended for use in the diagnosis of glaucoma.

(b) *Classification.* Class II.

§ 886.1945 Transilluminator.

(a) *Identification.* A transilluminator is a battery-powered device that is a light source intended to transmit light through tissues to aid examination of patients.

(b) *Classification.* Class I.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

§ 886.3100 Ophthalmic tantalum clip.

(a) *Identification.* An ophthalmic tantalum clip is a malleable metallic device intended to be implanted permanently or temporarily to bring together the edges of a wound to aid healing or prevent bleeding from small blood vessels in the eye.

(b) *Classification.* Class II.

§ 886.3130 Ophthalmic conformer.

(a) *Identification.* An ophthalmic conformer is a device usually made of molded plastic intended to be inserted temporarily between the eyeball and eyelid to maintain space in the orbital cavity and prevent closure or adhesions during the healing process following surgery.

(b) *Classification.* Class II.

§ 886.3200 Artificial eye.

(a) *Identification.* An artificial eye is a device resembling an eyeball, usually made of glass or plastic, intended to be inserted in a patient's eye socket for cosmetic purposes to replace an eye. The device is not intended to be implanted.

(b) *Classification.* Class II.

§ 886.3300 Absorbable implant (scleral buckling method).

(a) *Identification.* An absorbable implant (scleral buckling method) is a device intended to be implanted on the sclera to aid retinal reattachment.

(b) *Classification.* Class II.

§ 886.3320 Eye sphere implant.

(a) *Identification.* An eye sphere implant is a device intended to be implanted in the eyeball to occupy space following the removal of the contents of the eyeball with the sclera left intact.

(b) *Classification.* Class II.

§ 886.3340 Extraocular orbital implant.

(a) *Identification.* An extraocular orbital implant is a nonabsorbable device intended to be implanted during scleral surgery for buckling or building up the floor of the eye, usually in conjunction with retinal reattachment. Injectable substances are excluded.

(b) *Classification.* Class II.

§ 886.3400 Keratoprosthesis.

(a) *Identification.* A keratoprosthesis is a device made of plastic intended to be implanted to replace the central area of an opacified natural cornea of the eye to maintain or restore sight.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 886.3.

§ 886.3600 Intraocular lens.

(a) *Identification.* An intraocular lens is a device made of materials such as glass or plastic intended to be implanted to replace the natural lens of an eye.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.3800 Scleral shell.

(a) *Identification.* A scleral shell is a device made of glass or plastic that is intended to be inserted for short time periods over the cornea and proximal-cornea sclera for cosmetic or reconstructive purposes. An artificial eye is usually painted on the device. The device is not intended to be implanted.

(b) *Classification.* Class II.

§ 886.3920 Eye valve implant.

(a) *Identification.* An eye valve implant is a one-way, pressure-sensitive, valve-like device intended to be implanted to normalize intraocular pressure. The device may be used in the treatment of glaucoma.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 886.3.

Subpart E—Surgical Devices

§ 886.4070 Powered corneal burr.

(a) *Identification.* A powered corneal burr is a battery-powered device that is a motor and drilling tool intended to remove rust rings from the cornea of the eye.

(b) *Classification.* Class I.

§ 886.4100 Radiofrequency electrosurgical cautery apparatus.

(a) *Identification.* A radiofrequency electrosurgical cautery apparatus is an AC-powered or battery-powered device intended for use during ocular surgery to coagulate tissue or arrest bleeding by a high frequency electric current.

(b) *Classification.* Class II.

§ 886.4115 Thermal cautery unit.

(a) *Identification.* A thermal cautery unit is an AC-powered or battery-powered device intended for use during ocular surgery to coagulate tissue or arrest bleeding by heat conducted through a wire tip.

(b) *Classification.* Class II.

§ 886.4150 Vitreous aspiration and cutting instrument.

(a) *Identification.* A vitreous aspiration and cutting instrument is an electrically powered device, which may use ultrasound, intended to remove vitreous matter from the vitreous cavity or remove a crystalline lens.

(b) *Classification.* Class II.

§ 886.4170 Cryophthalmic unit.

(a) *Identification.* A cryophthalmic unit is a device that is a probe with a small tip that becomes extremely cold through the controlled use of a refrigerant or gas. The device may be AC-powered. The device is intended to remove cataracts by the formation of an adherent ice ball in the lens, to freeze the eye and adjunct parts for surgical removal of scars, and to freeze tumors.

(b) *Classification.* Class II.

§ 886.4230 Ophthalmic knife test drum.

(a) *Identification.* An ophthalmic knife test drum is a device intended to test the keenness of ophthalmic surgical knives to determine whether resharpening is needed.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.4250 Ophthalmic electrolysis unit.

(a) *Identification.* An ophthalmic electrolysis unit is a battery-powered device intended to destroy ocular hair follicles by applying a galvanic electrical current.

(b) *Classification.* Class I.

§ 886.4270 Intraocular gas.

(a) *Identification.* An intraocular gas is a device consisting of a gaseous fluid intended to be introduced into the eye to place pressure on a detached retina.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.4275 Intraocular fluid.

(a) *Identification.* An intraocular fluid is a device consisting of a nongaseous fluid intended to be introduced into the eye to aid performance of surgery, such as to maintain anterior chamber depth, preserve tissue integrity, protect tissue from surgical trauma, or function as a tamponade during retinal reattachment.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.4280 Intraocular pressure measuring device.

(a) *Identification.* An intraocular pressure measuring device is a manual or AC-powered device intended to measure intraocular pressure. Also included are any devices found by FDA to be substantially equivalent to such devices. Accessories for the device may include calibrators or recorders. The device is intended for use in the diagnosis of glaucoma.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.4300 Intraocular lens guide.

(a) *Identification.* An intraocular lens guide is a device intended to be inserted into the eye during surgery to direct the insertion of an intraocular lens and be removed after insertion is completed.

(b) *Classification.* Class I.

§ 886.4335 Operating headlamp.

(a) *Identification.* An operating headlamp is a battery-powered device intended to be worn on the user's head to provide a light source to aid visualization during surgical, diagnostic, or therapeutic procedures.

(b) *Classification.* Class I.

§ 886.4350 Manual ophthalmic surgical instrument.

(a) *Identification.* A manual ophthalmic surgical instrument is a nonpowered, handheld device intended to aid or perform ophthalmic surgical procedures. This generic type of device includes the manual corneal burr, ophthalmic caliper, ophthalmic cannula, eyelid clamp, ophthalmic muscle clamp, iris retractor clip, orbital compressor, ophthalmic curette, cystotome, orbital depressor, lachrymal dilator, erisophake, expressor, ophthalmic forcep, ophthalmic hook, sphere introducer, ophthalmic knife, ophthalmic suturing needle, lachrymal probe, trabeculotomy probe, cornea-sclera punch, ophthalmic retractor, ophthalmic ring (Flieringa), lachrymal sac rongeur, ophthalmic scissors, enucleating snare, ophthalmic spatula, ophthalmic specula, ophthalmic spoon, ophthalmic spud, trabeculotome or ophthalmic manual trephine.

(b) *Classification.* Class I.

§ 886.4360 Ocular surgery irrigation device.

(a) *Identification.* An ocular surgery irrigation device is a device intended to be suspended over the ocular area during ophthalmic surgery to deliver continuous, controlled irrigation to the surgical field.

(b) *Classification.* Class I.

§ 886.4370 Keratome.

(a) *Identification.* A keratome is battery-powered device intended to shave tissue from sections of the cornea for a lamellar (partial thickness) transplant.

(b) *Classification.* Class I.

§ 886.4390 Ophthalmic laser.

(a) *Identification.* An ophthalmic laser is an AC-powered device intended to coagulate or cut tissue of the eye, orbit, or surrounding skin by a laser beam.

(b) *Classification.* Class II.

§ 886.4400 Electronic metal locator.

(a) *Identification.* An electronic metal locator is an AC-powered device with

probes intended to locate metallic foreign bodies in the eye or eye socket.

(b) *Classification.* Class II.

§ 886.4440 AC-powered magnet.

(a) *Identification.* An AC-powered magnet is an AC-powered device that generates a magnetic field intended to find and remove metallic foreign bodies from eye tissue.

(b) *Classification.* Class II.

§ 886.4445 Permanent magnet.

(a) *Identification.* A permanent magnet is a nonelectric device that generates a magnetic field intended to find and remove metallic foreign bodies from eye tissue.

(b) *Classification.* Class I.

§ 886.4570 Ophthalmic surgical marker.

(a) *Identification.* An ophthalmic surgical marker is a device intended to mark by use of ink, dye, or indentation the location of ocular or scleral surgical manipulation.

(b) *Classification.* Class I.

§ 886.4610 Ocular pressure applicator.

(a) *Identification.* An ocular pressure applicator is a manual device that consists of a sphygmomanometer-type squeeze bulb, a dial indicator, a band, and bellows, intended to apply pressure on the eye in preparation for ophthalmic surgery.

(b) *Classification.* Class II.

§ 886.4670 Phacofragmentation system.

(a) *Identification.* A phacofragmentation system is an AC-powered device with a fragmenting needle intended for use in cataract surgery to disrupt a cataract with ultrasound and extract the cataract.

(b) *Classification.* Class II.

§ 886.4690 Ophthalmic photocoagulator.

(a) *Identification.* An ophthalmic photocoagulator is an AC-powered device intended to use the energy from an extended noncoherent light source to occlude blood vessels of the retina, choroid, or iris.

(b) *Classification.* Class II.

§ 886.4750 Ophthalmic eye shield.

(a) *Identification.* An ophthalmic eye shield is a device that consists of a plastic or aluminum eye covering intended to protect the eye or retain dressing materials in place.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.4770 Ophthalmic operating spectacles (loupes).

(a) *Identification.* Ophthalmic operating spectacles (loupes) are devices that consist of convex lenses or lens systems intended to be worn by a surgeon to magnify the surgical site during ophthalmic surgery.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198 with respect to complaint files.

§ 886.4790 Ophthalmic sponge.

(a) *Identification.* An ophthalmic sponge is a device that is an absorbant sponge, pad, or spear made of folded gauze, cotton, cellulose, or other material intended to absorb fluids from the operative field in ophthalmic surgery.

(b) *Classification.* Class II.

§ 886.4855 Ophthalmic instrument table.

(a) *Identification.* An ophthalmic instrument table is a manual device on which ophthalmic instruments are placed.

(b) *Classification.* Class I. This device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Subpart F—Therapeutic Devices

§ 886.5100 Ophthalmic beta radiation source.

(a) *Identification.* An ophthalmic beta radiation source is a device intended to apply superficial radiation to benign and malignant ocular growths.

(b) *Classification.* Class II.

§ 886.5120 Low-power binocular loupe.

(a) *Identification.* A low-power binocular loupe is a device that consists of two eyepieces, each with a lens or lens system, intended for medical purposes to magnify the appearance of objects.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5420 Contact lens inserter/remover.

(a) *Identification.* A contact lens inserter/remover is a handheld device intended to insert or remove contact lenses by surface adhesion or suction.

(b) *Classification.* Class I.

§ 886.5540 Low-vision magnifier.

(a) *Identification.* A low-vision magnifier is a device that consists of a magnifying lens intended for use by a patient who has impaired vision. The device may be held in the hand or attached to spectacles.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5600 Ptosis crutch.

(a) *Identification.* A ptosis crutch is a device intended to be mounted on the spectacles of a patient who has ptosis (drooping of the upper eyelid as a result of faulty development or paralysis) to hold the upper eyelid open.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5800 Ophthalmic bar reader.

(a) *Identification.* An ophthalmic bar reader is a device that consists of a magnifying lens intended for use by a patient who has impaired vision. The device is placed directly onto reading material to magnify print.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5810 Ophthalmic prism reader.

(a) *Identification.* An ophthalmic prism reader is a device intended for use by a patient who is in a supine position to change the angle of print to aid reading.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5840 Magnifying spectacles.

(a) *Identification.* Magnifying spectacles are devices that consist of spectacle frames with convex lenses intended to be worn by a patient who has impaired vision to enlarge images.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in

Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5842 Spectacle frame.

(a) *Identification.* A spectacle frame is a device made of metal or plastic intended to hold prescription spectacle lenses worn by a patient to correct refractive errors.

(b) *Classification.* Class I.

§ 886.5844 Prescription spectacle lens.

(a) *Identification.* A prescription spectacle lens is a glass or plastic device that is a lens intended to be worn by a patient in a spectacle frame to provide refractive corrections in accordance with a prescription for the patient. The device may be modified to protect the eyes from bright sunlight (i.e., prescription sunglasses). Prescription sunglass lenses may be reflective, tinted, polarizing, or photosensitized.

(b) *Classification.* Class I.

§ 886.5850 Sunglasses (nonprescription).

(a) *Identification.* Sunglasses (nonprescription) are devices that consist of spectacle frames or clips with absorbing, reflective, tinted, polarizing, or photosensitized lenses intended to be worn by a person to protect the eyes from bright sunlight but not to provide refractive corrections. This device is usually available over-the-counter.

(b) *Classification.* Class I.

§ 886.5870 Low-vision telescope.

(a) *Identification.* A low-vision telescope is a device that consists of an arrangement of lenses or mirrors intended for use by a patient who has impaired vision to increase the apparent size of objects. This generic type of device includes handheld or spectacle telescopes.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5900 Electronic vision aid.

(a) *Identification.* An electronic vision aid is a battery-powered device that consists of an electronic sensor/transducer intended for use by a patient who has impaired vision or blindness, to translate visual images of objects into tactile or auditory signals.

(b) *Classification.* Class I.

§ 886.5910 Image intensification vision aid.

(a) *Identification.* An image intensification vision aid is a battery-powered device intended for use by a patient who has limited dark adaptation or impaired vision to amplify ambient light.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5915 Optical vision aid.

(a) *Identification.* An optical vision aid is a device that consists of a magnifying lens with accompanying battery-powered light source intended for use by a patient who has impaired vision to increase the apparent size of object detail.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 886.5916 Rigid gas permeable contact lens.

(a) *Identification.* A rigid gas permeable contact lens is a device intended to be worn directly against the cornea of the eye to correct vision conditions. The device is made of various materials, such as cellulose acetate butyrate, polyacrylate-silicone, or silicone elastomers, whose main polymer molecules generally do not absorb or attract water.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.5918 Rigid gas permeable contact lens solution.

(a) *Identification.* A rigid gas permeable contact lens solution is a device intended to clean, disinfect, wet, or store a rigid gas permeable contact lens (§ 886.5916).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.5925 Soft (hydrophilic) contact lens.

(a) *Identification.* A soft (hydrophilic) contact lens is a device intended to be worn directly against the cornea and adjacent limbal and scleral areas of the eye to correct vision conditions or act as a therapeutic bandage. The device is made of various polymer materials the main polymer molecules of which absorb or attract a certain volume (percentage) of water.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.5928 Soft (hydrophilic) contact lens solution.

(a) *Identification.* A soft (hydrophilic) contact lens solution is a device intended to clean, disinfect, wet, or store a soft (hydrophilic) contact lens (§ 886.5925).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

§ 886.5933 Contact lens heat disinfection unit.

(a) *Identification.* A contact lens heat disinfection unit is a device intended to disinfect a contact lens by means of heat.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 886.3.

Dated: June 15, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

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Federal Register

Wednesday
September 2, 1987

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 886

Ophthalmic Devices; Proposed Exemptions From Premarket Notification; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 86N-0013]

Ophthalmic Devices; Proposed Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt from the requirement of premarket notification, with limitations, 55 class I ophthalmic devices. Elsewhere in this issue of the Federal Register, FDA is publishing a final rule classifying these and other ophthalmic devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

DATES: Comments by November 2, 1987. FDA is proposing that the final rule based on this proposed rule become effective 30 days after its date of publication in the Federal Register.

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

FOR FURTHER INFORMATION CONTACT: Mary E. Jacobs, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7320.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption allows manufacturers to introduce into commerical distribution devices of the generic type exempted without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did not routinely evaluate whether it should grant to manufacturers of such devices placed in class I an exemption from the requirement of premarket notification in section 510(k) of the act and 21 CFR Part 807, Subpart E. Generally, FDA considered such exemptions only when the advisory panels recommended the exemptions.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of premarket notifications on relatively innocuous devices while freeing agency resources for the review of more complex notifications.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal in FDA's July 1985 "A Plan for Action" (Ref. 1).

Criteria for 510(k) Exemptions

FDA is proposing to exempt a generic type of class I device from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may propose to grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience with premarket notification and publicly available reports or studies on device performance. Based on the above criteria, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a premendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Application of the Criteria to Class I Ophthalmic Devices

In the proposed regulations of January 26, 1982 (47 FR 3694), FDA proposed to classify preamendments ophthalmic devices in accordance with the amendments. When FDA proposed to classify the 55 devices below, the agency did not propose exemptions from the requirement of premarket notification for these devices. The Panel did not recommend exemptions from the requirement of premarket notification for certain of these devices. FDA agrees that full exemption from premarket notification is unjustified for these devices; however, for efficient enforcement of the act and consistent with its policy regarding exemptions from premarket notification, FDA now is proposing to exempt from the requirement of premarket notification, with limitations, the 55 devices below.

Section	Device
	Subpart B—Diagnostic Devices
886.1040	Ocular esthesiometer.
886.1140	Ophthalmic chair.
886.1150	Visual acuity chart.
886.1170	Color vision tester.
886.1190	Distometer.
886.1200	Optokinetic drum.
886.1270	Exophthalmometer.
886.1320	Fornixscope.
886.1330	Amsler grid.
886.1350	Keratoscope.
886.1375	Bagolini lens.
886.1380	Diagnostic condensing lens.
886.1390	Flexible diagnostic Fresnel lens.
886.1395	Diagnostic Hruby fundus lens.
886.1400	Maddox lens.
886.1410	Ophthalmic trial lens clip.
886.1415	Ophthalmic trial lens frame.
886.1420	Ophthalmic lens gauge.
886.1460	Stereopsis measuring instrument.
886.1500	Headband mirror.
886.1605	Perimeter.
886.1650	Ophthalmic bar prism.
886.1655	Ophthalmic Fresnel prism.
886.1660	Gonioscopic prism.
886.1665	Ophthalmic rotary prism.
886.1700	Pupillometer.
886.1770	Manual refractor.
886.1790	Near-point ruler.
886.1800	Schirmer strip.
886.1810	Tangent screen (campimeter).
886.1840	Simulatan (including crossed cylinder).
886.1860	Ophthalmic instrument stand.
886.1870	Stereoscope.
886.1880	Fusion and stereoscopic target.
886.1906	Nystagmus tape.
886.1910	Spectacle dissociation test system.
	Subpart E—Surgical Devices
886.4230	Ophthalmic knife test drum.
886.4335	Operating headlamp.
886.4350	Manual ophthalmic surgical instrument.
886.4360	Ocular surgery irrigation device.
886.4445	Permanent magnet.
886.4570	Ophthalmic surgical marker.
886.4770	Ophthalmic operating spectacles (loupes).
886.4856	Ophthalmic instrument table.
	Subpart F—Therapeutic Devices
886.5120	Low-power binocular loupe.
886.5420	Contact lens inserter/remover.
886.5540	Low-vision magnifier.
886.5600	Ptosis crutch.
886.5800	Ophthalmic bar reader.
886.5810	Ophthalmic prism reader.
886.5840	Magnifying spectacles.
886.5844	Prescription spectacle lens.
886.5870	Low-vision telescope.
886.5910	Image intensification vision aid.
886.5915	Optical vision aid.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the devices above in class I. FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above. However, the proposed exemptions for the ocular esthesiometer (§ 886.1640), gonioscopic prism (§ 886.1660), Schirmer strip (§ 886.1800), ophthalmic surgical marker (§ 886.4570), magnifying spectacles (§ 886.5840), and prescription spectacle lens (§ 886.5844) are limited and would apply only to those devices made of the same materials that were used in the devices before May 28, 1976. Further, the proposed exemption for the ocular surgery irrigation device (§ 886.4360) is limited and would apply only to uses where the device does not contact the patient's body.

References

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions. Under any final rule based on this proposal, the devices would remain subject to such controls, other than premarket notification.

Interested persons may, on or before November 2, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 886 be amended as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority citation for 21 CFR Part 886 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 886 is amended by adding new § 886.9, to read as follows:

§ 886.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially

equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 886.1040 by revising paragraph (b) to read as follows:

§ 886.1040 Ocular esthesiometer.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

4. In § 886.1140 by revising paragraph (b) to read as follows:

§ 886.1140 Ophthalmic chair.

* * * * *

(b) *Classification.* Class I for manual ophthalmic chair. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

5. In § 886.1150 by revising paragraph (b) to read as follows:

§ 886.1150 Visual acuity chart.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

6. In § 886.1170 by revising paragraph (b) to read as follows:

§ 886.1170 Color vision tester.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

7. In § 886.1190 by revising paragraph (b) to read as follows:

§ 886.1190 Distometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

8. In § 886.1200 by revising paragraph (b) to read as follows:

§ 886.1200 Optokinetic drum.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

9. In § 886.1270 by revising paragraph (b) to read as follows:

§ 886.1270 Exophthalmometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

10. In § 886.1320 by revising paragraph (b) to read as follows:

§ 886.1320 Fornixscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

11. In § 886.1330 by revising paragraph (b) to read as follows:

§ 886.1330 Amsler grid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

12. In § 886.1350 by revising paragraph (b) to read as follows:

§ 886.1350 Keratoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

13. In § 886.1375 by revising paragraph (b) to read as follows:

§ 886.1375 Bagolini lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

14. In § 886.1380 by revising paragraph (b) to read as follows:

§ 886.1380 Diagnostic condensing lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

15. In § 886.1390 by revising paragraph (b) to read as follows:

§ 886.1390 Flexible diagnostic Fresnel lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning

records, and § 820.198, with respect to complaint files.

16. In § 886.1395 by revising paragraph (b) to read as follows:

§ 886.1395 Diagnostic Hruby fundus lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

17. In § 886.1400 by revising paragraph (b) to read as follows:

§ 886.1400 Maddox lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

18. In § 886.1410 by revising paragraph (b) to read as follows:

§ 886.1410 Ophthalmic trial lens clip.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

19. In § 886.1415 by revising paragraph (b) to read as follows:

§ 886.1415 Ophthalmic trial lens frame.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

20. In § 886.1420 by revising paragraph (b) to read as follows:

§ 886.1420 Ophthalmic lens gauge.

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(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

21. In § 886.1460 by revising paragraph (b) to read as follows:

§ 886.1460 Stereopsis measuring instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

22. In § 886.1500 by revising paragraph (b) to read as follows:

§ 886.1500 Headband mirror.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

23. In § 886.1605 by revising paragraph (b) to read as follows:

§ 886.1605 Perimeter.

* * * * *

(b) *Classification.* (1) Class I for manual perimeter. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

24. In § 886.1650 by revising paragraph (b) to read as follows:

§ 886.1650 Ophthalmic bar prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

25. In § 886.1655 by revising paragraph (b) to read as follows:

§ 886.1655 Ophthalmic Fresnel prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

26. In § 886.1660 by revising paragraph (b) to read as follows:

§ 886.1660 Gonioscopic prism.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

27. In § 886.1665 by revising paragraph (b) to read as follows:

§ 886.1665 Ophthalmic rotary prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

28. In § 886.1700 by revising paragraph (b) to read as follows:

§ 886.1700 Pupillometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

29. In § 886.1770 by revising paragraph (b) to read as follows:

§ 886.1770 Manual refractor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

30. In § 886.1790 by revising paragraph (b) to read as follows:

§ 886.1790 Near-point ruler.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

31. In § 886.1800 by revising paragraph (b) to read as follows:

§ 886.1800 Schirmer strip.

* * * * *

(b) *Classifications.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

32. In § 886.1810 by revising paragraph (b) to read as follows:

§ 886.1810 Tangent screen (campimeter).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

33. In § 886.1840 by revising paragraph (b) to read as follows:

§ 886.1840 Simulatan (including crossed cylinder).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

34. In § 886.1860 by revising paragraph (b) to read as follows:

§ 886.1860 Ophthalmic instrument stand.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

35. In § 886.1870 by revising paragraph (b) to read as follows.

§ 886.1870 Stereoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

36. In § 886.1880 by revising paragraph (b) to read as follows:

§ 886.1880 Fusion and stereoscopic target.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

37. In § 886.1905 by revising paragraph (b) to read as follows:

§ 886.1905 Nystagmus tape.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

38. In § 886.1910 by revising paragraph (b) to read as follows:

§ 886.1910 Spectacle dissociation test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

39. In § 886.4230 by revising paragraph (b) to read as follows:

§ 886.4230 Ophthalmic knife test drum.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

40. In § 886.4335 by revising paragraph (b) to read as follows:

§ 886.4335 Operating headlamp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

41. In § 886.4350 by revising paragraph (b) to read as follows:

§ 886.4350 Manual ophthalmic surgical instrument.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

42. In § 886.4360 by revising paragraph (b) to read as follows:

§ 886.4360 Ocular surgery irrigation device.

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(b) *Classification.* Class I. If the device does not directly contact the patient's body, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

43. In § 886.4445 by revising paragraph (b) to read as follows:

§ 886.4445 Permanent magnet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

44. In § 886.4570 by revising paragraph (b) to read as follows:

§ 886.4570 Ophthalmic surgical marker.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

45. In § 886.4770 by revising paragraph (b) to read as follows:

§ 886.4770 Ophthalmic operating spectacles (loupes).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

46. In § 886.4855 by revising paragraph (b) to read as follows:

§ 886.4855 Ophthalmic instrument table.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

47. In § 886.5120 by revising paragraph (b) to read as follows:

§ 886.5120 Low-power binocular loupe.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

48. In § 886.5420 by revising paragraph (b) to read as follows:

§ 886.5420 Contact lens inserter/remover.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

49. In § 886.5540 by revising paragraph (b) to read as follows:

§ 886.5540 Low-vision magnifier.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

50. In § 886.5600 by revising paragraph (b) to read as follows:

§ 886.5600 Ptosis crutch.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. In § 886.5800 by revising paragraph (b) to read as follows:

§ 886.5800 Ophthalmic bar reader.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

52. In § 886.5810 by revising paragraph (b) to read as follows:

§ 886.5810 Ophthalmic prism reader.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

53. In § 886.5840 by revising paragraph (b) to read as follows:

§ 886.5840 Magnifying spectacles.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

54. In § 886.5844 by revising paragraph (b) to read as follows:

§ 886.5844 Prescription spectacle lens.

* * * * *

(b) *Classification.* Class 1. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

55. In § 886.5870 by revising paragraph (b) to read as follows:

§ 886.5870 Low-vision telescope.

* * * * *

(b) *Classification.* Class 1. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

56. In § 886.5910 by revising paragraph (b) to read as follows:

§ 886.5910 Image intensification vision aid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

57. In § 886.5915 by revising paragraph (b) to read as follows:

§ 886.5915 Optical vision aid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Dated: June 17, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-20050 Filed 9-1-87; 8:45 am]

BILLING CODE 4160-01-M

federal register

Wednesday
September 2, 1987

Part V

Office of Management and Budget

Budget Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report two revised deferrals of budget authority now totaling $706,709,883.

The deferrals affect programs in the Departments of Agriculture and Health and Human Services.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House,
August 27, 1987.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department Agriculture:	
	Forest Service:	
D87-4B	Cooperative work.....	535,791
	Department of Health and Human Services:	
	Social Security Administration:	
D87-57A	Limitation on administrative expenses (information technology systems).....	170,919
	Total, deferrals.....	706,710

SUMMARY OF SPECIAL MESSAGES FOR FY 1987
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Sixth special message:		
Revisions to previous special messages.....	---	36,998
Effects of second special message.....	---	36,998
Amounts from previous special messages that are changed by this message (changes noted above).....	---	669,712
Subtotal, rescissions and deferrals.....	---	706,710
Amounts from previous special messages that are not changed by this message.....	5,835,751	10,787,865
Total amount proposed to date in all special messages.....	5,835,751	11,494,575

D87-4B

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-4A transmitted to Congress on March 4, 1987.

This revision to a deferral of the Department of Agriculture, Forest Service, Cooperative work account, increases the amount previously reported from $535,274,663 to $535,790,883. This increase of $516,220 results from the deferral of actual recoveries of prior year obligations that cannot be used this year.

Deferral No: D87-4B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture Bureau: Forest Service	New budget authority.....*$ 209,582,000 (16 U.S.C. 576b) Other budgetary resources..* 548,322,883 Total budgetary resources..* 757,904,883
Appropriation title and symbol: Cooperative work 1/ 12X8028	Amount to be deferred: Part of year.....$ ____ Entire year.....* 535,790,883
MB identification code: 12-8028-0-7-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System and it benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been collected cannot be done during the same year that the collections are being realized because of seasonality, scheduling, and extensive site preparation requirements. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-61).

* Revised from previous report.

D87-57A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-57 transmitted to Congress on March 4, 1987.

This revision to a deferral for the Limitation on administrative expenses (information technology systems) account of the Social Security Administration in the Department of Health and Human Services increases the amount previously reported from $134,437,367 to $170,919,000. This net increase of $36,481,633 results from (1) the release and transfer of $18,000,000 to the regular limitation on administrative expenses account to fund the full cost of the January 1987 Federal pay raises (as required by the Supplemental Appropriations Act, 1987), (2) the recovery of $3,168,706 of prior year obligations that cannot be used this year, and (3) a net decrease of $51,312,927 in the planned program for 1987 due to cancellation of some projects, lower contract awards than anticipated, delays in awarding projected contracts, and small increases in other projects.

Deferral No: D87-57A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority.....$ 225,398,000 (P.L. 99-500 & 99-591)
Bureau: Social Security Administration	Other budgetary resources..*$ 199,604,773
Appropriation title and symbol: Limitation on administrative expenses (information technology systems) 1/ 75X8704	Total budgetary resources..*$ 425,002,773
	Amount to be deferred: Part of year.....$ ____
	Entire year.....*$ 170,919,000
OMB identification code: 20-8007-0-7-651	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other * ____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other ____

Justification: *This account funds the lease and purchase of ADP hardware and software, ADP supplies and contractual services, major telephone system procurement, and telephone lease and maintenance costs for the Social Security Administration (SSA). All planned projects and acquisitions for Information Technology Systems resources during 1987 can be accomplished at a cost of $254 million. Other available resources will not be required for obligation during the year. The deferred funds consist of accumulated savings from delays in project awards resulting from vendor protests and the actual timing of awards, revised project and acquisition plan timetables due to delays in project awards, and awards at lower than estimated cost based on competitive procurement. These funds are reserved pending the identification of new requirements. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D87-57A

1/ Another limitation in this same account is also the subject of a deferral (D87-12A). This account was the subject of similar deferrals in 1986 (D86-28A, D86-39 and D86-40).

* Revised from previous report.

[FR Doc. 87-20221 Filed 9-1-87; 8:45 am]
BILLING CODE 3110-01-C

federal register

Wednesday
September 2, 1987

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 38
Education Personnel; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 38

Education Personnel

July 10, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking revises provisions of the existing regulations in 25 CFR Part 38, Education Personnel. This proposed revision sets forth the requirements of employment, discharge, and payment of teachers and other personnel in Bureau of Indian Affairs operated schools and agency education positions. It follows a new format and includes deletions, changes, and/or additions in language to clarify the current provisions and to make some substantive changes. These regulations also propose rulemaking for certain sections of the Indian Education Technical Amendments Act of 1985.

DATES: Comments must be received and/or postmarked on or before October 2, 1987.

ADDRESSES: Written comments should be directed to the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs), Bureau of Indian Affairs, Department of the Interior, Room 3512N, 18th and "C" Streets, NW., Washington, DC 20240. If preferred, comments may be delivered to Room 3528, Main Interior Building, 18th & "C" Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, Room 3528N, 18th and "C" Streets, NW., Washington, DC 20240, telephone number (202) 343–4872.

SUPPLEMENTARY INFORMATION: This proposed revised rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Background

The Bureau is reviewing, deleting, and revising selected parts of the Bureau's personnel regulations contained in Chapter I, Title 25, CFR Part 38, with the objective of reducing and/or eliminating obsolete and unnecessary regulatory requirements. This action is mandated by the Regulatory Flexibility Act and by the Department of the Interior Regulatory Flexibility Review Plan, which appeared in the **Federal Register** on April 19, 1984 (49 FR 15997). As stated in a notice published by the Department of the Interior in the **Federal Register** on October 22, 1984 (49 FR 41773), 25 CFR Part 38 is one of the sections scheduled for revision under the Department of the Interior plan. Accordingly, the revised Part 38 proposes revised guidelines for filling education positions, recruitment, employment and payment of teachers and other personnel in Bureau of Indian Affairs (BIA) operated schools and incorporates both current provisions and substantive changes. Section 38.14, Information collection was added recently to conform with 5 CFR Part 1320 by codifying such statements as part of its rules and as required by the Office of Management and Budget. Under the proposed revision, § 38.14 has been redesignated § 38.2 and § 38.14 has been designated as Voluntary services. The major changes from the present regulations are deletions of the requirements contained in: §38.6(g), Conditional appointment and (h), Short term contracts; § 38.8, Entitlement of educators to compensation; § 38.9, Payment of compensation to educators; and § 38.10(g), Mid-term review with school boards.

In addition, these regulations provide for the proposed implementation of sections 511 and 512 of Pub. L. 98–511 and sections 8 and 9 of Pub. L. 99–89, the Indian Education Technical Amendments Act of 1985. Sections 511 and 8 of Pub. L. 98–511 and Pub. L. 99–89 respectively, provide for volunteer services in BIA schools to provide more services to Indian students. This is a positive way of including members of the Indian community and the public at large in the education process of Indian children.

Sections 512 and 9 of Pub. L. 98–511 and Pub. L. 99–89 respectively, pro rata of pay, provide for the employee, at his or her election, to be paid on a 12 month basis or only for those months while school is in session. The 12 month pay schedule provides an employee currently in an education position a steady salary over a 12 month period.

Sections 512 and 9 of Pub. L. 98–511 and Pub. L. 99–89 respectively, extracurricular activities, provide employees a stipend in lieu of overtime pay or compensatory time off. This provision provides more incentive for employees to perform additional activities and to provide additional services to students to support the school's academic and social programs.

Throughout the revision, editorial changes are made the clarify and simplify the language contained in the present education personnel regulations in Part 38. Because of the numerous amendments made throughout Part 38, the entire proposed rulemaking document is being published rather than describing amendments by using the words of issuance and amendatory language procedure.

The Policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule revisions to the location identified in the addresses section of this preamble.

The Department of the Interior has determined that this proposed rulemaking does not constitute 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 information collection requirement contained in § 38.5 uses Standard Form 171 for collection which has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 3206.0012. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirement contained in § 38.14 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0116.

The principal authors of this proposes rulemaking are Ms. Betty Walker, Education Programs Administrator, Minneapolis Area Office, and Mr. Larry Holman, Agency Superintendent, for Education, Eastern Navajo Agency.

List of Subjects in 25 CFR Part 38

Indians—education, Teachers.

For the reasons set out in the preamble, Title 25, Chapter I, Part 38 is proposed to be revised to read as follows:

PART 38—EDUCATION PERSONNEL

Sec.

38.1 Scope.
38.2 Information collection.
38.3 Definitions.
38.4 Education positions.
38.5 Qualifications for educators.
38.6 Basic compensation for educators and education positions.
38.7 Appointment of educators.

Sec.
38.8 Nonrenewal of contract.
38.9 Discharge of educators.
38.10 Conditions of employment of educators.
38.11 Length of the regular school term.
38.12 Leave system for education personnel.
38.13 Status quo employees in education positions.
38.14 Voluntary services.

Authority: Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327, 25 U.S.C. 2011 and 2015); secs. 511 and 512 of Pub. L. 98–511; and Secs. 8 and 9 Pub. L. 99–89 (Indian Education Technical Amendments Act of 1985).

§ 38.1 Scope.

(a) *Primary scope.* This part applies to all individuals appointed or converted to contract education positions as defined in § 38.3 in the Bureau of Indian Affairs after November 1, 1979. This part applies to elementary and secondary school positions and agency education positions.

(b) *Secondary scope.* Section 38.13 applies to employees with continuing tenure in both the competitive and excepted service who encumber education positions.

§ 38.2 Information collection.

(a) The information collection requirements contained in § 38.5 use Standard Form 171 for collection, and have been approved by OMB under 25 U.S.C. 2011 and 2015 and assigned approval number 3206–0012. The sponsoring agency for the Standard Form 171, is the Office of Personnel Management. The information is being collected to determine eligibility for employment. The information will be used to rate the qualifications of applicants for employment. Response is mandatory for employment.

(b) The information collection requirement for § 38.14, Voluntary Services has been approved by the Office of Management and Budget under 44 U.S.C. *et seq.* and assigned clearance number 1076–0116. The information is being collected to determine an applicants eligibility and selection for appropriate volunter assignments. Response is voluntary.

§ 38.3 Definitions.

As used in this part, the term:

"Agency" means the current organization unit of the Bureau, which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

"Agency school board" as defined in section 1139(1), of Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency School Board.

"Agency Superintendent for Education" (ASE) means the Bureau official in charge of education functions at an Agency Office and to whom the school supervisor(s) and other educators under the Agency's jurisdiction, report.

"Area Education Programs Administrator" (AEPA) means the Bureau official in charge of Bureau education programs and functions in a Bureau Area Office, who is responsible for off-reservation residential schools, and, in some cases, peripheral dormitories and on-reservation day schools not receiving services from the Agency Superintendent for Education.

"Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior.

"Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

"Consult", as used in this part and provided in section 1131(d)(1) (B) and (C) of Pub. L. 95–561, means providing pertinent information to and being available for discussion with the school board, giving the school board the opportunity to reply and giving due consideration to the school board's response, subject to appeal rights provided in § 38.7 (a), (b) and (c), and § 38.9(e)(3).

"Director" means the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs) in the Bureau.

"Discharge" means the separation of an employee during the term of the contract.

"Education function" means the administration and implementation of the Bureau's education programs and activities (including school operations).

"Education position", as defined in section 1131(n)(1) of Pub. L. 95–561, means a position in the Bureau the duties and responsibilities of which:

(1) Are performed on a school term basis principally in a Bureau elementary and secondary school which involve:

(i) Classroom or other instruction or the supervision or direction of classroon or other instruction;

(ii) Any activity (other than teaching) that requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(iii) Any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(2) Are performed at the Agency level of the Bureau and involve the implementation of education-related Bureau programs. The position of Agency Superintendent of Education is excluded.

"Educator", as defined in section 1131(n)(2) of Pub. L. 95–561 means an individual whose services are required, or who is employed, in an education position as defined in § 38.3

"Employment contract" means a signed agreement executed by and between the Bureau and the individual employee hired or converted under this part, that specifies the position title, period of employment, and compensation attached thereto.

"Involuntary change in position" means the release of an employee from his/her position instigated by a change in program or other occurrence beyond the control of the employee.

"Local school board", as used in this part and defined in section 1139(7) of Pub. L. 95–561, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

"School board" means an Agency school board or a local school board.

"School supervisor" means the Bureau official in charge of a Bureau school who reports to an Agency Superintendent for Education. In the case of an off-reservation residential school(s), and, in some cases, peripheral dormitories and on-reservation day schools, the school supervisor shall report to the Area Education Programs Administrator.

§ 38.4 Education positions.

(a) The Director shall establish the kinds of positions required to carry out the Bureau's education function. No position will be established or continued for which:

(1) Funds are not available; or

(2) There is not a clearly demonstrable need and intent for it to carry out an education function.

(b) Positions established for regular school operations will be restricted to school term or program duration. Particular care shall to taken to insure that year-long positions are not

established unless they are clearly required and involve essential 12-month assignments.

§ 38.5 Qualifications for educators.

(a) *Qualifications related to positions.* Job qualification requirements shall be at least equivalent to those established by the appropriate licensing and certification authorities of the State in which the position is located.

(b) *Qualifications related to individuals.* An applicant for an education position must establish that he/she meets the requirements of the position by submitting an application and a college transcript, as appropriate, to the local school supervisor, Agency Superintendent for Education (ASE), or Director and appearing for an interview if requested by the official involved. The applicant's education and experience will be subject to verification by the ASE or the Area Education Programs Administrator (AEPA). Employees who falsify experience and employment history may be subject to disciplinary action or discharge from the position to which he/she is appointed.

(1) School boards may waive formal education and State certification requirements for tribal members who are hired to teach tribal culture and language.

(2) Tribal members appointed under this waiver may not have their basic pay rate set higher than the rate paid to qualified educators in teaching positions at that school.

(c) *Identification of qualified individuals.* The Director shall require each ASE, AEPA, and other appropriate local officials in the education program organization to maintain lists of qualified and interviewed applicants for each of the kinds of established positions. Applications on file shall be purged annually. Applicants whose qualifications are established and who indicated an interest in working in specified locations will be included on those local applicant lists. The Director shall maintain a national list of qualified applicants for each of the kinds of positions established. Applicants whose qualifications are established and who either do not indicate an interest in a specific location or indicate and interest in working any location will be entered on the national list. The national list is a secondary source of applicants.

(d) *Special recruitment and training for Indian educators.* The Director reviews annually the Bureau's "Recruitment of Indian Educators Program" and updates as necessary. The Director's training program describes opportunities for advancement and defines steps required for promotion from within the Bureau and includes a listing of opportunities for acquiring work experience prior to an actual work assignment.

§ 38.6 Basic compensation for educators and education positions.

(a) *Schedule of basic compensation rates.* The Director shall establish a schedule for each pay level specified in 62 Bureau of Indian Affairs Manual (BIAM). The schedule will be revised at the same time as and be consistent with rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions.

(b) *Range of pay rates for positions within pay levels.* The range of basic compensation rates for positions assigned to each pay level will be consistent with the General Schedule rates that would otherwise be applicable if the position were classified under Chapter 51 of Title 5 U.S.C. The maximum pay shall not exceed step 10 of the comparable General Schedule position by more than ten percent.

(c) *Adjusting employee basic compensation rates.* (1) Adjustments in an employee's basic compensation made in connection with each contract renewal will be based on the following:

(i) Contract renewal incentive—one pay increment for each renewal, not to exceed four increments, unless the educator is covered by a negotiated labor union agreement.

(ii) Performance—employees whose performance is rated "above sastisfactory," one pay increment; employees whose performance is rated "outstanding," two pay increments.

(2) Pay increments based on education may be awarded as outlined in 62 BIAM.

(d) *Special additions to basic compensation.* The Director is authorized to establish the following special additions to rates of basic compensation:

(1) The Director may authorize payment of a staffing differential not exceeding 25 per centum of the rate of basic compensation based on a formally-documented request by an ASE or AEPA. Such a staffing differential shall only be authorized in writing when the Director determines that:

(i) It is warranted by the geographic isolation of the work site or other unusually difficult environmental working or living conditions and/or

(ii) It is necessary as a recruitment or retention incentive. This staffing differential is to be computed on the basic schedule rate before any other additions are computed.

(2) Special rates may be established for recruitment and retention applicable only to a specific position or to specific types of position in specific locations based on a formally documented request by an ASE or AEPA and submitted to the Director for approval.

(e) *Payment of compensation to educators.* This section applies to those individuals employed under the provisions of section 1131(m) of Pub. L. 95–561 or Title 5, United States Code.

(1) *Pay periods.* Educators shall be paid on the basis of biweekly pay period during the term of the contract. Chapter 55 of Title 5 U.S.C. applies to the administration of pay for educators, except that section 1131(m) of Pub. L. 95–561 provides that 5 U.S.C. 5533 does not apply with respect to the receipt of pay by educators during summer recess under certain circumstances.

(2) *Pay for contract educators.* When an educator is appointed, payment under the contract is to begin as of the effective date of the contract. If an educator resigns or is discharged before the expiration of the term of the contract, pay ceases as of the date of resignation or discharge.

(3) *Prorating of pay.* Up to 30 days prior to the beginning of the academic school term, each educator must elect whether to have the annual contractual rate or basic pay prorated over the contractual academic school term, or to have the basic pay prorated over a 12 month period.

(i) Each educator may change such election once during the academic school term, provided notice is given two weeks prior to the end of the fifth month after the beginning of the academic school term.

(ii) An educator who elects a 12 month basis of prorate pay may further elect to be paid on one lump sum at the end of the academic school term for the then remaining amount of rate of basic pay otherwise due, provided notice is given four weeks prior to the end of the academic school term.

(iii) No educator shall suffer a loss of pay or benefits because of elections made under this section.

(4) *Stipends for extracurricular activities.* An employee, if assigned to sponsor an approved extracurricular activity, may elect annually at the beginning of the contract to be paid a stipend in lieu of overtime premium pay or compensatory time when the employee performs additional activities to provide services to students or otherwise support the school's academic and social programs.

(i) The Director is authorized to establish a schedule of stipends for each Bureau Area, taking into consideration types of activities to be compensated

and payments provided by public school districts in or near the area.

(ii) The stipend shall be a supplement to the employee's base pay and is not a part of salary for retirement computation purposes.

(iii) The employee may elect annually at the beginning of the contract to be paid the stipend either in equal payments over the period of the extracurricular activity or in equal payments paid each pay period the employee is in pay status.

§ 38.7 Appointment of educators.

(a) *Local school employees.* Local Bureau school employees shall be appointed only by the school supervisor. Before the local school employee is employed, the school board shall be consulted. An individual's appointment may be finalized upon receipt of a formal written determination certified by the local school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The local school board shall use the same written procedure to disapprove an appointment. The school supervisor may appeal to the ASE, or, where appropriate, to the AEPA, any determination by the local school board concerning an individual's appointment. A written statement of appeal describing the action and the reasons the supervisor believes such action should be overturned must be filed within 10 days of receipt of the action from the local school board. A copy of such statement shall be submitted to the school board and the board shall be afforded an opportunity to respond, not to exceed 10 calendar days, in writing, to the appeal. After reviewing such written appeal and response, the ASE or AEPA may, for cause, overturn the action of the local school board. The ASE or AEPA must transmit the determination of the appeal (in the form of a written opinion) to the board and to the supervisor identifying the reasons for overturning the action 10 calendar days. Failure to act within the 10 calendar day period shall have the effect of approving the local school board's determination.

(b) *School supervisors.* School supervisors may be appointed only by the ASE, except the AEPA shall appoint school supervisors for off-reservation boarding schools and those few other schools supervised by the AEPA. The school board shall be consulted before the school supervisor is employed. The appointment may be finalized upon receipt of a formal written determination certified by the school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The school board shall use the same procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE or AEPA, as appropriate, may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the local school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such appeal. The Director may reverse the determination for cause set out in writing to the school board. Within 20 calendar days of the school board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE or AEPA identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period shall have the effect of approving the school board's determination.

(c) *Agency office education program employees.* Appointments to Agency office education positions may be made only by the ASE. The Agency school board shall be consulted before the agency education employee is employed, and the appointment may be finalized upon receipt of a formal, written determination certified by the Agency school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The Agency school board shall use the same written procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the Agency school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such appeal. After reviewing the written appeal and response, the Director may, for cause, overturn the determination of the Agency school board. Within 20 days of the board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period shall have the effect of approving the school board's determination.

(d) *Employment contracts.* The Bureau shall issue employment contracts each year for individuals employed in contract education positions at the Agency or school levels.

(e) *Absence of local school boards.* Where a local school board has not been established in accordance with section 1139(7) Pub. L. 95–561 with respect to a Bureau school, or where a school board is not operational, and the local school board is required to be given a notice or required to be consulted by statute or these regulations, the official involved shall notify or consult with the Agency school board serving the tribe(s) to which the parents of the Indian children attending that school belong, or, in that absence, the tribal organization(s) of the tribe(s) involved.

(f) *Provisional contracts.* Provisional certification or other limited certificates from the state is not considered full certification and only a provisional contract may be issued. There may be circumstances when no individual who has met the full certification or experience requirements is available for a professional position or when a status quo employee who does not meet full certification or experience requirements desires to convert the contract. When this situation exists, a provisional contract may be issued in accordance with the following:

(1) The contract will be made only:

(i) After it is determined that an individual already meeting certification or experience requirements is not available; or

(ii) For conversion of a status quo employee who does not yet meet all established position requirements.

(2) Consultation with the appropriate school board is required prior to the contract.

(3) The contract may be of 12 month or school term duration.

(4) The employee will be required to make satisfactory progress toward meeting full qualification requirements.

(5) If the employee fails to meet the requirements established under § 38.7(f)(4), the contract will be terminated. Such termination cannot be grieved or appealed.

(g) *Conditional appointment.* As provided in section 1131(d)(4), Pub. L. 95–561, if an individual who has applied at both the national and local levels is appointed from a local list of applicants, the appointment shall be conditional for 90 days. During that period, the individual's application and background shall be examined to determine if there is a more qualified individual for the position. Removal during this period is not subject to discharge, hearing or grievance procedures.

(h) *Short term contracts.* (1) There may be circumstances where immediate action is necessary and it is impossible to consult with the local school board. When this situation exists short term contracts may be made by the school supervisor in accordance with the following:

(i) The length of the contract will not exceed 60 days, or the next regularly scheduled school board meeting, whichever comes first.

(ii) If the board meets and does not take action on the individual in question, the short term contract may be extended for the duration of the school year.

(iii) It shall be the responsibility of the school supervisor to fully inform the local school board of all such short term contracts. Failure to do so may be cited as reason to discharge the school supervisor if so requested by the board.

(2) The local school board may authorize the school supervisor to make an emergency short term contract to classroom, dormitory and other positions directly related to the health and safety of students. When this situation exists short term contracts may be made in accordance with the following:

(i) If local and agency lists of qualified applicants are exhausted, short term contracts may be made without regard to qualifications for the position;

(ii) The pay level will be based on the qualifications of the individual employed rather than the requirements of the position;

(iii) The short term contract may not exceed the school term and may not be renewed or extended:

(iv) Every 60 days the school supervisor will determine if qualified individuals have been placed on the local or agency lists. If a qualified individual on the list accepts employment, the school supervisor must terminate the emergency appointment at the time the qualified individual is appointed.

(i) *Waiver of Indian preference.* As provided in section 1131(f)(1) of Pub. L. 95–561. "Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created)." Waivers shall apply only to Federal employees. When a waiver is granted, it shall apply only to that particular position and as long as the employee remains in that position.

(j) *Prohibited reappointment.* An educator who voluntarily terminates employment before the end of the school term may not be appointed to another Bureau education position before the beginning of the following school term. An educator will not be deemed to have voluntarily terminated employment if transferred elsewhere with the consent of the local school or Agency boards.

(k) *Contract renewals.* The appropriate school board shall be notified in writing by the school supervisor and/or ASE or AEPA not less than 90 days before the end of the school term whether or not an individual's contract is recommended for renewal.

(1) If the school board disagrees with the school supervisor's or ASE's recommendations, the board will submit a formal, written certification of its determinations to the school supervisor or ASE within 25 days. If the boards determinations are not received within the 25 days, the school supervisor or ASE shall issue the required 60 day notification of renewal or nonrenewal to the individual under § 38.8.

(2) When the school board submits its determination within the 25 days and determines that a contract will be renewed, the appropriate official shall issue the required renewal notice. If the determination is that the contract will not be renewed, the procedures specified in § 38.8 shall apply.

§ 38.8 Nonrenewal of contract.

Where the determination is made that an employee's contract shall not be renewed for the following year the following procedure will apply:

(a) The employee will be given a written notice of the action and the reasons therefor not less than 60 days before the end of the school term.

(b) The employee will be given 10 calendar days to request an informal hearing before the appropriate official or body. Upon request, the employee may be given official time, not to exceed eight hours, to prepare a written response to the reason(s).

(c) If so requested, an informal hearing shall be held within 30 calendar days of the receipt of the request.

(d) The appropriate official or body will render a written determination within seven calendar days after the informal hearing.

(e) The employee has a right to request an administrative review by the ASE of the determination within 10 calendar days of that determination. The ASE then has 20 calendar days to render a final decision. Where the employee is the supervisor of the school or an agency education employee, any appeal of the ASE would be addressed to the Director for a decision. If the Director or ASE's decision overturns the appropriate official or bodies determination, the appropriate official or body will be notified of the reasons in writing. Failure by the Director or ASE to act within the 20 days will sustain the determination. This completes the administrative appeal process.

(f) Failure of any of the parties to meet the requirements of the above procedures will serve to negate the particular action sought by the negligent party.

(g) The above procedures only apply to employees who have completed 36 months of continuous service under consecutive contract appointments and satisfactory performance in the same or comparable education position.

(h) For those employees with less than 36 months of consecutive contract appointment, nonrenewal of a contract will be considered a continuation of the examining process. This action cannot be appealed.

(i) Independently of the procedures outlined in this section, the school supervisor, or the Agency Superintendent for Education for applicable positions, shall be required to submit to the Agency Superintendent for Education or appropriate higher authority all nonrenewal actions. Within 60 days, the Agency Superintendent for Education, shall review the nonrenewal actions and may overturn the determination of nonrenewal. In the event that the Agency Superintendent

for Education makes a decision to overturn the school board determination, the ASE shall notify the school board in writing of his/her reasons for doing so.

(j) No more than the substantial standard of evidence shall be required to sustain the nonrenewal.

(k) A procedural error shall not be grounds for overturning a determination of nonrenewal unless the employee shows harmful error in the application of the agency's procedures in arriving at such decision. For purpose of this section, "harmful error" means error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

(l) Nonrenewal of a contract is not discharge and will not follow the discharge procedures. The individual contract shall be subject to valid provisions of any collective bargaining agreement only during the term of the contract.

§ 38.9 Discharge of educators.

(a) *Discharge for cause.* Educators covered under the provision of this section are excluded from coverage under 5 U.S.C. 7511 and 4303. In order to provide due process for educators, the Director shall publish in 62 BIAM representative conditions that could result in the discharge of educators for cause and procedures to be followed in discharge cases.

(b) *Discharge for inadequate performance.* Action to remove educators for inadequate performance will be taken for failure to meet performance standards established under 5 U.S.C. 4302. Performance standards for all educators will include, among others, lack of student achievement. Willful failure to exercise properly assigned supervisory responsibilities by supervisors shall also be cause for discharge.

(c) *Other discharge.* The Director shall publish in 62 BIAM a description of the budgetary and program conditions that may result in the discharge of educators for other than cause during the school term. The individual's personnel record will clearly reflect that the action taken is based upon budgetary or program restraints and is not a reflection on the employee's performance.

(d) *Procedures for discharge for cause.* The Director shall publish in 62 BIAM the procedural steps to be followed by school supervisors and ASE's in discharge for cause cases. These procedures shall provide (among other things) for the following:

(1) The educator to be discharged shall receive a written notice of the proposal, specifying the causes or complaints upon which the proposal is based, not less than 30 calendar days before the discharge. However, this shall not prohibit the exclusion of the individual from the education facility in cases where exclusion is required for the safety of the students or the orderly operation of the facility.

(2) A reasonable time, but not less than 10 calendar days, will be allotted for the individual to make written and/or oral responses to the charge.

(3) An opportunity will be afforded the individual to review the material relied upon to support the charge.

(4) Official time, not to exceed eight hours, will be provided to the individual to prepare a response to the charge.

(5) The educator may elect to have a representative and shall furnish the identity of any representative to the ASE. The ASE may disallow, as an employee representative, any individual whose activities as a representative would cause a conflict of interest or position, or an employee whose release from his or her official position would give rise to unreasonable costs to the Government, or when priority work assignment precludes his or her release from official duties. The terms of any applicable collective bargaining agreement and 5 U.S.C. 7114(a)(5) shall govern representation of employees in an exclusive bargaining unit.

(6) The individual has a right to a final decision made by the appropriate level of supervision.

(7) The individual has a right to appeal the final decision and have the merits of the case reviewed by a Departmental official not previously involved in the case. This right includes entitlement to a hearing upon request under procedures in accordance with the requirements of due process under section 1131(e)(1)(B) of Pub. L. 95–561.

(e) *School board action.* (1) The appropriate school board shall be notified as soon as possible, but in no case later than 10 calendar days from the date of issue of the notice of intent to discharge.

(2) The appropriate school board, under any uniform procedure as it may adopt, may issue a formal written certification to the school supervisor, ASE, or AEPA either approving or disapproving the discharge before the expiration of the notice period and before actual discharge. Failure to respond before the expiration of the notice period will have the effect of approving the discharge.

(3) The school supervisor initiating a discharge action may appeal the board's determination to the ASE or AEPA within 10 calendar days of receipt of the board's notice. The ASE or AEPA initiating a discharge may appeal the board's determination to the Director within 10 calendar days of receipt of the board's notice. Within 20 calendar days following the receipt of an appeal, the reviewing official may, for good cause, reverse the school board's determination by a notice in writing to the board. Failure to act within 20 calendar days shall have the effect of approving the board's determination.

(f) *School board recommendations for discharge.* School boards may recommend in writing to school supervisors, ASE's, AEPA's, and the Director that individuals in the education program be discharged. These written recommendations may follow any procedures formally established internally by the school board or tribal government. However, the written recommendations must contain specific causes or complaints that may be verified or established by investigation of factual situations. The official receiving a board recommendation for discharge of an individual shall acknowledge the recommendation in writing within 10 calendar days of receipt and proceed with a fact finding investigation. The official who finally disposes of the recommendation shall notify the school board of the disposition in writing within 60 calendar days of initiation of the fact finding investigation.

§ 38.10 Conditions of employment of educators.

(a) *Supervision not delegated to school boards.* School boards may not direct, control, or interrupt the day-to-day activities of BIA employees carrying out Bureau-operated education progams.

(b) *Employee handbook.* Employee handbook and recruiting guides shall be developed by each local school or agency to provide specific information regarding:

(1) The working and hiring conditions for various tribal jurisdictions and Bureau locations;

(2) The need for all education personnel to adapt to local situations; and

(3) The requirement of all education personnel to comply with and support duly adopted school board policies, including those relating to tribal culture or language.

(c) *Contract renewal notification.* Employees will be notified 60 calendar days before the end of the school term whether or not their contracts are to be renewed. If an individual's contract is to be renewed, the individual must agree in writing to serve for the next school term. This agreement must be received within 14 calendar days of the date of the notice in order to complete the contract renewal. If this agreement is not received by the fourteenth day, the employee has voluntarily forfeited his or her right to continuing employment. If an individual agrees to serve for the next school term and fails to report for duty at the beginning of the next school term, the contract will be terminated and the individual's future appointment will be subject to the restriction in § 38.7(j) of this part.

(d) *Dual compensation.* An employee accepting a renewal of a school term contract may be appointed to another federal position during the school recess period without regard to the dual compensation regulations in 5 U.S.C. 5533.

(e) *Discrimination complaints.* Equal Employment Opportunity (EEO) procedures established under 29 CFR 1613 are applicable to contract employees under this part. It is the policy of the BIA that all employees and applicants for employment shall be treated equally when considered for employment or benefits of employment, regardless of race, color, sex, religion, national origin, age, or mental or physical health (handicap), within the parameters of Indian preference.

(f) *Grievance procedures.* The Director shall publish in 62 BIAM procedures for the rapid and equitable resolution of grievances.

(g) *Performance evaluation.* The minimum number of times a supervisor shall meet with an employee to discuss performance and suggest improvements shall be once every three months for the educator's first year at a school or Agency, and twice annually thereafter during the school term.

§ 38.11 Length of the regular school term.

The length of the regular school term shall be at least 180 student instructional days, unless the Bureau-operated school has entered into a cooperative agreement with a public school district. The cooperative agreement shall establish the minimum student instructional days.

§ 38.12 Leave system for education personnel.

(a) *Full-time school term employees.* Employees on a full-time school term contract are authorized the following types of leave:

(1) *Personal leave.* A school-term employee will receive 28 hours of personal leave to be used for personal reasons and 12 hours of emergency leave. This leave only accrues provided the length of the contract exceeds 24 weeks.

(i) The school-term employee will request the use of this leave in advance when it is for personal use or personal business (e.g., going to bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known by the employee and before leave is taken.

(ii) Final approval rests with the supervisor. This leave shall be taken only during the school term. No compensation for or carryover of unused leave is authorized.

(2) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations.

(i) Sick leave shall accrue at the rate of four hours each biweekly pay period in pay status during the term of the contract; and no precredit or advance of sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(3) *School vacation time.* School term employees may receive up to 136 hours of school vacation time for use when school is not in session. Approval for the use of this time will be administratively determined by the school supervisor, ASE or AEPA, and this vacation time may not be scheduled before the first day of student instruction or after the last day of student instruction. All school vacation time for school term employees will be approved at the convenience of the program and not as a right of the employee. It cannot be paid for or carried over if the employee is required to work during the school vacation time or if the program will not permit school term employees to take such vacation time.

(b) Leave for full-time year-long employees. Employees who are on a full-time, year-long contract are authorized the following types of leave:

(1) *Vacation Leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—120 hours; years 3–5 of employment—160 hours; 6 or more years—200 hours. The supervisor will determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment, provided the length of the contract exceeds 24 weeks. An employee may carry into succeeding years up to 200 hours of vacation leave. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave accumulation and use is authorized on the same basis as for school term employees under § 38.12(a)(2) of this part.

(c) Leave for part-time year-long employees. Employees who are on part-time, year-long contracts exceeding 20 hours per week are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—60 hours; years 3–5 of employment—80 hours; 6 or more years—100 hours. The supervisor shall determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment provided the length of the contract exceeds 24 weeks and may not be accumulated in excess of 100 hours from year to year. An employee may carry over up to 100 hours from one contract year to the next. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave is accumulated on the basis of three hours each bi-weekly pay period in pay status; no precredit or advance of sick leave is authorized. Accumulated sick at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(d) Leave for school term employees on a part-time work schedule in excess of 20 hours per week. (1) Employees on a part-time work schedule in excess of 20 hours per week may receive a maximum of 102 hours of school vacation time; 18 hours of personal leave; and 63 hours of sick leave accrued at three hours per pay period for the first 21 pay periods of their contracts. Personal leave only accrues provided the length of the contract exceeds 24 weeks.

(2) The part-time employee will request the use of this leave in writing in advance when it is for personal use or personal business (e.g., going to bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known by the employee and before leave is taken.

(3) Final approval rests with the supervisor. This leave shall be taken only during the school year. No compensation for or carryover of unused leave is authorized.

(4) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations.

(i) Sick leave shall accrue at the rate of three hours each biweekly pay period in pay status for the first 21 pay periods of their contract; no precredit or advance for sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(5) School vacation time. Part-time employees may receive up to 102 hours of school vacation time for use when school is not in session. Approval for the use of this time will be administratively determined by the school supervisor, ASE or AEPA, and this time may not be scheduled before the start of school or after the end of school.

(i) All school vacation time for part-time employees will be approved at the convenience of the program and not as a right of the employee.

(ii) Vacation time cannot be paid for or carried over for a part-time employee if the employee is required to work during the school vacation time or if the program will not permit part-time employees to take such vacation time.

(e) Accountable absences for all contract employees. The following are considered accountable absences:

(1) *Approved absence.* If prescheduled and approved by the school supervisor, ASE or AEPA, as appropriate, an employee may be on leave without pay.

(2) *Absence without leave.* Any absence that is not prescheduled or approved in advance or excused by the supervisor is considered absence without leave.

(3) *Court and military leave.* Employees are entitled to paid absence for jury or witness service and military duty as a member of the National Guard or Reserve under the same terms or conditions as outlined in Sections 6322 and 6323 of Title 5 U.S.C., and corresponding provisions of the Federal Personnel Manual, when the absence occurs during the regular contract period. Employees may be requested to schedule their military leave at times other than when school is in session.

(4) *Administrative leave.* Administrative leave is an excused absence from duty administratively authorized without loss of pay or without charge to leave. This leave is not a substitute for other paid or unpaid leave categories. Administrative leave usually is authorized on an individual basis except when a school is closed or a group of employees is excused from work for a particular purpose. The school supervisor, ASE or AEPA will grant administrative leave; a school closing must be approved by the ASE or AEPA.

(f) Educators serving with contracts with work weeks of 20 hours a week or less are not eligible for any type of paid leave.

(g) For school term educators, no paid leave is earned nor may accumulated leave be used during any period of employment with the Bureau between school terms.

(h) Employees issued contracts for intermittent work are not eligible for any type of paid leave.

(i) Leave transferred in. Annual leave credited to an employee's accrued leave balance immediately before conversion to a contract education position or appointment under this part will be carried over and made available to the employee. Sick leave credited to an employee's accrued sick leave balance immediately before conversion to a contract education position or appointment under this part shall be credited to the employee's sick leave account under the system in § 38.12(a)(2) and (b)(2).

§ 38.13 Status quo employees in education positions.

(a) *Status quo employees.* Individuals who were Bureau employees on October 31, 1979, with an appointment in either the competitive or excepted service without time limitation, and who are serving in an education position, shall be continued in their positions under the terms and conditions of that appointment with no change in their status or positions. Such employees are entitled to receive any changes in compensation attached to the position. Although such employees occupy "education positions" as defined in this part, the terms and conditions of their appointment, status, and entitlements are determined by competitive service regulations and procedures. Under applicable procedures, these employees are eligible for consideration for movement to other positions that are defined as "contract education" positions. Such movement shall change the terms and conditions of their appointment to the terms and conditions of employment established under this part.

(b) *Conversion of status quo employees to contract positions.* Status quo employees may request in writing to the school supervisor, ASE or AEPA, as applicable, that their position be converted to contract. The appropriate school board will be consulted and a determination made by such school board whether such individual should be converted to a contract employee.

(1) Written determination by the school board should be received within a reasonable period, but not to exceed 30 days from receipt of the request. Failure of the school board to act within this period shall have the effect of disapproving the proposed conversion.

(2) With school board approval, an involuntary change in position shall not affect the current status of status quo education employees.

§ 38.14 Voluntary services.

(a) *Scope.* An ASE or AEPA may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools from the private sector, including individuals, groups, or students. Voluntary service shall be for all non-hazardous activities where public services, special projects, or school operations are improved and enhanced. Volunteer service is limited to personal services received without compensation (salary or wages) by the Bureau from individuals, groups, and students earning credit (i.e., student teaching). Nothing in this section shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees.

(b) *Volunteer service agreement.* An agreement is a written document, jointly completed by the volunteer and the Bureau school supervisor, that outlines the responsibilities of each. In the case of students receiving credit for their work (i.e., student teaching) from an education institution, the agreement will be jointly completed by the student, a representative of the school, and the Bureau school supervisor. In the case of volunteer groups, the agreement shall be signed by an official of the volunteering organization and a list of signatures and emergency telephone numbers of all participants shall be attached.

(c) *Eligibility.* Although no minimum age requirement exists for volunteers, schools shall comply with appropriate Federal and State laws and standards on using the services of minors. All volunteers under the age of 18 must obtain written permission from their parents or guardians to perform volunteer activities.

(d) *Status.* Volunteers participating under this part are not considered Federal employees for any purpose other than:

(1) Title 5 U.S.C. Chapter 81, dealing with compensation for injuries sustained during the performance of work assignments.

(2) Federal tort claims provisions published in 28 U.S.C. Chapter 171.

(3) Department of the Interior Regulations Governing Responsibilities and Conduct.

(e) *Travel and other expenses.* The decision to reimburse travel and other incidental expenses, as well as the amount of reimbursement, shall be made by the school supervisor, ASE, AEPA, and the respective school board. Payment is made in the same manner as for regular employees. Payment of travel and per diem expenses to a volunteer on a particular assignment must be supported by a specific travel authorization and cannot exceed the cost of employing a temporary employee of comparable qualification at the school for which a travel authorization is considered.

(f) *Annual report.* School supervisors shall submit reports on volunteers to the ASE or AEPA by October 31 of each year for the preceding year.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 87-20142 Filed 9-1-87; 8:45 am]

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Federal Register

Wednesday
September 2, 1987

Part VII

Department of Commerce

Presidential Board of Advisors on Private Sector Initiatives; Meeting Notice

Part VII

Department of Commerce

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on September 14, 1987. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place:

Presidential Board of Advisors on Private Sector Initiatives

Monday, September 14, 1987, 2:00 p.m.–3:00 p.m., at the U.S. Chamber of Commerce, 1615 H Street NW., Washington, DC 20062, Room to be Posted.

Committee Meetings

Monday, September 14, 1987, 10:00 a.m.–11:30 a.m., at the National Paint and Coating Association, 1500 Rhode Island Avenue NW., Washington, DC 20005, Rooms to be Posted.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce (202/377–3942), Main Commerce Building, Washington, DC 20230.

Date: August 31, 1987.

Robert H. Brumley,

Deputy General Counsel.

[FR Doc. 87–20387 Filed 9–1–87; 11:05 am]

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federal register

Wednesday
September 2, 1987

Part VIII

The President

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act—Memorandum of August 27, 1987

Public Papers

Federal Register
Vol. 52, No. 170
Wednesday, September 2, 1987

Presidential Documents

Title 3—

The President

Memorandum of August 27, 1987

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State, the Secretary of the Treasury

Under Section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on August 20, 1986 (51 F.R. 30201), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1987.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by Section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1988, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

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

Ronald Reagan

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