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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

HOUSTON, TX

WHEN: March 10; at 9 am.
WHERE: Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
RESERVATIONS: Call the Houston Federal Information Center on the following local numbers:

Houston **713–229–2552**
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ATLANTA, GA

WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404–331–2170.

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Weighing Provisions and Procedures

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is issuing this final rule which makes changes to the regulations for Weighing Provisions and Procedures under the United States Grain Standards Act (Act), as amended. The Service reviewed these regulations under the requirements for the periodic review of existing regulations and is reissuing them with amendments. This action amends the regulations for Weighing Provisions and Procedures by condensing language and reorganizing the text. In addition, this final rule establishes new provisions permitting the application of additives to grain for the purpose of controlling fungi, suppressing dust, and identifying grain.

EFFECTIVE DATE: April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for major regulation established in the Order.

Regulatory Flexibility Act Certification

Mr. W. Kirk Miller, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and Section 3504(h) of the Act, the previously approved information collection and recordkeeping requirements are included in OMB approval number 0580–0012.

Final Action

FGIS reviewed the Weighing Provisions and Procedures (7 CFR Part 800.95–800.103) to determine whether there was a continuing need for the regulations. The objectives of the review were to ensure that the regulations were serving their intended purposes, that the language was clear, and that the regulations were consistent with FGIS authority. FGIS has determined that these regulations are serving their intended purpose, are consistent with FGIS authority, and should remain in effect. In the November 26, 1984, **Federal Register** (49 FR 46414), FGIS proposed the reissuance of the regulations with revisions. Comments were to be submitted by January 25, 1985.

Based on the comments received and all other information available, this final rule amends:

1. Section 800.0, *Meaning of terms*, by including a definition for "additives" as § 800.0(b)(2), and redesignating the remaining successive paragraphs through § 800.0(b)(105).

2. Section 800.88, *Loss of identity*, by incorporating provisions for applying additives for the purpose of controlling insects and fungi, suppressing dust, or identifying grain. The proposed rule noted that the changes to § 800.103(c)(2) as to applying additives would affect § 800.88 which deals with the effect of applications of additives from the official inspection standpoint. Conforming changes, which were to have been established in separate rulemaking, were incorporated in this final rule.

3. Section 800.95, *Methods and order of performing weighing services*, by:

(a) Clarifying the procedures for performing weighing services by specifying who may perform approved weighing services.

(b) Removing the provisions for weighing bulk grain, sacked grain, and conducting reviews of weighing because these provisions duplicate provisions already covered in §§ 800.46, 800.129, and FGIS instructions.

(c) Combining §§ 800.96(b) and 800.95(c) and redesignating as § 800.95(b) to simplify the regulation.

4. Section 800.96, *Weighing procedures*, by:

(a) Removing the general Class X and Class Y weighing provisions in § 800.96(a) because these provisions duplicate provisions already covered in § 800.95.

(b) Incorporating provisions for weighing inbound and outbound grain into §§ 800.96(a) and 800.96(b) that are presently covered by §§ 800.96(b)(4)(ii) and 800.103(d)(1).

(c) Reorganizing and clarifying the remaining paragraphs contained in this section, presently designated as §§ 800.96(b), 800.96(c), and 800.96(d), concerning spills, commingled carriers, and losses of identity; and redesignating as §§ 800.96(c)(1), 800.96(c)(4), and 800.96(c)(5).

(d) Incorporating provisions for dust which are presently covered by § 800.103(d)(2)(ii), clarifying the provisions, and redesignating as § 800.96(c)(3).

(e) Incorporating and revising provisions for applying additives presently covered by § 800.103(c) and redesignating as § 800.96(c)(2) for the purpose of controlling insects and fungi, suppressing dust, or identifying grain.

5. Section 800.97, *Weighing of bulk grain in containers, land carriers, and barges in single lots*, by:

(a) Revising the section title.

(b) Revising § 800.97(a) to include weighing grain loaded or unloaded from any carrier and simplifying the language to promote greater understanding of the regulation.

(c) Condensing and combining the procedures for weighing grain currently

contained in §§ 800.97(b), 800.97(d), 800.97(e)(1), and 800.99(c), 800.99(d)(3) and redesignating as §§ 800.97(b)(1), 800.97(b)(2), and 800.97(b)(3).

(d) Clarifying § 800.97(c), revising the heading, and redesignating as § 800.97(c)(1)

(e) Simplifying § 800.97(e)(2) and redesignating as § 800.97(c)(2).

(f) Removing § 800.97(f) because this informaton is not necessary in the regulatory text and is already covered in FGIS instructions.

(g) Incorporating and clarifying the provisions for certificating shiplot grain that are now in §§ 800.99(d)(1), 800.99(d)(2), and 800.99(d)(4).

6. Section 800.98, *Weighing of grain in combined lots,* by:

(a) Revising the section title.

(b) Simplifying the language of § 800.98(a) to promote greater understanding of the regulation.

(c) Removing the application procedures for weighing during loading or unloading and recertification in §§ 800.98(b)(1) and 800.98(b)(2) because they duplicate provisions already covered in § 800.116 and in the FGIS Weighing Handbook.

(d) Reorganizing, clarifying, and redesignating the specific weighing and certification procedures as §§ 800.98(b) and 800.98(c) to promote a better understanding of the regulations.

(e) Removing the OMB clearance statement of § 800.98 because the information collection requirement is now contained in § 800.116.

7. Section 800.99, *Weighing of shiplot grain in single lots,* by:

(a) Revising the section title.

(b) Removing the weighing and certification procedures for shiplot grain presently contained in §§ 800.99(a), 800.99(c), and 800.99(d) and combining these procedures with those procedures established for other carriers in § 800.97 to simplify the regulations.

(c) Removing the application procedures for shiplot grain in § 800.99(b) because they duplicate those already covered by § 800.116.

(d) Incorporating the checkweighing provisions by level of service presently contained in § 800.101 and redesignating as § 800.99(a).

(e) Incorporating, clarifying, and condensing the official weight sample provisions for checkweighing sacked grain, with the exception of § 800.100(a) which is duplicative, presently contained in §§ 800.100(b), 800.100(c), 800.100(d), 800.100(e), and 800.100(f) and redesignating as § 800.99(b), 800.99(c), 800.99(d), 800.99(e), and 800.99(f).

(f) Incorporating the official checkweighing sampling provisions by kind of movement presently contained in §§ 800.102(a), 800.102(b), 800.102(c), and 800.102(d) and redesignating as §§ 800.99(g)(1), 800.99(g)(2), 800.99(g)(3), and 800.99(g)(4).

(g) Removing the OMB clearance statement from § 800.99 because the information collection requirement is now contained in § 800.116.

8. Section 800.100, *Official weight sample provisions for checkweighing sacked grain,* by removing the requirements contained in §§ 800.100(a), 800.100(b), 800.100(c), 800.100(d), 800.100(e), and 800.100(f), and with the exception of § 800.100(a), including the requirements in §§ 800.99(b), 800.99(c), 800.99(d), 800.99(e), and 800.99(f).

9. Section 800.101, *Checkweighing sampling provisions by level of service,* by removing and including in § 800.99(a).

10. Section 800.102, *Official checkweighing sample provisions by kind of movement,* by removing and including in § 800.99(g).

11. Section 800.103, *Restricted weighing activities,* by:

(a) Removing the provisions for misusing and modifying equipment contained in §§ 800.103(a) and 800.103(b) because these sections duplicate provisions already covered in 7 CFR Part 802.

(b) Removing the provisions for adding insecticide contained in § 800.103(c) and including in § 800.96(c)(2).

(c) Removing the provisions for processing weighed grain contained in 800.103(d) and including in §§ 800.96(a), 800.96(b), 800.96(c)(2), and 800.96(c)(3).

Fifteen parties commented on the proposed changes to the regulations. These commenters included trade associations, end-users of grain, grain companies, exporters, Government agencies at the State and Federal level, and members of Congress. Three of the parties were in favor of the proposed regulations without any reservations. The remaining commenters were in favor of the proposed condensation of language and reorganization of text and had a variety of comments on the proposed provisions for applying additives to grain for controlling insects, suppressing dust, and identifying grain.

Two of the 12 parties that commented on the proposed rule were opposed to the proposed additive provisions, as related to dust-suppressing agents, asserting that: (1) grain that has been repeatedly sprayed with additives as it moves through the marketing system may eventually deteriorate; (2) edible oils applied to barley may not be easily removed prior to malting and edible oils may inhibit the malting process; and (3) water may be added just to increase the weight of the grain.

The application of additives can reduce particulate dust and, thereby, eliminate potentially explosive concentrations of dust and dust-related health hazards. Concomitantly, additives may lower test weight, change kernel appearance, and foster off-odors. The current grain standards would reflect, through a lower quality grade, grain influenced in such a manner. Research conducted by the Department (Lai, F.S., Martin, B.S., and Pomeranz, Y. 1985. Oils and lecithin as dust suppression additives in commercially handled corn, soybeans, and wheat; efficacy of treatments and effects on grain quality) found that additives can effectively and economically suppress dust. The Service recognizes the commentors' concerns that additive-treated grain may not be desirable for all end-uses. Therefore, to permit the industry to receive the benefits of dust suppressants while ensuring that end-users are made aware that additives have been applied, the FGIS instructions implementing this regulation will require that the following statement be shown on official certificates issued by the Service or agencies when additives are applied during loading or unloading: "Applicant states (*type of additive*) applied to grain (*before or after*) (*sampling or weighing*) to (*purpose of the application*)."

The remaining 10 commenters were in favor of the proposed additive policy, but offered recommendations or expressed some concerns about certain parts of the regulations. Three parties noted the potential for improper addition of additives for the purpose of adding weight to the grain. Adding any substance for purposes of increasing weight, is a violation of section 342(b) of the Food, Drug, and Cosmetic Act (7 U.S.C. 342(b)). All incidents or suspected incidents of unapproved additive usage or improper additive application will be reported to the appropriate Federal, State, or local authorities for action.

Five commenters recommended that edible oils such as soybean oil, soybean lecithin, and vegetable oil, which have been deemed Generally Regarded as Safe (GRAS) by FDA be allowed to be applied to grain. FGIS concurs that all additives deemed GRAS or otherwise approved by FDA may be applied to grain and a new definition for additives has been added to the regulations to accommodate this view.

Two commenters objected to the showing of information on the official certificate when an additive is applied for the purpose of identification (dye) or

insect control. Since additives may affect the manner in which the grain is used or stored, the Service considers it in the best interest of the marketing system that such information be available in all cases. One commenter requested that the weight of the additive be deducted from the weight of inbound grain shipments. When additives are applied to grain which moves through the handling system, any measurable weight of the additive will continue to be reflected in the total weight. Therefore, the weight of the additive need not be deducted from the weight of the inbound shipment.

One commenter suggested that the language in the proposal with respect to determining the weight of grain on which an additive is applied be clarified. The Service concurs with the comment and has recast the section to clarify when the provision would apply. Also, the list of the purposes for which additives may be applied is changed to delete reference to "other purposes determined by the Administrator to be in the best interest of orderly marketing of grain," because the phrase is unnecessary and the Service believes that any further changes should be accomplished through the rulemaking process. The regulations currently permit the application of additives to grain for the purpose of controlling insects. It was proposed that the application of additives to grain be expanded to include suppressing dust and identifying grain. In addition to these uses, this final rule permits the application of additives to control fungi.

As noted above, the Service is clarifying the provision relating to additives by including a definition of additives (§ 800.0(b)(2)) for purposes of the regulations. Additives are defined as materials approved by FDA or the Environmental Protection Agency and added to grain for purposes of insect or fungi control, dust suppression, or identification.

This change affects the present § 800.88, *Loss of identity*, which deals with the effect of an application of additives from an official inspection standpoint. Therefore, conforming changes have been made to it.

Miscellaneous nonsubstantive changes for clarity are also made in this final rule from that proposed.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain, Export.

For reasons set out in the preamble, Title 7, Part 800 of the Code of Federal Regulations, is amended as set forth below.

PART 800—GENERAL REGULATIONS WEIGHING PROVISIONS AND PROCEDURES

1. The authority citation for Part 800 continues to read as follows:

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

2. Section 800.0 is amended by redesignating paragraph (b)(2) through (b)(105) as (b)(3) through (b)(106), and adding a new paragraph (b)(2) to read as follows:

§ 800.0 Meaning of terms.

* * * * *

(b) * * *

(2) *Additives.* Materials approved by the Food and Drug Administration of the Environmental Protection Agency and added to grain for purposes of insect and fungi control, dust suppression, or identification.

* * * * *

3. Section 800.88 is revised as follows:

§ 800.88 Loss of identity.

(a) *Lots.* Except as noted in paragraph (d) of this section, the indentity of a lot of grain shall be considered lost if (1) a portion of the grain is unloaded, transferred, or otherwise removed from the carrier or container in which the grain was located at the time of the original inspection; or (2) a portion of grain or other material, including additives, is added to the lot after the orginal inspection was performed, unless the addition of the additive was performed in accordance with the regulations and the instructions. At the option of official personnel performing a reinspection, appeal inspection, or Board appeal inspection service, the identity of grain in a closed carrier or container shall be considered lost if the carrier or container is not sealed or if the seal record is incomplete.

(b) *Carriers and containers.* The indentity of a carrier or container shall be considered lost when (1) the stowage area is cleaned, painted, treated, fumigated, or fitted after the original inspection was performed; or (2) the identification of the carrier or container has been changed since the original inspection was performed.

(c) *Submitted samples.* The identity of a submitted sample of grain shall be considered lost when (1) the identifying number, mark, or symbol for the sample is lost or destroyed or (2) the samples have not been retained and protected by official personnel as prescribed in the instructions.

(d) *Additives.* [1] If additives are applied during loading to outbound grain after sampling or during unloading to inbound grain before sampling for the purpose of insect or fungi control, dust suppression, or identification, the inspection certificate shall show a statement showing the type and purpose of the additive application.

4. Section 800.95 is revised as follows:

§ 800.95 Methods and order of performing weighing services.

(a) *Methods.* All Class X or Class Y weighing, checkweighing, checkloading, stowage examination, and other weighing services shall be performed by official personnel or approved weighers using approved weighing equipment and according to procedures prescribed in the regulations and the instructions.

(b) *Order of service.* Weighing services shall be performed, to the extent practicable, in the order in which requests are received. Official personnel must mark or stamp the date received on each written request for service. Precedence will be given to requests for weighing required by sections 5(a)(1) or 5(a)(2) of the Act.

5. Section 800.96 is revised as follows:

§ 800.96 Weighing procedures.

(a) *Inbound.* Inbound grain that is to be weighed must be routed directly from the carrier and cannot be cleaned, dried, or otherwise processed to remove or add other grain or material en route. Except as noted in paragraph (c) of this section, the identity of an inbound lot shall be considered lost when a portion of the lot is transferred or otherwise removed prior to weighing or a portion of grain or other material is added to the lot prior to weighing. When loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for the lot.

(b) *Outbound.* Outbound grain that has been weighed must be routed directly from the scale to the carrier and cannot be cleaned, dried, or otherwise processed to remove or add other grain or material en route. Except as noted in paragraph (c) of this section, the identity of an outbound lot will be considered lost if a portion of the lot is transferred or otherwise removed from the lot after weighing or a portion of grain or other material is added to the lot after weighing. When loss of identity occurs, no amount shall be shown in the "Net

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

Weight" portion of the weight certificate for the lot.

(c) *Exceptions*—(1) *Spills*—(i) *Outbound*—(A) *Replaced.* If a spill occurs in handling and loading of outbound grain and the spilled grain is retrieved, or is replaced in kind, and is loaded on board during the loading operations, the weight certificate shall show the weight of the grain that was physically loaded on board. Upon request of the applicant, an additional certificate may be issued by the agency or the field office to show the weight of the additional grain that was used to replace a spill.

(B) *Not replaced.* If a spill occurs in the handling and loading of outbound grain and the spilled grain is not retrieved or is not replaced during the loading operation, the weight certificate shall show the weight of the grain that was actually weighed, minus the estimated amount of the grain that was spilled. Upon request of the applicant, an additional certificate may be issued showing the estimated amount of grain that was spilled. The applicant may, upon request, have the total amount that was weighed shown on the weight certificate with the estimated amount of the spilled grain noted.

(ii) *Inbound.* If a spill occurs in the handling of inbound grain and the grain is not retrieved and weighed, the weight certificate shall show the weight of the grain that was actually unloaded from the carrier and a statement regarding the spill as prescribed in the instructions.

(2) *Additives.*[1] If additives are applied during loading to outbound grain after weighing or during unloading to inbound grain before weighing for the purpose of insect or fungi control, dust suppression, or identification, the weight certificate shall show (i) the actual weight of the grain after the application of the additive for inbound grain or the weight of the grain prior to the application of the additive for outbound grain, and (ii) a statement showing the type and purpose of the additive application as prescribed in the instructions.

(3) *Dust.* If dust is removed during the handling of grain, the weight certificate shall not be adjusted to reflect the weight of the removed dust.

(4) *Commingled carriers.* If grain from two or more identified carriers becomes mixed, (i) the combined weight of the grain shall be shown in the "Net Weight" block of one certificate with all carrier identification shown in the identification of carrier section of the certificate, or (ii) upon request of the applicant, a certificate shall be issued for each carrier with the "Net Weight" block crossed out, and with the total combined weight unloaded and the identification of the other carrier(s) shown in the "Remarks" section.

(5) *Unremoved grain.* If, after unloading an inbound carrier, there is sound grain remaining in the carrier that could have been removed with reasonable effort, the weight certificate shall show the weight of the grain that was actually unloaded from the carrier and a statement regarding the grain remaining in the carrier.

6. Section 800.97 is revised as follows:

§ 800.97 Weighing grain in containers, land carriers, barges, and shiplots.

(a) *General.* The weighing of grain loaded or unloaded from any carrier shall be conducted according to this section and the instructions.

(b) *Procedure*—(1) *General.* If grain in a carrier is offered for inspection or weighing service as one lot, the grain shall be weighed and certificated as one lot. The identification of the carrier shall be recorded on the scale tape or ticket and the weight certificate.

(2) *Sacked grain.* If sacked grain is offered for weighing and the grain is not fully accessible, the request for weighing service shall be dismissed.

(3) *Part lots.* If a portion of an inbound lot of grain is unloaded and a portion is left in the carrier because it is not uniform in quality or condition, or the lot is unloaded in other than a reasonably continuous operation, the portion that is removed and the portion remaining in the carrier shall be considered as part lots and shall be weighed and certificated as part lots.

(c) *Certification of trucklots, carlots, and bargelots*—(1) *Basic requirement.* One official certificate shall be issued for the weighing of the grain in each truck, trailer, truck/trailer(s) combination, railroad car, barge, or similarly sized carrier. This requirement shall not be applicable to grain weighed as a combined lot under § 800.98.

(2) *Part-lot weight certificates.* A part-lot weight certificate shall show (i) the weight of the portion that is unloaded and (ii) the following statement: "Part-lot: The net weight stated herein reflects a partial unload."

(d) *Certification of shiplot grain*—(1) *Basic requirement.* The certificate shall show (i) if applicable, a statement that the grain has been loaded aboard with other grain, (ii) the official weight, (iii) the stowage or other identification of the grain, and (iv) other information required by the regulations and the instructions.

(2) *Common stowage*—(i) *Without separation.* If bulk grain is offered for weighing as it is being loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the weight certificate for the grain in each lot shall show that the lot was loaded aboard with other grain or another commodity without separation and the relative location of the grain.

(ii) *With separation.* If separations are laid between adjacent lots, the weight certificates shall show the kind of material used in the separations and the location of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph shall not be applicable to the first lot in a stowage area unless a second lot has been loaded, in whole or in part, in the stowage area before issuing the official weight certificate for the first lot.

(3) *Official mark.* If the grain is officially weighed in a reasonably continuous operation, upon request by the applicant, the following statement may be shown on the weight certificate: "Loaded under continuous official weighing."

7. Section 800.98 is revised as follows:

§ 800.98 Weighing grain in combined lots.

(a) *General.* The weighing of bulk or sacked grain loaded aboard, or being loaded aboard, or unloaded from two or more carriers as a combined lot shall be conducted according to this section and the instructions.

(b) *Weighing procedure*—(1) Single lot weighing. Single lots of grain that are to be weighed as a combined lot shall be weighed in one location. The grain loaded into or unloaded from each carrier must be weighed in accordance with procedures prescribed in the instructions. In the case of sacked grain, a representative weight sample shall be obtained from the grain in each carrier unless otherwise specified in the instructions.

(2) *Recertification.* Grain that has been weighed and certificated as two or more single lots may be recertificated as a combined lot provided that (i) the grain in each single lot has been weighed in one location, (ii) the original weight certificates issued for the single lots have been or will be surrendered to the appropriate agency or field office, (iii) the official personnel who performed the weighing service for the single lots and the official personnel who are to recertificate the grain as a combined lot determine that the weight

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

of the grain in the lots has not since changed and, in the case of sacked grain, that the weight samples used as a basis for weighing the single lots were representative at the time of the weighing.

(3) *Grain uniform in quality.* An applicant may request that grain be weighed and certificated as a combined lot whether or not the grain is uniform in quality for the purpose of inspection under the Act.

(c) *Certification procedures*—(1) *General.* Each certificate for a combined-lot Class X or Class Y weighing service shall show the identification for the "Combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. The identification and any seal information for the carriers may be shown on the reverse side of the weight certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(2) *Recertification.* If a request for a combined-lot Class X or Class Y weighing service is filed after the grain in the single lots has been weighed and certificated, the combined-lot weighing certificate shall show (i) the date of weighing the grain in the combined lot (if the single lots were weighed on different dates, the latest of the dates shall be shown); (ii) a serial number, other than the serial numbers of the weight certificates that are to be superseded; (iii) the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the weight of the grain in the combined lot; (v) a completed statement showing the identification of any superseded certificate as follows: "This combined-lot certificate supersedes certificate Nos. _____, dated _____; and (vi) if at the time of issuing the combined-lot weight certificate the superseded certificates are not in the custody of the agency or field office, the statement "The superseded certificates identified herein have not been surrendered" shall be clearly shown, in the space provided for remarks, beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the agency or field office, the superseded certificates shall be clearly marked "Void."

(3) *Part lot.* If a part of a combined lot of grain in inbound carriers is unloaded and a part is left in the carriers, the grain that is unloaded shall be certificated in accordance with the provisions in § 800.97(c)(2).

(4) *Official mark.* When grain is weighed as a combined lot in one continuous operation, upon request by the applicant, the following statement shall be shown on the weight certificate: "Loaded under continuous official weighing," or "Loaded under continuous official inspection and weighing."

(5) *Further combining.* After a combined-lot weight certificate has been issued, there shall be no further combining and no dividing of the certificate.

(6) *Limitations.* No combined-lot weight certificate shall be issued (i) for any weighing service other than as described in this section or (ii) which shows a weight of grain different from the total of the combined single lot.

8. Section 800.99 is revised as follows:

§ 800.99 Checkweighing sacked grain.

(a) *General.* Each checkweighing service performed on a lot of sacked grain to determine the weight of the grain shall be made on the basis of one or more official weight samples obtained from the grain by official personnel according to this section and procedures prescribed in the instructions.

(b) *Represenative sample.* No official weight sample shall be considered to be representative of a lot of sacked grain unless the sample is of the size prescribed in the instructions and has been obtained and weighed according to the procedures prescribed in the instructions.

(c) *Protecting samples and data.* Official personnel and other employees of an agency or the Service shall protect official weight samples and data from manipulation, substitution, and improper and careless handling which might deprive the samples and sample data of their representativeness.

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency. Upon good cause shown by the agency, the Administrator may grant an exception to this rule on a case-by-case basis.

(e) *Equipment and labor.* Each applicant for weighing services shall provide necessary labor for obtaining official weight samples and place the samples in a position for weighing and shall supply suitable weighing equipment approved by the Service, pursuant to the regulations and the instructions.

(f) *Disposition of official weight samples.* In weighing sacked grain in lots, the grain in the official weight samples shall be returned to the lots from which the samples were obtained.

(g) *Provisions by kinds of service.*—(1) *"IN" movements.* Each checkweighing on an "IN" movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest in the carrier or during unloading, in accordance with procedures prescribed in the instructions.

(2) *"OUT" movements (export).* Each checkweighing of sacked export grain shall be based on an official weight sample obtained as the grain is being loaded aboard the final carrier, as the grain is being sacked, or while the grain is at rest in a warehouse or holding facility, in accordance with procedures prescribed in the instructions.

(3) *"OUT" movements (other than export).* Each checkweighing of an "OUT" movement of nonexport sacked grain shall be based on an official weight sample obtained from the grain as the grain is being loaded in the carrier, or while the grain is at rest in the carrier, or while the grain is at rest in a warehouse or holding facility, or while the grain is being sacked, in accordance with procedures prescribed in the instructions.

(4) *"LOCAL" weighing.* Each checkweighing of a "LOCAL" movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest or while the grain is being transferred, in accordance with procedures prescribed in the instructions.

§§ 800.100, 800.101, 800.102, and 800.103 [Removed]

8. Sections 800.100, 800.101, 800.102, and 800.103 are removed.

Dated: February 17, 1987.

D.R. Galliart,

Acting Administrator.

[FR Doc. 87-4481 Filed 3-3-87; 8:45 am]

BILLING CODE 3410-EN-M

Farmers Home Administration

7 CFR Part 1910

Commercial Credit Reports; Implementation Provisions for Processing Commercial Credit Reports

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adds a new regulation concerning charging a fee for commercial credit reports. This action is necessary for obtaining commercial

credit reports under any program activity where this type of report is to be used. The intended effect is to establish the new procedures for ordering commercial credit reports with a new contractor and the fee to be collected to cover the cost of the service.

EFFECTIVE DATE: March 4, 1987.

FOR FURTHER INFORMATION CONTACT: Obediah G. Baker, Branch Chief, Multiple Family Housing Processing Division, Farmers Home Administration, Room 5337, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202 382–1628.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management and Agency procedure. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits or contracts notwithstanding the exemption in 5 U.S.C. 553, with respect to such rules. This final action, however, is not published for proposed rulemaking since it involves only internal Agency management and Agency procedure, and publication for comment is unnecessary.

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low and Low Income Housing Loans (Section 502 Rural Housing Loans)
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.418 Water and Waste Disposal Loan and Grants
10.419 Watershed Loans and Advances
10.422 Business and Industrial Loans
10.423 Community Facilities Loans.

For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is listed in the Catalog of Federal Domestic Assistance under 10.405 (Farm Labor Housing Loans and Grants), 10.418 (Water and Waste Disposal Loan and Grants), 10.419 (Watershed Loans and Advances), 10.422 (Business and Industrial Loans), 10.423 (Community Facility Loans), 10.424 (Industrial Development Grants) and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program". It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1910

Credit.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart C is added to read as follows:

Subpart C—Commercial Credit Reports

Sec.
1910.101 Preface.
1910.102–1910.150 [Reserved]

Subpart C—Commercial Credit Reports

§ 1910.101 Preface.

FmHA Instruction 1910–C (available in any Farmers Home Administration (FmHA) office) describes the procedure to be used by FmHA in obtaining commercial credit reports. A nonrefundable fee, set forth in § 1910.106(d) of this Instruction will be collected from the applicant, general contractor or dealer contractor who is the subject of the report.

§§ 1910.102–1910.150 [Reserved]

Dated: February 11, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–4480 Filed 3–3–87; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Part 1980

Guaranteed Loan Programs; Administrative Provisions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its General and Business and Industrial Loan Program (B&I) regulations pertaining to the administration of the guaranteed loan programs. The changes are of two types: Those that are contained in various sections of the regulations and affect the public and those which are administrative and involve internal Agency procedures which do not affect the public. These amendments further Administration objectives to: (1) Assure more viable projects and (2) eliminate various loopholes and terminology which have caused the Agency considerable time and expense and potential increased liability for losses in the event of default. These actions are in response to recommendations by Agency and program managers to correct these deficiencies. The intended effect of the changes is to strengthen overall credit terms, evaluations and servicing requirements of the FmHA B&I guaranteed loan program specifically and other FmHA guranteed programs generally.

EFFECTIVE DATE: March 4, 1987.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Loan Specialist, Business and Industry Division, USDA, and FmHA, 14th and Independence Avenue, SW., Washington, DC 20250—Telephone (202) 475–3811.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "non-major" since the annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The FmHA guaranteed programs and projects which are affected by this action are outlined in the Catalog of Federal Domestic Assistance (CFDA) and include: CFDA Number 10.422 Business and Industrial Loans, 10.404 Emergency Loans, 10.416 Soil and Water Loans, 10.406, Farm Operating Loans, and 10.407 Farm Ownership Loans.

The activities covered by this rule are subject to the requirements for intergovernmental consultation as stated in 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities."

This final action has been reviewed in accordance with FmHA Instruction

1940–G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

FmHA has included in this final rule a number of changes to the B&I regulations (Part 1980–E). FmHA's experience over the past 2 years has brought to management's attention the need to revise and strengthen the processing and servicing provisions. Previous guaranteed loans will not be affected by any amendment inconsistent with previously issued regulations.

Throughout the revisions of Subparts A and E of Part 1980 there are editorial changes to clarify the language so as to better communicate the intent of the regulations.

The final revisions to Subpart E of Part 1980 provide for B&I loan servicing actions that are more compatible with those practices that are customary and normal in the banking industry, upon which the B&I program relies for loan servicing.

There is an inconsistent use of the term "applicant" throughout Subpart E of Part 1980. "Applicant" is used to mean either "lender" or "borrower" in different sections. This final action is changed to use either "lender" or "borrower" as applicable for the purpose of clarity. Since this change occurs so frequently, §§ 1980.401 through 1980.500 are entirely printed in final form.

Discussion of Comments Received and Final Rule

A proposed rule was published in the **Federal Register** (51 FR 13008) on April 17, 1986. That proposed rule provided for a 30-day comment period. Comments were received from seven respondents.

The proposed rule is adopted without change except as indicated by the following comments:

One respondent felt that the language in the discussion of the proposed rule should be changed; however, since the discussion of the proposed rule is only a clarification of the rule, it is not necessary to change any part of the proposed rule in regard to the comment.

Subpart A of Part 1980

Section 1980.85 Exception authority.

This section provides the Administrator with the authority to make exceptions to the provisions of the regulations provided such exceptions are not inconsistent with the provisions of any applicable statute or opinion of the Comptroller General and the failure to make such exceptions would result in an adverse effect on the Government. One respondent commented that the language should be changed to state that an exception of any requirement or provision of the regulations which adversely affects the lender or the borrower involved in the loan which is the subject to the exception will not be granted without the consent of the party that is adversely affected. The respondent further stated that the exception authority should extend to any adverse effect suffered by the lender and/or borrower. The Agency sees no reason to change the rule in that the exception authority cannot be used if it would be contrary to any provision of an existing statute or opinion of the Comptroller General. The Agency feels the opinions of the Comptroller General and existing statutes constitute an adequate safeguard for the lender and/or borrower. Additionally, vested rights of the lender and borrower (given by contract and regulation) cannot be waived by the Agency. This section is published without change.

Subpart E of Part 1980

Section 1980.443 Collateral, personal and corporate guarantees, and other requirements.

1. Paragraph (a)(4)(i)(A)(*3*) provides an example of one method of acceptable application of proceeds from the sale of collateral of an ongoing concern. One respondent requested a clarification of another example of use of collateral proceeds. The request will be answered in a separate letter to the respondent since the comment does not impact on the final rule.

2. Paragraphs Administrative A.3 and A.4 provide guidance to the FmHA official reviewing the collateral offered for the loan to be guaranteed. The paragraphs provide for a maximum collateral valuation of inventory and accounts receivable of 60 percent of their book value. One respondent felt this was a low value and was not an incentive for assisting new industry. This argument misses the point. New businesses may have fewer accounts receivable than established businesses or they may have more. But no matter what the case, the amount of receivables a business has in no way relates to the account receivable's probability of collectability which is what the assigned percentage represents. Based on the FmHA Business and Industry Division's past experience, it has been demonstrated that the least valuable type of collateral in liquidation has been inventory and receivables. The Agency believes the guideline for this type of collateral valuation is realistic based on its past experience. The paragraphs are published without change.

General Comment

Throughout both regulations, the public is instructed to obtain FmHA assistance from the State Office which is the focal point for the B&I program. One respondent felt the County and District Offices should be the focal point for the program. The Agency maintains its original position that the relative infrequence of submission of processing and servicing requests in the District and County Offices makes it impractical to maintain the high level of expertise necessary to best serve the public. Those sections affected are published without change.

Section 1980.469 Loan servicing.

1. Paragraph (a) of this section requires the lender to classify the B&I guaranteed loans in its portfolio according to criteria established in this section. One respondent requested a clarification of when the lender was to perform the classification. The classification by the lender is to be performed on the B&I loans in its portfolio as soon as it is notified by the FmHA State Office that this rule is effective and again whenever there is a change in the loan which requires reclassification of that loan. The paragraph is changed to reflect this clarification.

2. Paragraph (b)(3) of this section provides loan classification criteria for current non-problem loans. One respondent requested clarification of the language concerning the time a loan must be current in order to be classified as a current non-problem loan. The proposed rule provided that the loan would have to be in compliance with all loan conditions and B&I regulations as well as being current for a period of 1 to 23 months. The loan may be classified as a current non-problem loan even if it has been delinquent in the past so long as it is now current and complies with all other conditions of the classification. The paragraph is published without change.

3. Paragraph Administrative B.3 of this section provides internal Agency operating procedures for actions to be taken when FmHA suspects fraud has occurred. One respondent indicated there should be a mandatory requirement for the involvement of the Office of Investigation (OIG) in such cases. The Agency agrees. The

suggestion for mandatory involvement of OIG in cases of suspected fraud is incorporated into this paragraph.

Section 1980.475 Bankruptcy.

This section provides that expenses incurred by the lender while the B&I guaranteed loan borrower is in Chapter 11 reorganization, Liquidation Chapter 11 or Chapter 7 (unless the lender is directly handling the liquidation) are not to be deducted from collateral proceeds. Two respondents indicated that there is no incentive for the lender to get the best legal advice if the lender must pay 100 percent of the cost to protect its 10 percent of the loan. The Agency takes the position that the lender retains the benefit of the guarantee while the borrower is in bankruptcy even though the lender may not be entitled to any benefit under the ruling of the bankruptcy court. This benefit is greater than the lender would enjoy if the loan were not guaranteed. The Lender's Agreement between the lender and the Government provides that the lender is responsible for protecting the interests of the Government at all times in return for the benefit of the guarantee. The lender entered into this agreement at the outset of the loan before any indication of bankruptcy was evident. There is nothing to indicate that the lender would retain better legal representation to protect the interests of the Government if legal expenses were deductible from collateral proceeds than if they were not. The section is published without change.

Section 1980.496 Exception authority.

This section provides the Administrator with the authority to make exceptions to the provisions of the regulations provided such exceptions are not inconsistent with any applicable statute or opinion of the Comptroller General and the failure to make such exceptions would result in an adverse effect on the Government. One respondent commented that the language should be changed to state that an exception to any requirement or provision of the regulations which adversely affects the lender or the borrower involved in the loan which is the subject of the exception will not be granted without the consent of the party that is adversely affected. The respondent further stated that the exception authority should extend to any adverse effect suffered by the lender and/or borrower. The Agency sees no reason to change the rule in that the exception authority cannot be used if it would be contrary to any provision of an existing statute or opinion of the Comptroller General. The Agency feels the opinions of the Comptroller General and existing statutes constitute an adequate safeguard for the lender and/or borrower. Additionally, vested rights of the lender and borrower (given by contract and regulation) cannot be waived by the Agency. This section is published without change.

List of Subjects in 7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development, Rural areas.

PART 1980—[AMENDED]

Therefore, Title 7, Chapter XVIII Part 1980 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1490; 5 U.S.C. 301; Sec. 10, Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23, 7 CFR 2.70.

Subpart A—General

2. In § 1980.11, the seventh sentence is revised to read as follows:

§ 1980.11 Full faith and credit.

* * * Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 449–14, "Conditional Commitment for Guarantee," or Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee."* * *

3. In § 1980.12, paragraphs (a)(1) and (a)(3) are revised to read as follows:

§ 1980.12 Case and identification (ID) number.

(a) * * *

(1) If such party is an individual, his or her Social Security number will be used. If such party is husband and wife, the Social Security number of either one as designated by the spouses will be used.

* * * * *

(3) The applicant's Social Security or IRS tax number preceded by State and County Code numbers will constitute the entire case number to be used on all FmHA forms. The County Supervisor will provide the lender with these numbers, except for B&I cases where the State Director will provide the lender with these numbers.

* * * * *

4. In § 1980.41, paragraph (b)(3)(iii)(A) is revised to read as follows:

§ 1980.41 Equal opportunity and nondiscrimination requirements.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) Form FmHA 400–3, "Notice to Contractors and Applicants," signed by the County Supervisor (State Director for B&I) with an attached Equal Employment Opportunity Poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

* * * * *

5. In § 1980.46, paragraph (a)(2) is revised to read as follows:

§ 1980.46 Right to Financial Privacy Act of 1978.

(a) * * *

(2) Notification must also be given to the lender and other financial institutions to which FmHA makes a direct request for financial records. The notification to the lender and other financial institutions will read as follows:

I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, Public Law 95–630, in seeking financial information regarding

_____

(applicant)

_____

Date

_____

County Supervisor

(State Director for B&I)

* * * * *

6. In § 1980.61, paragraphs (b)(4) and (h) are revised to read as follows:

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee and Assignment Guarantee Agreement.

* * * * *

(b) * * *

(4) If the lender requests a series of new notes to replace previously issued guaranteed notes as provided in paragraph III A 2 (b) of the Lender's Agreement, the County Supervisor (State Director for B&I) may reissue the new Loan Note Guarantees in exchange for the original Loan Note Guarantees.

* * * * *

(h) *Authorized FmHA representatives to execute forms.* State Directors, District Directors, State Program Loan Chiefs, and County Supervisors are authorized to execute the Lender's Agreement (Form FmHA 449–35 or Form FmHA 1980–38), the Loan Note Guarantee, the Contract of Guarantee, and/or the Assignment Guarantee Agreement, except for B&I where the

State Director and State B&I or C&BP Chief will execute these forms.

7. Section 1980.63 is revised to read as follows:

§ 1980.63 Defaults by borrower.

(a) Refer to paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

(b) FmHA may be required to purchase the guaranteed portion of a loan(s) from holder(s) in the event of default or servicing problems. The County Supervisor (State Director for B&I) will coordinate any requests from holder(s) located in close proximity to the local lender. If several holders are located outside the area, the State Director will handle the transaction and notify the County Supervisor (except for B&I). The County Supervisor (State Director for B&I) will prepare a Form FmHA 1980–37, "FmHA Purchase of a Guaranteed Loan Portion," for each holder(s) and follow the instructions on the reverse of the form.

8. Section 1980.67 is revised to read as follows:

§ 1980.67 Lender's request to terminate Loan Note Guarantee or Contract of Guarantee.

If the Loan Note Guarantee has not automatically terminated, the lender may request FmHA to terminate the Loan Note Guarantee(s) or Contract of Guarantee(s), for any reason, provided the lender holds all the guaranteed portions of the loan. (See paragraph 12 of Form FmHA 499–34, or paragraph 5 of Form FmHA 1980–27.) The lender will provide the County Supervisor (State Director for B&I) with a written notice that the loan(s) or line(s) of credit is paid in full and/or termination of the Loan Note Guarantee(s) or Contract of Guarantee(s), enclosing the original Form(s) FmHA 449–34 or Form FmHA 1980–27 for cancellation. Within 30 days, the County Supervisor (State Director for B&I) will forward a memorandum to the Finance Office through the State Director. The memorandum will indicate that: "the loan(s) or line(s) of credit is paid in full," and/or "the Loan Note Guarantee or Contract of Guarantee has been cancelled at the request of the lender."

9. In § 1980.83, paragraph (b) is amended by adding the following to the end of the list of forms:

§ 1980.83 FmHA forms.

* * * * *

(b) * * *

FmHA form No.	Title of form	Purpose and code [1]
*	* *	* *
1980–56	Guaranteed Loan Borrower Deferment.	Used by FmHA to document deferral of payments and adjustments to interest rates and guaranteed loans.[1]
1980–57	Reverse Guaranteed Loan Borrower Deferment.	Used by FmHA to update accounting system records for reversal of deferment of payments.[1]

[1] Code (1) FmHA use only, (2) FmHA and lender use, (3) Lender use only.

* * * * *

10. Section 1980.85 is added to read as follows:

§ 1980.85 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the appropriate Assistant Administrator. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

Subpart E—Business and Industrial Loan Program

11. Sections 1980.401 through 1980.500 and Appendix C are revised and Appendix H is added to read as follows:

PART 1980—GENERAL

Subpart E—Business and Industrial Loan Program

Subpart E—Business and Industrial Loan Program

§ 1980.401 Introduction.

(a) This subpart, supplemented by Subpart A of this part, contains regulations for Business and Industrial (B&I) loans guaranteed or insured by the Farmers Home Administration (FmHA), and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing, insuring, holding, servicing, or liquidating such loans.

(b) The purpose of the B&I program is to improve, develop or finance business, industry and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality loans which will

provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to "bail out" lenders having such loans.

(c) The B&I loan program is administered by the Administrator through a State Director serving each State. The State Director is the focal point for the program and the local contact person for processing and servicing activities, although this subpart refers in various places to the duties and responsibilities of other FmHA employees.

(d) Throughout this subpart there appear Administrative provisions for the State Director, District Director, and County Supervisor. These provisions establish the internal duties, responsibilities and procedures to carry out the requirements of the program. These provisions are identified as *"Administrative"* and follow appropriate sections of this subpart.

§ 1980.402 Definitions.

The following general definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of Subpart A of this part.

(a) *Borrower.* A borrower may be a cooperative, corporation, partnership, trust or other legal entity organized and operated on a profit or nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized tribal group; a municipality, county or other political subdivision of a State; or an individual. Such borrower must be engaged in or proposing to engage in improving, developing or financing business, industry and employment and improving the economic and environmental climate in rural areas, including pollution abatement and control.

(b) *Community facilities.* For the purpose of this subpart, community facilities are those facilities designed to aid in the development of private business and industry in rural areas. Such facilities include, but are not limited to, acquisition and site preparation of land for industrial sites (but not for improvements erected thereon), access streets and roads serving the site, parking areas extension or improvement of community transportation systems serving the site and utility extensions all incidental to site preparation. Projects eligible for assistance under Subpart A of Part 1942 of this chapter are not eligible for assistance under this subpart.

(c) *Development cost.* These costs include, but are not limited to, those for acquisition, planning, construction, repair or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land easements, rights-of-way; payment of startup operating costs, and interest during the period before the first principal payment becomes due, including interest on interim financing.

(d) *Letter of conditions.* Letter issued by FmHA to a borrower setting forth the conditions under which FmHA will make a direct (insured) loan from the Rural Development Insurance Fund.

(e) *Loan classification system.* The process by which loans are examined and categorized by degree of potential for loss in the event of default.

(f) *Problem loan.* A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

(g) *Public body.* A municipality, political subdivision, public authority, district, or similar organization.

(h) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing area with a population density of more than one hundred persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

(i) *Seasoned loan.* A loan which:

(1) Has a remaining principal guaranteed loan balance of two-thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(2) Is in compliance with all loan conditions and B&I regulations.

(3) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(4) Is secured by collateral which is determined to be adequate to insure there will be no loss on the B&I guaranteed loan.

(j) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(k) *Working capital.* The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

§ 1980.403 Citizenship of borrowers.

Loans to individuals will be made or guaranteed only to those who are citizens of the United States or reside in the United States after being legally admitted for permanent residence. At least 51 percent of the outstanding interest in any corporation or organization-type applicant must be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 1980.404 [Reserved]

§ 1980.405 Rural area determinations.

FmHA will determine if any area is rural for purposes of the Guaranteed or Insured loan program. The following will be used by FmHA in making area eligibility determinations when it is not clear from the geographical location of the applicant:

(a) Urbanized area immediately adjacent to a city having a population of 50,000 or more: An urbanized area immediately adjacent to a city having a population of 50,000 or more is an area constituting for general social and economic purposes a single community having a boundary contiguous with that of the city. Such community may be incorporated or unincorporated and will extend from the contiguous boundary(ies) to the recognizable open country, less densely settled areas or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities or public parks will be disregarded. Outer boundaries of an incorporated community will extend at least to its legal boundaries. Cities which may have a contiguous border with another city but are located across a river from such city and recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area as defined in this section are not in a nonrural area.

(b) Urbanizing area: An urbanizing area is one defined as a community which is not now or within the foreseeable future not likely to be clearly separate from and independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community will be considered as "separate from" when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities or public parks will be disregarded. A community will be considered as "independent of" when its social and economic structure (e.g., government, education, health and recreational facilities; business, industry, tax base

and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized area.

(c) The State Director will proceed as follows in rural area determinations: When the FmHA State Director determines an area to be urbanizing, he must then determine the population density per square mile. If the area appears to be eligible, the State Director will request the National Office to provide him/her with the correct density figure. All such density determinations will be made on the basis of minor civil divisions or census county divisions as used by the Bureau of the Census. In making the density calculations, there will be excluded large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses and cemeteries or land set aside for such purposes.

§§ 1980.406 through 1980.410 [Reserved]

§ 1980.411 Loan purposes.

Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(a) *Private entrepreneurs.* Loans may be for improving, developing or financing business, industry and employment and improving the economic and environmental climate, including pollution and abatement control, of rural areas, and may include but not be limited to:

(1) Business and industrial acquisitions, construction, conversion, enlargement, repair, modernization of development cost.

(2) Purchasing and development of land, easements, rights-of-way, buildings, facilities, leases or materials.

(3) Purchasing of equipment, leasehold improvements machinery or supplies.

(4) Pollution control and abatement including those in connection with farming and ranching operations.

(5) Transportation services incidential to industrial development.

(6) Startup costs and working capital.

(7) The financing of housing development sites located in open country or cities, towns or villages with populations not in excess of those eligible for FmHA rural housing loans, provided the community demonstrates a need for additional housing to prevent a loss of jobs in the area, or to house families moving to the area as a result of new employment opportunities.

(8) Loans, other than for working capital or debt refinancing, for meat processing facilities and integrated meat and poultry operations. Loans may not be guaranteed for agricultural production as defined in § 1980.412(e); however, applicants who are in the business of processing, marketing or packaging of agricultural products, as well as agricultural production, may be eligible for loan assistance for that portion of the business other than agricultural production provided the agricultural production aspect is separate from the rest of the business; i.e., the production aspects are handled through separate legal business entities or through maintenance of the accounting system in such a manner as to clearly identify the use of and future accounting of the loan proceeds and operation of the business.

(9) Loans, other than for working capital or debt refinancing, for commercial custom feedlot operations. As used herein, commercial custom feedlot operations mean those lots primarily feeding, on a custom basis, livestock which belongs to other than the feedlot owner-operator. This would not preclude assistance to those borrowers whose principals or members are farmers and ranchers whose individually owned livestock may be custom fed at the lot; provided, such principals' or members' personal financial conditions are not likely to adversely affect the financial success of the custom operation. In those cases where feedlot operators buy and feed for themselves, records and accounts of such operations shall be maintained in such manner that they may be identified separately from the custom feeding operations, and loan agreements and security instruments will specify that any losses incurred in the owner-operator operation will not be chargeable to the custom feeding operations.

(10) Interest (including interest on interim financing) during the period before the first principal payment becomes due or the facility becomes income producing, whichever occurs first.

(11) Feasibility studies.

(12) Debt refinancing. Lenders and FmHA must provide as part of their loan analysis the reasons for refinancing and the file must be documented accordingly. Refinancing debts may be allowed in connection with viable projects when it is determined by the Lender and FmHA that it is necessary to save existing jobs. FmHA will consider any lender's exposure as it relates to this item and may adjust the guarantee percentage accordingly. Refinancing in accordance with this paragraph may be insured or guaranteed only when:

(i) It is necessary to spread substantial debt payment over a longer period of time thereby improving the business' net cash flow and working capital position consistent with the useful life of the asset(s) being refinanced, or

(ii) For payment of short-term debt when required in situations customarily financed over long periods of time (e.g., financing the purchase of real estate, machinery, or equipment with short-term debt or cash expenditures, when lenders would not extend reasonable longer terms to the business), or

(iii) It is necessary to place a permanent loan subsequent to an interim loan for financing the construction of the project.

(13) Reasonable fees and charges only as specifically listed below and disclosed on Form FmHA 449–1, "Application for Loan and Guarantee," or on an addendum to the application at the time the request is submitted to FmHA for processing. Authorized fees include professional fees rendered by professionals generally licensed by individual State or accreditation Associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of the fee will be what is reasonable and customary in the community or region where the project is located. For example, Architects and Engineers customarily charge fees based on a percentage of estimated project costs. Lawyers, Accountants, and Appraisers customarily charge for services on an hourly basis. Any fees for professional or expert services are to be fully documented and justified on the Form FmHA 449–1 and are subject to FmHA review and approval before the application is presented to the FmHA State Loan Review Board for action. The above approved fees and charges may be funded out of loan proceeds.

(14) FmHA guarantee fee.

(15) Acquisition of membership and/or stocks, bonds, or debentures necessary to obtain a loan from Production Credit Associations, Banks for Cooperatives, Small Business Investment Companies, and other lenders, provided such acquisition is required of all their borrowers. However, a lender which requires membership fees in such organization or the purchase of securities issued by such organization will not use such proceeds to acquire, lease or improve property which does not benefit its members.

(16) Aquaculture including conservation, development and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial

purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned and regulated stock of fish.

(b) *Public bodies.* See § 1980.481 and 1980.488.

§ 1980.412 Ineligible loan purposes.

Loans may *not* be made or guaranteed if the funds are used:

(a) To pay off a creditor in excess of the value of the collateral.

(b) For distribution or payment to the owner, partners, shareholders or beneficiaries of the applicant or members of their families when such persons will retain any portion of their equity in the business.

(c) For projects in which such assistance exceeds $1 million and when direct employment increases more than 50 employees which is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by the operations of the applicant. This limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such explanation is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(d) For projects in which such assistance exceeds $1 million and when direct employment increased more than 50 employees which is calculated to or likely to result in an increase in the production of goods, materials or commodities, or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(e) For agricultural production which means the cultivation, production (growing), and harvesting either directly or through intergrated operations of agricultural products (crops, animals, birds, and marine life either for fiber or food for human consumption and disposal (marketing), the raising, breeding, hatching, including the control and management of farm and domestic animals). Exceptions to this definition are:

(1) Aquaculture as identified under eligible purposes.

(2) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(3) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(4) Loans for livestock and poultry processing as identified under eligible purposes.

(5) Loans for commercial custom feedlot operations as identified under eligible purposes.

(6) The growing of mushrooms or hydroponics.

(f) For the transfer of ownership of a business unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(g) For financing community antenna television services or facilities.

(h) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(i) For lending and investment institutions and insurance companies.

(j) For assistance to government employees and military personnel who are directors, officers or have a major ownership of 20 percent or more in the business.

(k) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(l) For any illegal business activity.

(m) For hotels, motels, tourist homes, or convention centers.

(n) For any tourist, recreation or amusement facility.

(o) For any line of credit.

Administrative

Par (c) and (d). The FmHA State Director will review the criteria in § 1980.412 (c) and (d) and make a written determination with supporting data and reasons as to the determinations. Such review must be independent of the Department of Labor certification. The State Director will make sure the loan file contains these determinations as part of the loan analysis prior to the issuance of the Conditional Commitment for Guarantee.

§ 1980.413 Transactions which will not be guaranteed.

(a) The following transactions will not be guaranteed by FmHA:

(1) The guarantee of lease payments.

(2) The guarantee of loans made by other Federal agencies. This does not preclude the guaranteeing of loans made by the Bank for Cooperatives, Federal Land Bank, or Production Credit Association.

(3) The guarantee or making of any B&I loans(s), to any one borrower, when the total amount of the B&I loans(s) requested plus the outstanding balance of any existing B&I loan(s) is in excess of $10 million.

(4) The guarantee or making of any B&I alcohol production facilities loan(s) to any one borrower, when the total amount of the B&I alcohol production facilities loan(s) requested plus the outstanding balance of any existing B&I loans(s) is in excess of $20 million.

(b) Guaranteeing of loans involved in tax-exempt obligations as set forth in § 1980.23 of Subpart A of this Part.

Administrative

The State Director will consider the overall State allocations of funding authority in recommending loans for processing. Loan requests which fall within Small Business Administration (SBA) authority should continue to be referred to SBA. If the State Director decides to process SBA size loans, the loan file must be fully documented as to the reasons for such actions.

§ 1980.414 Fees and charges by lender and others.

[See Subpart A, § 1980.22]

(a) All fees and charges must be specifically documented and justified on the Form FmHA 449–1 or on an addendum to the application at the time the loan request is submitted to FmHA for processing. Allowable fees will be those reasonably and customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval.

(b) Packaging fees include services rendered by the lender or others in connection with preparation of the application and seeing the project through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount of the loan up to $1 million and on all amounts over $1 million, an additional one-fourth percent up to total maximum fee of $50,000.

Packaging fees, investment banker fees and and other fees and charges not specifically provided for in this section are permitted subject to FmHA review and approval. Loan proceeds may be used to pay fees as specifically authorized under §§ 1980.411(a)(13) and (14). Packaging fees, investment banker fees, and any other fees or charges shall not be paid from loan proceeds.

§§ 1980.415 through 1980.418 [Reserved]

§ 1980.419 Eligible lenders.

[See Subpart A, § 1980.13.]

Administrative

A. *Par (a) of Subpart A, § 1980.13* requires National Office approval for any variations.

B. *Par (b)(4) of Subpar A, § 1980.13,* State Director submits information to National Office with recommendations.

C. With prior written approval of the FmHA National Office, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the National Office only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the National Office, the State Director will submit to the Finance Office Form FmHA 1980-42, "Notice of Substitution of Lender."

§§ 1980.420 through 1980.422 [Reserved]

§ 1980.423 Interest rates.

(a) *Guaranteed loans.* Rates will be negotiated between the lender and the borrower. They may be either fixed or variable as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval. Should any part of the loan(s) be sold by the lender, FmHA, in its analysis, will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. It must rise and fall with the selected base rate, and changes can be made no more often than quarterly. There will be no floor or ceiling on variable interest rates except as specified in paragraph (a)(6)(i) of this section. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(2) Under a Memorandum of Understanding between FmHA and the Farm Credit Administration dated September 25, 1974, the interest rate on loans made by the Bank for Cooperatives, Federal Land Banks and Production Credit Associations may be a variable rate based on their administrative and borrowing costs.

(3) Any change in the interest rate between the date of issuance of the Form FmHA 449-14, "Conditional Commitment For Guarantee," and before the issuance of the Loan Note Guarantee must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA 449-14.

(4) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(i) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar size and purpose for borrowers under similar circumstances.

(ii) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(5) When multi-rates are used, the lender will provide FmHA with the overall effective interest rate for the entire loan.

(6) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate of their B&I guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by FmHA, then FmHA is a holder and must affirm or reject interest rate change proposals. When FmHA is a holder, it will concur in such interest rate change only when it is demonstrated to FmHA that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination will include whether the proposed interest rate will be below the Government's cost of borrowing money, whether continuing with the loan would realistically promote or enhance rural development and employment in rural areas, whether the monetary recovery would be increased by proceeding immediately to liquidation, if applicable, or allowing the borrower to continue at a reduced interest rate, and whether an in-depth financial analysis by the lender reasonably indicates that the business would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any. The FmHA will reflect the documentation of the interest rate change decision.

(i) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(ii) Variable rates can be changed to reduced fixed rates. In a final loss settlement, when qualifying rate changes were made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate can never exceed the amount which would have been eligible for claim had the variable interest remained in force. The lesser cost to the Government will always prevail. The lender must maintain records which adequately document the accrued interest claimed.

(iii) The lender is responsible for the legal documentation of interest changes by an allonge attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note(s) may be issued.

(7) No increases in interest rates will be permitted under the B&I loan guarantee except the normal fluctuations in approved variable interest rate loans.

(b) *Insured loans.*

(1) Loans for other than those in paragraph (b)(2) of this section will bear interest at a rate prescribed by FmHA, and will be announced periodically. The interest rate for insured loans will be the rate in effect at the time the loan is approved or at the time the loan is closed, whichever rate is lower.

(2) Loans to public bodies, nonprofit associations and Indian Tribes used to finance community facilities will bear interest at the rate prescribed in FmHA Instruction 440.1, Exhibit B (available in any FmHA Office).

Administrative

Par (a)(6) and (a)(7). (Added 4-26-85, SPECIAL PN.) The Director will notify the Finance Office of any interest rate reduction by using Form FmHA 1980-47, "Guaranteed Loan Borrower Adjustments." The State Director will make corrections to the Rural

Community Facility Tracking System (FCFTS) reflecting the interest rate change. The FmHA loan file, as well as the attachments to the copy of the promissory note in the file, will be documented by the State Director to reflect any change in the interest rate.

§ 1980.424 Term of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the promissory note except, any interest accrued as the result of the borrower's default on the guaranteed loan(s) over and above that which would have accrued at the normal note rate on the guaranteed loan(s) will not be guaranteed by FmHA. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and applicant but on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within three years from the date of the promissory note and at least annually thereafter. Interest will be due at least annually from the date of the note. Ordinarily, monthly payments will be expected, except for seasonal-type businesses.

(b) The maximum time allowable for final maturity for an FmHA guaranteed B&I loan will be limited to thirty (30) years for land, buildings and permanent fixtures; the usable life of the machinery and equipment purchased with loan funds, but not to exceed fifteen (15) years; and seven (7) years for the working capital portion of the loan. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan.

(c) The maximum time allowable for final maturity of an FmHA insured loan for community facilities will not exceed forty (40) years.

(d) FmHA will not guarantee any loan in which the promissory note or any other document provides for the payment of interest upon interest.

Administrative

It is permissible for lenders to structure the borrower's financial proposal under the multi-note option as provided for in paragraph III A.2. of Form FmHA 449-35, "Lender's Agreement," in the following ways:

A. To treat the entire financial package of the borrower as one loan (i.e., loan purposes may include one or any combination of working capital, machinery and equipment or real estate) provided:

1. The loan is amortized to provide repayment of the working capital portion within the 7 years, the machinery and equipment portion within useful life or 15 years, whichever is less, and real estate portion within 30 years.

2. One note represents the unguaranteed portion of the loan. It is permissible to issue as many as 10 notes or the guaranteed portion of the loan.

3. A Form FmHA 449-34, "Loan Note Guarantee," is attached to all notes, including the unguaranteed note.

4. One interest rate (either variable or fixed) is used for the entire loan or one interest rate is used on the guaranteed portion and a different interest rate is used on the unguaranteed portion, subject to the requirements and conditions found in § 1980.423 of this subpart.

5. One of each of the following Forms: FmHA 449-14, FmHA 1940-1, "Request for Obligation of Funds," FmHA 449-35, and FmHA 1980-19, "Guaranteed Loan Closing Report," is used.

B. To treat the financial package of the borrower as separate loans that are processed as a single application provided:

1. A separate loan is made for each purpose (i.e., working capital, machinery and equipment or real estate). As an example, a working capital loan could be structured as follows:

One note for $XXXX at X% interest due in 7 years representing the unguaranteed portion of the loan, and

Up to 10 notes for $XXXX at X% interest due in 7 years representing the guaranteed portions of the loan.

2. A Form FmHA 449-34 is attached to all notes, including the unguaranteed note.

3. A different interest rate may be used on the guaranteed and unguaranteed portions of the loan, subject to the requirements and conditions found in § 1980.423 of this subpart.

4. Separate Forms FmHA 449-14, 1940-1, 449-35, and 1980-19 are required for each loan. If you have two loans, one for working capital and another for real estate, then a set of these forms will be required for each loan.

C. Form FmHA 449-36, "Assignment Guarantee Agreement," will never be used when the multi-note option is utilized.

D. Par. (b). The State Director will assure that the loan officer reviewing the application fully evaluates the useful life of the collateral offered for the loan when determining maturities for the loan. Loan requests for the maximum maturities could result in collateral obsolescence prior to full repayment of the indebtedness. The loan file must be documented to support the maturity granted for the loan.

§ 1980.425 Availability of credit from other sources.

(a) Inability to obtain credit elsewhere is not a requirement for guaranteed assistance under this subpart.

(b) To be eligible for an insured loan under this subpart, the borrower must be unable to obtain the required credit from private or cooperative sources at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near the borrower's location(s) for loans for similar purposes and period of time. The borrower's inability to obtain such credit elsewhere will be determined in accordance with Subpart A of Part 1942 of this chapter.

§ 1980.426 through 1980.431 [Reserved]

§ 1980.432 Environmental requirements.

[See Subpart A, § 1980.40 and Subpart G of Part 1940 of this chapter.]

Administrative

When required by Subpart G of Part 1940 of this chapter, the approving official will review Form FmHA 1940-20, "Request for Environmental Information," submitted by the borrower and the environmental impact assessment prepared by the environmental reviewer. The approving official will indicate his/her decision as part of the assessment when required. If the approving official determines that an EIS is required, he/she will notify the borrower and lender in writing.

§ 1980.433 Flood or mudslide hazard area precautions.

(See Subpart A, § 1980.42.)

Administrative

The State Director is responsible for determining if a project is located in a special flood or mudslide hazard area. Refer to Subpart B of Part 1806 of this chapter [FmHA Instruction 426.2].

§ 1980.434 Equal opportunity and nondiscrimination requirements.

(See Subpart A § 1980.41.)

Administrative

The State Director will assure that equal opportunity and nondiscrimination requirements are met. If there is indication of noncompliance with these requirements, such facts will be reported by the Compliance Reviewing Officer or FmHA Official in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ 1980.435 through 1980.440 [Reserved]

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for insured loans at loan closing or at the time the Loan Note Guarantee is issued for guaranteed loans. However, balance sheet equity in the amount of at least 20-25 percent will be required under the following circumstances:

(1) For new businesses since they do not have a history of proven operations and such businesses generally experience unforeseen startup expenses which may deplete the available cash resources.

(2) For businesses where the borrower does not or cannot offer a limited or full personal or corporate guarantee as required in § 1980.443 and thereby

weakens the financial soundness of the loan.

(3) For energy related businesses since these types of projects may be technically feasible, but in many instances are more susceptible to higher risk. A higher equity position will assure management's commitment to the project.

(b) FmHA may also require more than a 10 percent equity investment in projects other than those in paragraphs (a)(1), (2) and (3) of this section if the reviewing official makes a written determination that special circumstances necessitate this course of action. Special circumstances are limited to credit factors which negatively affect the financial soundness of the loan, the chances of the project's success or the repayment ability of the borrower. Such determination will be in writing by the reviewing official and explain fully what the special circumstances are and how FmHA decided upon the percentage of equity investment to be required in the individual case.

(c) FmHA will require the borrower to contribute all of the equity requirement in the form of either cash or tangible earning assets injected into the business and reflected on the balance sheet. Appraisal surplus and/or subordinated debt cannot be used in the calculation of the equity requirements.

Administrative

The State Director will be selective in approving borrowers for new business ventures involved in unproven products, services or markets. Should such businesses be considered by the State Director, feasibility studies as outlined in § 1980.442 and additional equity will usually be required.

§ 1980.442 Feasibility studies.

FmHA may require a borrower to provide a feasibility study prepared by an independent recognized consultant. The cost of such study will be borne by the borrower and may be paid from funds included in the loan. On loans of $1 million dollars or more, feasibility studies by recognized independent consultants will be required. However, FmHA may make an exception to this requirement when the financial history of the business, the current financial condition and guarantees or other collateral are more than adequate to indicate the feasibility of the enterprise. The feasibility study outline will be approved by FmHA. FmHA personnel may not recommend consultants but may provide the borrower with a list of consultants who have performed satisfactorily on previous projects. An acceptable feasibility study should include but not be limited to:

(a) *Economic feasibility.* Information related to the project site, availability of trained or trainable labor; utilities; rail, air and road service to the site; and the overall economic impact of the project.

(b) *Market feasibility.* Information on the sales organization and management, nature and extent of market area, marketing plans for sale of projected output, extent of competition and commitments from customers or brokers.

(c) *Technical feasibility.* Technical feasibility reports shall be prepared by individuals who have previous experience in the design and analysis of similar facilities and/or processes as are proposed in the application. The technical feasibility reports shall address the suitability of the selected site for the intended use, including an environmental impact analysis. The report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income and/or production that are projected in the financial statements. The report shall also identify any constraints or limitations in these financial projections and any other facility or design related factors which might affect the success of the enterprise. The report shall also identify and estimate project operating and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. For the purpose of the technical feasibility reports, the project engineer or architect may be considered an independent party provided the principals of the firm or any individual of the firm who participates in the technical feasibility report does not have a financial interest in the project, and provided further that no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function.

(d) *Financial feasibility.* An opinion on the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow. An assessment of the cost accounting system, the availability of short-term credit for seasonal business and the adequacy of raw material and supplies.

(e) *Management feasibility.* Evidence that continuity and adequacy of management has been evaluated and documented as being satisfactory.

§ 1980.433 Collateral, personal and corporate guarantees and other requirements.

(a) *Collateral.* (1) The lender is responsible for seeing that proper and adequate collateral is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA.

(2) Collateral must be of such a nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project, and applicant's prospective earnings. Collateral may include, but is not limited to the following: land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, marketable securities and cash surrender value of life insurance. Collateral may also include assignments of leases or leasehold interest, revenues, patents, and copyrights.

(3) All collateral must secure the entire loan. The lender will not take separate collateral to secure only that portion of the loan or loss not covered by the guarantee. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan. However, compensating balances as used in the ordinary course of business may be used.

(4) Release of collateral of a going concern is based on a complete analysis of the proposal.

(i) Release of collateral prior to payment-in-full of the FmHA guaranteed debt must be requested by the lender and concurred with by the State Director as prescribed in § 1980.469 Administrative D.2 of this subpart subject to the following conditions:

(A) Collateral taken initially or subsequently may not be released prior to the payoff, in full, of the loan balance without adequate consideration for the value of that collateral. Adequate consideration may include, but is not limited to:

(*1*) Application of the net proceeds from the sale of the collateral to the note in inverse order of maturity. All or part of the total proceeds, if approved by the Administrator, may be applied to the payment of current or delinquent principal and interest on the note; or

(*2*) Use of the net proceeds from the sale of collateral to purchase collateral of equal or greater value for which the lender will obtain a first lien position; or

(*3*) Application of net proceeds from the sale of collateral to the borrower's business operations in such a manner

that enhancement of the borrower's debt service ability can be clearly demonstrated; for example, the payoff or reamortization of the loan as the result of a large extra payment which reduces subsequent installments on the loan; or

(4) Assurance of FmHA that the release of collateral will contribute to the project's success thereby furthering the goals of the B&I program to show why the release of collateral will contribute to the success of the borrower and repayment of the loan; and

(B) FmHA must not be adversely affected by the release of collateral; and

(C) If the release of collateral does not involve a reduction of the FmHA guaranteed debt equal to the net proceeds of the disposition of the collateral, then it must be determined that the remaining collateral is sufficient to provide for the recovery of the FmHA guaranteed loan(s).

(ii) Sale of collateral of a going concern to the borrower, borrower's stockholder(s) or officer(s), the lender or lender's stockholder(s) or officer(s) must be based on an arm's-length transaction with the concurrence of FmHA.

(b) *Personal and corporate guarantees.* (1) Unconditional personal/corporate guarantees (i.e., absolute guarantees of full and punctual payment and performance by the borrower) from owners or major stockholders as determined by FmHA and all partners of partnerships (except for limited partnerships) unless restricted by law *will* be required unless exempted as provided for in paragraph (b)(2) of this section. Guarantees of parent, subsidiaries, or affiliated companies and/or secured guarantees may also be required. FmHA is not a co-guarantor with the personal or corporate guarantors. The personal and corporate guarantees are part of the collateral for the loan.

(2) An exception to the requirement for personal or corporate guarantees may be made by FmHA when requested by the lender and if:

(i) The borrower has a satisfactory and current (not over 90 days old) credit report, proven management, evidence of the market necessary to support projections, profitable historical performance of no less than 3 years, abundant collateral to protect the lender and FmHA, sufficient cash flow to service its debts and meets key industry standards such as those of Robert Morris Associates, Dunn and Bradstreet or the like; or

(ii) The borrower's stock is widely enough held so that no one individual can exercise control. Examples of control would include but are not limited to: holding sufficient proxies and maintaining sufficient family or special interest voting blocks; or

(iii) A borrower which has a parent, subsidiary, or affiliate which is legally restricted from guaranteeing, or if the guarantee would conflict with existing contractual obligations. Examples of existing contractual obligations include but are not limited to restrictions in loan agreements or in credit lines which may preclude guaranteeing.

(3) No guarantees are required from any partners in a limited partnership.

(4) As a general rule, stockholders of publicly traded corporations will not be required to guarantee. However, such guarantees can be required from some of the stockholders where such guarantees are determined necessary to adequately protect the interest of the Government.

(5) If the guarantee would conflict with existing contractual restrictions, the Administrator will have the authority to grant exceptions to the above restrictions upon a finding by the Administrator that such a guarantee is not necessary to adequately protect the Government's interest. Relief would only be granted as to contractual restrictions existing at the time the lender filed an application with FmHA.

(6) Unsecured personal guarantees, while collateral, will not be considered for purposes of adequacy of security. Personal guarantees will be secured by collateral when business collateral offered is determined by FmHA to be insufficient or when the borrower's credit does not meet the program's normal requirements or anytime the lender deems such security should be taken.

(7) Guarantors of borrowers will:

(i) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing), signed by the guarantors, which make a clear disclosure of community or homestead property.

(ii) in the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing), certified by an officer of the corporation.

(iii) When applicable, provide written evidence to FmHA of their inability to provide a guarantee because of existing contractual arrangements or legal restrictions.

(c) *Other requirements.* (1) The lender will ascertain that no claim or liens of laborers, material men, contractors, subcontractors, suppliers of machinery and equipment or other parties are against the collateral of the borrower, and that no suits are pending or threatened that would adversely affect the collateral of the borrower when the security instruments are filed.

(2) Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide or any other hazard insurance that may be required to protect the collateral.

(3) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the borrower and will be assigned or pledged to the lender. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(4) Workman's compensation insurance is required in accordance with State law.

Administrative

A. Par (c)(2). FmHA's credit analysis of collateral will consist of the following:

1. Little or no value will be assigned to unsecured personal or corporate guarantees.

2. A maximum of 80 percent of current market value will be given to real estate. Special purpose real estate should be assigned less value.

3. FmHA at its option may permit a maximum of 60 percent of book value to be assigned to acceptable accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts and other accounts deemed, by the FmHA official, not to be collateral will be omitted. Calculations to determine the percentage to be applied in the analysis are to be based on the realizable value of the accounts receivable taken from a current aging of accounts receivable from the borower's most recent financial statement.

4. A maximum of 60 percent of book value will be assigned to inventory.

5. Collateral value assigned to machinery and equipment, furniture and fixtures will be based upon its marketability, mobility, useful life and alternative uses, if any.

B. Par (b). The State Director will assure that the collateral values and personal and corporate guarantees are fully reviewed, analyzed and the loan file is documented as to the facts and reasons for decisions reached.

§ 1980.444 Appraisal of property serving as collateral.

(a) Appraisal reports prepared by independent qualified fee appraisers will be required on all property that will serve as collateral on loans in excess of $350,000 or where there is a specialized facility or specialized machinery and equipment or if loan funds are to be

used to refinance lender's existing debts to the applicant. On loans of $350,000 or less, the lender will be responsible for assuring that appropriate appraisals are made by either independent fee appraisers or qualified appraisers on the lender's staff. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used.

(b) The lender will be responsible for determining that appraisers have the necessary qualifications and experience to make the appraisals. The lender will consult with FmHA for its recommendations before having the appraisal made.

(c) The lender will determine that the fees or charges of appraisers are reasonable.

(d) Independent appraisals will be made in accordance with the accepted format of the industry and those prepared by the lender in accordance with its policy and procedures. All appraisals will become part of the application. (See § 1980.541(i)(6) of this subpart.)

(e) If a subsequent loan request is made within 3 years from the date of the most recent borrower's appraisal report, and there is no significant change in collateral, then the FmHA State Director in his/her discretion, and if the lender agrees, may use the existing appraisal report in lieu of having a new appraisal prepared.

§§ 1980.445 through 1980.450 [Reserved]

§ 1980.451 Filing and processing applications.

(a) *Borrowers' and lenders' contact.* Borrowers and lenders desiring FmHA assistance as provided in this subpart may file preapplications or applications with the County Supervisor or District Director servicing the area in which the project is to be located. In either case, the requirements of § 1980.46 of Subpart A of this part must be met. The County Supervisor or District Director receiving the request for assistance will promptly notify the State Director of the nature and facts of the request. The FmHA State Director will promptly arrange an early meeting with the borrower and lender representatives to discuss assembly, preparation and processing of preapplications and applications. The State Director may call upon the County Supervisor and District Director to assist the State Office in any way necessary.

(b) *Applications from cooperatives.* Borrowers eligible for loans from the Bank for Cooperatives will be encouraged to obtain guaranteed loans from that source since the Bank for Cooperatives is experienced in making and servicing such loans and can provide substantial counsel to the applicant. Applications must be submitted to the Bank for Cooperatives as a test for credit elsewhere when an insured loan is being considered. (See FmHA Instruction 2000–Q available in any FmHA office for Memorandum of Understanding between FmHA and Farm Credit Administration.)

(c) *Borrowers eligible for Small Business Administration (SBA) assistance.* All borrowers for loan guarantees eligible for SBA assistance will be advised by FmHA at the time of receipt of the preapplication of the availability of such assistance and will be encouraged to apply to that agency. (See FmHA Instruction 2000–P available in any FmHA office for Memorandum of Understanding between SBA and FmHA).

(d) *Loan priorities.* Applications and preapplications received by FmHA will be considered in the order received. Priority will be given to projects located in areas and cities having a population of less than twenty-five thousand.

(1) FmHA will cooperate fully with appropriate State agencies in guaranteeing and insuring loans in a manner which will assure maximum support of the State's strategies for development of its rural areas.

(2) When applications on hand otherwise have equal priority, the applications from a veteran will have preference. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable and who served on active duty in such forces:

(i) During the period April 6, 1917, though March 31, 1921;

(ii) During the period of December 7, 1941, through December 31, 1946;

(iii) During the period of June 27, 1950, through January 31, 1955; or

(iv) For a period of more than 180 days, any part of which occurred after January 31, 1955; but on or before May 17, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

(3) In assigning priorities to applications and in selecting projects for funding, FmHA will consider State development strategies. Funds (Insurance or guarantee authority) allocated for use as prescribed in this regulation are to be considered for use by Indian tribes within the State regardless of whether State development plans include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in any benefits of these programs. Priorities will be assigned by the FmHA State Director in accordance with the following:

(i) Those projects which will save existing jobs.

(ii) Those projects which will enlarge, extend, or otherwise improve existing business and industries.

(iii) Those which will create the highest number of permanent employment opportunities.

(iv) Those projects which will contribute to the overall economic stability of the rural areas but generate little or no permanent employment opportunities beyond the entrepreneur himself.

(e) *Filing preapplications and applications.* Borrowers or lenders may file preapplications described in paragraph (f) of this section if they desire an expression of FmHA interest prior to assembling the complete application and request for Loan Note Guarantee or they may present the complete application, in one package, including the material required in paragraphs (f), (i), (j), and (k) of this section.

(f) *Preapplications.* Applicants may file preapplications with the County, District, or State Office including:

(1) A letter prepared by the borrower and the lender which shall include:

(i) Borrower's name, address, contact person and telephone number.

(ii) Amount of loan request.

(iii) Name of the proposed lender, address, contact person, and telephone number.

(iv) Brief description of the projects, products and services provided.

(v) Type and number of employment opportunities and unemployment rate where the project will be located.

(vi) Amount of borrower's equity and guarantees offered.

(vii) Anticipated loan maturity and interest rates.

(viii) Availabiity of raw materials and supplies.

(ix) If a corporation, names and addresses of borrower's parent, affiliates and/or subsidiary firms and a brief description of relationship, products and ownership among borrower, parent, affiliates and subsidiary firms.

(2) Form FmHA 449–22, "Certification of Non-Relocation and Market and Capacity Information Report."

(3) Form FmHA 449–4, "Statement of Personal History," for a proprietor (owner), each partner, officer, director, key employee and stockholders holding

20 percent or more interest in the borrower except for those corporations listed on a major stock exchange and for those so listed if required by FmHA. Forms FmHA 449–4 are not required to be submitted for elected officials and appointed officials in connection with loan applications from public bodies. Failure to report full, complete and accurate information on the Statement of Personal History may result in FmHA's not making or guaranteeing the loan.

(4) A record of any pending or final regulatory or legal (civil or criminal) action against the borrower, parent, affiliate, proposed guarantors, subsidiaries, principal stockholders, officers and directors.

(5) For existing businesses, a current balance sheet, and latest profit and loss statement (not more than 60 days old) and financial statements including parent, affiliate and subsidiary firms, for at least the last 3 years or more if necessary for a thorough evaluation.

(6) A detailed projection of gross revenue, net earnings and cash flow statements for 3 years including assumptions upon which such forecasts are based.

(7) Sales projections indicating the percent of the national and local market the business expects to obtain.

(8) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA Office.

(g) *Preliminary determination by FmHA.* If preparation information indicates the project will not meet FmHA's minimum credit standards for a sound loan, is ineligible, does not have sufficient priority or that funds or guarantee authority are not available for the project, FmHA will so inform the lender. The lender will be notified in writing with all reasons for the decision indicated. If it appears that the project is eligible, has sufficient priority, is economically feasible and loan guarantee authority is available, FmHA will inform the lender and borrower in writing and request that they complete the application.

(h) *Department of Labor certifications.* FmHA will submit Form FmHA 449–22 to the Department of Labor for the necessary certification that the proposal will not be in conflict with § 1980.412 (c) and (d).

(i) *Content of Applications:*

(1) Form FmHA 449–1.

(2) Form FmHA 449–2

(3) Form FmHA 1940–20, when required by Subpart G of Part 1940 of this chapter.

(4) Architectural or engineering plans, if applicable.

(5) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(6) Appraisal reports.

(7) For existing businesses a pro forma balance sheet at startup and for at least three additional projected years, indicating the necessary startup capital, operating capital and short-term credit based on financial statements for the last three years, or more (if available); and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The business should submit a current balance sheet with a debt schedule of any debts to be refinanced and an income statement to FmHA, through the lender, every 90 days from the time the application is filed with the lender to the time of issuance of the Loan Note Guarantee. If debt refinancing is requested, a debt schedule is prepared (correlated to the latest balance sheets) reflecting the debts to be refinanced including the name of the creditor, the original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secured such loans.

(8) For new businesses, a pro forma balance sheet at startup and for the next three years, project cash flow (monthly first year, quarterly for two additional years) and projected earnings statements for three years supported by a list of assumptions showing the basis for the projections.

(9) Any credit reports obtained by the lender or FmHA on the borrower, its principals and parent, affiliate and subsidiary firms.

(10) Form FmHA 400–1, "Equal Opportunity Agreement," if construction costing more than $10,000 is involved.

(11) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency.

(12) Personal and corporate financial statements of those guarantors named in § 1980.443.

(13) Proposed loan agreement. (See paragraph VII of Form FmHA 449–35.) Loan agreements between the borrower and lender will be required. The final executed loan agreement must include FmHA's requirements as set forth in the Form FmHA 449–14 including the requirements for periodic financial statements and recordkeeping. There must be provisions for an annual audited financial statement of the borrower; it will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the borrower. FmHA does not require an unqualified audit opinion as a result of the audit. Compilation or reviews do not satisfy the audit requirement. The loan agreement must also include but is not limited to the following:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restrictions on dividend payments.

(iii) Limitation on purchase or sale of equipment and fixed assets.

(iv) Limitations on compensation of officers and owners.

(v) Minimum working capital requirements.

(vi) Maximum debt to net worth ratio.

(vii) Restrictions concerning consolidations, mergers or other circumstances.

(viii) Limitations on selling the business without concurrence of the lender and FmHA.

(ix) Repayment and amortization of the loan.

(x) List of collateral for the loan including a list of persons and/or corporations guaranteeing the loan with a schedule for providing the lender and FmHA with personal and/or corporate financial statements. (See § 1980.443)

(14) A complete feasibility study when required. (See § 1980.442)

(15) Any additional information required by FmHA.

(16) For companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations, a copy of Form 10–K, "Annual Report Pursuant to section 13 or 15 D of the Act of 1934."

(17) Documented evidence that the project is located within or without special flood or mudslide hazard areas.

(18) Notices of compliance with the Privacy Act of 1974.

(j) If the borrower is acting in a personal capacity and not as an entrepreneur for such entities as proprietorships, partnerships, or corporations, and FmHA solicits

personal information for him/her, the individual will be provided Form FmHA 410–9, "Statement Required by the Privacy Act."

(ii) If FmHA desires to obtain information concerning an individual from any source, FmHA will provide such source with Form FmHA 410–10, "Privacy Act Statement to References."

(19) On any request for refinancing of existing loan(s) as authorized under § 1980.411(a)(12), the lender is required, as a minimum, to obtain the previously held collateral as security for the guaranteed loan(s). Additional collateral will be required by FmHA when refinancing of unsecured or undersecured loans is unavoidable in order to accomplish the necessary strengthening of the firm's current position.

(j) *Use of forms.* FmHA numbered forms will be used where shown in both preapplications and applications. Otherwise, lenders should use their forms, real estate mortgages, security instruments and other agreements, provided such forms do not contain any provisions that are in conflict or are inconsistent with provisions of the subpart.

(k) *Certificate of need.* If the loan request is for health care facilities (e.g., hospitals or nursing homes), a "Certificate of Need" will be obtained by the borrower from the appropriate regulatory or other agency having jurisdiction over the project and submitted to FmHA by the lender. If a significant part of the project's income will be from third party payors, (e.g., medicare or medicaid), the project will be designed and operated in a manner necessary to meet the requirements of the third-party payors.

Administrative

A. The State Director:

1. Determines if material and information submitted is completed and signed by the appropriate party in the appropriated capacity.

2. May request the comments and recommendations of the County Supervisor and District Director. Such comments will include but are not limited to the following: Community attitude toward project; a summary of comments regarding the proposal by the lender, county leaders and other interested parties; whether the project is likely to result in the need for additional community facilities such as schools, water, sewer and health care services, and if so, the community's plan for providing such facilities; availability of any required additional labor force and training plans for such force, if needed; an economic forecast of the effect on the community should the project fail, if financed.

3. Will furnish all individuals acting in a personal capacity at the time of filing a preapplication or application and two copies of Form FmHA 410–9. The individual will sign both copies, retaining one and providing FmHA with the other copy which becomes a part of the loan file.

4. Will provide any source whom FmHA obtains information concerning an individual with two copies of Form FmHA 410–10. The source will sign both copies, retain one and provide FmHA with the other copy which becomes a part of the loan file.

5. Will prepare Form FmHA 2033–34, "Management System Card—Business and Industry," in accordance with FmHA Instruction 2033–F. Form FmHA 2033–34 will be used as the resource document to input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS). The RCFTS data structure consist of 3 sets: Applicant/Borrower (BOR), Facility (FAC), and Fund Request (FRO) sets. There are multiple screens for the FAC and FRO sets.

6. Will forward immediately to the National Office on all projects.

(a) Form FmHA 449–22 (7 copies) for loans over $1 million and when direct employment increases more than 50 employees.

(b) For insured loans where the borrower leases facilities to another, submit Form FmHA 449–22 for such borrower. The lessor(s) will also be required to provide Form FmHA 449–22. Subsequent loan requests require resubmission of Form FmHA 449–22.

(c) Form FmHA 449–4 (5 copies) for all loans over $1 million or for loans, regardless of size, when the State Director believes a character evaulation check is advisable. Borrowers should be advised that this clearance will take approximately 60 days to process and that the National Office will take no action to expedite such processing.

Note.—Forms FmHA 449–22 and FmHA 449–4 should *only* be processed if a *complete* preapplication or application has been received.

B. Miscellaneous Administrative provisions:

1. *Par (f).* Preapplications are not to be accepted or processed unless a lender has agreed in writing to finance the proposal. The preapplication letter is a joint letter prepared by the borrower and lender.

2. *Par (g).* Upon receipt of all preapplications in excess of $5 million, the State Director will transmit to the National Office the material required under paragraph (f)(1), (f)(4) and (f)(5) of this section together with recommendations and observations an analysis of the quality and permanency of the employment opportunities involved in the project. The National Office will review the proposed project in relation to objectives, priorities and intent of the program and will advise the State Director. After receiving the National Office advice or for loans less than $5 million, the State Director will inform the borrower of the decision.

3. *Par (i).* State Director submits a transmittal letter with recommendations on loan applications requiring National Office review. Included are:

(a) Loan file.

(b) Form FmHA 449–29, "Project Summary—Business Industrial Loan Division," including State Director's a spread sheets, financial history and projections (use attachments to Project Summary if necessary).

(c) Proposed Form FmHA 449–14.

(d) Copy of FmHA State Loan Review Board Minutes.

(e) Notification of required financial and other reports, their frequency, due dates and fiscal yearend.

4. *Par (i)(9), Credit reports.*

(a) The National Office has a contract to provide credit reports for preapplications, applications, and in instances after the loan(s) is made, where a credit report is needed.

(b) States should first try to have the lender provide such a report because credit reports are the responsibility of the lender.

(c) Any state needing a credit report should telephone the National Office, Director, B&I, and give the name of the business and the city and State location. The report will be mailed to the State the same day, if possible.

5. *File documentation.* Applications will be organized in a loan file in accordance with FmHA Instruction 2033–A (available in any FmHA office.) An 8-position folder with tabs will be utilized.

The State Director may supplement the Position Guides to include specific legal requirements within their State. If the lender prepares a complete application package, it may accompany the docket provided the docket is organized in a binder, indexed and tabbed. Feasibility studies should be kept separate. It is the responsibility of FmHA employees who work on applications or servicing actions to add to the correspondence section of the loan file (also known as the running record) a written report of any field visits, meetings, telephone conversations and memorandums covering decisions or reasons for FmHA's actions on the cases. Particular attention must be given to this requirement on cases that become delinquent or problems in order that FmHA position will be defensible in the event of an adverse action.

6. *Par (i), (13), Audit agreements and requirements.* FmHA urges the use of a written agreement between the lender and borrower to assure that there is no misunderstanding concerning FmHA audit requirements.

7. *Par (i), Forms and documents found in loan docket.* The following table is a guide to forms and documents used in completing an application and loan docket. The filing position within the 8 position folder is shown on the right. Some of these items may not be applicable for a particular loan. However, a complete loan docket may need to include items in addition to the following:

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE		Filing position
AD-425	Contractor's Affirmative Action Plan For Equal Employment Opportunity	1
FmHA 400-1	Equal Opportunity Agreement	6
FmHA 400-3	Notice to Contractors and Applicants	6
FmHA 400-4	Assurance Agreement	3
FmHA 400-6	Compliance Statement	6
FmHA 410-8	Applicant Reference Letter	3
FmHA 410-9	Statement Required by the Privacy Act	3
FmHA 410-10	Privacy Act Statement to References	3
FmHA 424-12	Inspection Report	6
FmHA 1940-1	Request for Obligation of Funds	2
FmHA 1940-22	Environmental Checklist for Categorical Exclusion, or	3
FmHA 1940-21	Environmental Assessment for Class I Action, or	3
Exhibit H, Subpart G of Part 1940	Environmental Assessment for Class II Action	3
	Environmental Impact Statement	3
FmHA 440-57	Acknowledgement of Obligated Funds/Check Request	2
FmHA 449-1	Application for Loan and Guarantee	3
FmHA 449-2	Statement of Collateral	5
FmHA 449-4	Statement of Personal History	3
FmHA 1940-20	Request for Environmental Information	3
FmHA 449-14	Condition Commitment for Guarantee	2
FmHA 449-22	Certification of Non-relocation and Market and Capacity Information Report	3
FmHA 449-29	Project Summary—Business Industrial Loan Division	3
FmHA 449-34	Loan Note Guarantee	2
FmHA 449-35	Lender's Agreement	2
FmHA 449-36	Assignment Guarantee Agreement	2
FmHA 1980-19	Guaranteed Loan Closing Report	2
	Annual Audit Report	1
	Borrower Financial Statements	3
	Chattel Security Instruments	1
	Report—Exhibit B, FmHA Instruction 2015—C	1
	Borrower's Certification of Indebtedness	1
	Lender's Loan Agreement	2
	Promissory Notes	2
	Bond (specimen) Bond Ordinances, Bond Transcripts or Similar Items	2
	Running Case Record	3
	Market Analysis Information (feasibility study)	3
	Borrower's and Lender's Preapplication Letters	3
	Lender's Evaluation and Recommendations	3
	Cost Estimates and Forecast for Contingency Funds	6
	Dun and Bradstreet Reports	3
	Corporate or Personal Financial Statements of Guarantors	3
	S.E.C. 10-K Report	3
	Pro-forma Balance Sheet	3
	Current Profit and Loss Statements	3
	Projection of Gross Revenues and Net Earnings	3
	Cash Flow Statements, 3 Years with Assumptions	3
	Appraisal Reports	8
	Documentation for Considering Refinancing	3
	Financial Statements for last 3 years	3
	Complete Debt Schedule	3
	Interim Financial Statements	3
	Aging and Turnover of Receivables and Inventory	3
	Credit Reports	3
	Records of any Pending or Final Regulatory Litigation	3
	Comments on any State Development Strategies	3
	Flood or Mudslide Hazard Area Statement	3
	National Historic Preservation Act Statement	3
	State Review Board Minutes	3
	Certificate of Need (Health Care Facilities)	3
	Clean Air and Water Pollution Control Act Requirements Statement	3
	Correspondence (excluding closing instruments)	4
	Department of Labor Certification	4
	Mortgagee Title Insurance Policy	5
	Title Opinions	5
	By-Laws, Resolutions, or Regulations and Amendments	5
	Articles of Incorporation, By-laws and Regulations or Charter	5
	Lender Security agreements and Financing Statements	5
	Lender Mortgages and Notes	5
	Advice of Office of General Counsel from Review of Docket	5
	Partnership Agreements	5
	Other Documents used in Loan Closing	5
	Schedule of Stock Ownership	5
	Franchise Agreement	5
	Construction Contracts and Compliance Statements	6
	Lender's Approval of Plans and Specifications	6
	Engineer's Certification of Satisfactory Completion in Accordance with Plans and Specifications	6
	Lender's Audit of Expenditures and Project Costs	6
	Evidence of Concurrence and compliance with Construction Requirements of State, County, and Municipal Government (including building permits).	6
	Lender's Closing Certification	6
	Lender's Loan Servicing Plan	6
	Loan Closing Opinion of Lender's Legal Counsel	6

§ 1980.452 FmHA evaluation of application

FmHA will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose and that there is reasonable assurance of repayment ability, sufficient collateral and sufficient equity and the proposed loan complies with all applicable statutes and regulations. If FmHA determines it is unable to guarantee the loan, the lender will be informed in writing. Such

notification will include the reasons for denial of the guarantee. If FmHA is able to guarantee the loan, it will provide the lender and the borrower with Form FmHA 449–14, listing all requirements for such guarantees. FmHA will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA 449–1. The Conditional Commitment for Guarantee may not be issued on any loan until the State Director has been notified by the National Officer that the Statements of Personal History(s) have been processed and cleared. FmHA State Directors are the only persons authorized to execute Form FmHA 449–14.

Administrative

State Director evaluates the application and considers:

A. Rural area determinations. (See § 1980.405 of this subpart.)

B. Community impact of the proposal which includes:

1. Number of businesses and industries in the town or city.

2. Employment impact upon the community.

3. Availability of skilled and unskilled labor and permanency of employment opportunities.

4. Vocational and educational facilities to provide skilled labor, if applicable.

5. Policies of applicant regarding unemployment, lay-offs, wage scales, etc.

C. If debt refinancing is requested, consider in accordance with § 1980.411(a)(12) of this subpart and:

1. A complete review will be made to determine whether it is essential to restructure the company's debts on a schedule that will allow the business to operate successfully rather than merely guaranteeing an unsound loan.

(a) Obtain a borrower's complete debt schedule. Schedule should agree with borrower's latest balance sheet.

(b) Determine from lender if the borrower's present loan(s) is on the lender's regulatory examiner's report and if so determine the loan classification.

(c) Analyze lender's liability ledger on the borrower, individual customer credit file, installment Loan Ledger Card or Computer printouts and other credit reports.

(d) The percentage of guarantee should be adjuted to assure that the lender does not bring its previously existing unguaranteed exposure under the guarantee.

(e) Any special servicing requirements should be identified and included in the Conditional Commitment for Guarantee.

D. Applications will be analyzed by an FmHA State Loan Review Board before execution of Form FmHA 449–14. When analyzing the B&I loan request, the State Loan Review Board will specifically address the issue of the guarantee percentage to be approved. Consideration of reducing the maximum guarantee to less than 90 percent is appropriate when the loan has sufficient strength to warrant further participation by the private sector or refinancing of existing lender debts to the borrower is involved. Ordinarily, B&I loan guarantees should be structured so that the lender bears a significant portion of the risk of loss from a default. "Significant" means equal to or greater than 20 percent of the loss stemming from default. All review board meetings will be fully documented, including the review and decision concerning the guarantee percentage, and will be signed by those FmHA employees serving on the board. A copy of such documentation will be retained in the loan file.

1. Generally, the review board consists of the State Director as Chairperson, Community and Business Program Chief or the Business and Industry Chief (Loan Specialist) and either the Community Programs Chief, Rural Housing Chief, or Farmer Programs Chief, as appropriate.

2. The State Director may wish to contact non-FmHA sources for expertise, such as banker or other lenders, industrial development specialists from state commissions, academicians, certified public accountants, tax attorneys, successful business and professional lenders, management consultants and officials from other Federal agencies. Outside resource consultants may be reimbursed only for their travel costs (transportation and subsistence). (See FmHA Instruction 2036–A which is available in any FmHA Office).

3. The Rural Housing Loan Chief will be a member of the FmHA State Loan Review Board if a site development loan (see § 1980.411(a)(7) of this subpart) is being considered. The Community and Business Programs Chief (Loan Specialist) will be a member if a loan for facilities of the type financed under the provisions of Subpart A of Part 1942 of this chapter is being considered. The Farmer Programs Chief will be a member of the board if a project, the success of which is dependent on the production of agricultural products, is being considered. If the proposed project covers more than one program area, all the chiefs for those programs involved will be members of the board. If the approval of an application for a B&I loan may result in benefiting or hindering other FmHA programs, the review board will determine whether the making of such loan or guarantee is likely to result in embarrassment for FmHA as a result of a possible conflict of interest whereby other parties may accuse the agency of giving loan preference to housing borrowers (in the case of site development) or producers (in the case of agricultural processing plants) or other FmHA programs.

4. The State Director may request the County Supervisor and/or District Director to attend the review board meeting whenever it is determined they may have special knowledge of the proposed loan which may affect the board's decision.

5. Prior to submission of a B&I guaranteed loan(s) request to the National Office for loan processing review and prior to loan approval, the appropriate loan processing official must visit the project site and discuss the loan proposal with the lender and borrower. In the event there are multiple project sites the official should visit a representative sample of project sites to develop deeper understanding of the project operation. For businesses without a developed project site a visit is not necessary; however, a visit with the lender and borrower is still required. The findings of the visit should be documented in the loan docket submitted to the National Office.

6. The State Director will prepare an original and two copies of Form FmHA 1940–1 for each loan to be obligated. Also, for each initial loan, Form FmHA 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," will be prepared. The State Director will sign the original and one copy and conform the second copy. Form FmHA 1940–1 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Form FmHA 1940–1 and Form FmHA 449–14 on the obligation date, unless the Administrator has given prior authorization to the Finance Office to obligate before the 6-day reservation period and directs the State Director to forward Form FmHA 1940–1 to the lender in advance of issuance of Form FmHA 449–14. The State Director or designee will record the actual date of lender notification on the original of the Form FmHA 1940–1 and retain the original of the form as a permanent part of the FmHA case file. The State Director may retain the remaining conformed copy of Form FmHA 1940–1. The State Director or designee will use the State Office terminal to request reservation/obligation of funds. Use of the telephone for the reservation/obligation of funds is restricted to those instances when the State Office terminal is inoperative. Form FmHA 1980–50 will be prepared and distributed for initial loans only.

a. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form FmHA 1940–1 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

b. The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 41 of Form FmHA 1940–1.

c. The Finance Office will terminally process telephone reservation requests. Those requests for reservation received before 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

d. Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be 8 working days from

the date of the request for reservation of authority which is being processed in the Finance Office. The Finance Office will mail to the State Director Form FmHA 440–57, "Acknowledgment of Obligated Funds/Check Request," prepared in duplicate, confirming the reservation of authority with the obligation date inserted as required by item No. 9 on the FMI for Form FmHA 440–57. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information staff in the National Office as required by FmHA Instruction 2015–C (available in any FmHA office).

e. See FmHA Instruction 2015–C (available in any FmHA office) for notification procedures.

7. State Director notifies the lender and borrower if he/she will not issue the Form FmHA 449–14.

§ 1980.453 Review or requirements.

(a) Immediately after reviewing the conditions and requirements in Form FmHA 449–14 the lender and applicant should complete and sign the "Acceptance of Conditions," and return a copy to the FmHA State Director. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA.

(b) If the lender indicates in the "Acceptance of Conditions" that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Note Guarantee, the lender will immediately advise the FmHA State Director.

Administrative

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form FmHA 449–14. A copy of Form FmHA 449–14 and any amendments thereto will be included when the loan file is submitted to the National Office for review. When the National Office recommends modifications or additions to Form FmHA 449–14, the State Director will further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would modify recommendations of the National Office, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA 449–14 and any amendments thereto.

B. On loan applications within the State Director's loan approval authority, the State Director will submit to the National Office, Business and Industry Division, within 30 days after the Form FmHA 449–14 has been accepted:

1. A copy of Form FmHA 449–29.

2. A copy of Form FmHA 449–14 is accepted by the lender and borrower.

2. A copy of FmHA State Loan Review Board Minutes.

4. Notification of required financial and other reports, their frequency, due dates and fiscal year-end.

5. A copy of the proposed loan agreement between the lender and the borrower.

6. When debt refinancing is involved, a copy of the justification for the refinancing.

7. The cover memorandum should indicate whether the Form FmHA 449–34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by § 1980.60(a) of Subpart A of this part, and, if not, a proposed date for issuance of the Form FmHA 449–34.

§ 1980.454 Conditions precedent to issuance of the Loan Note Guarantee.

In addition to compliance with the requirements of § 1980.60 of Subpart A of this subpart, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee.

(a) *Transfer of lenders.* The FmHA State Director may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where Loan Note Guarantee has not yet been issued) provided, there are no changes in the borrower's ownership or control, loan purposes, scope of project and loan conditions in the Form FmHA 449–14 and the loan agreement remains the same. To effect such a substitution, the former lender will provide FmHA with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form FmHA 449–1. If approved by FmHA, the State Director will issue a letter or amendment to the original Form FmHA 449–14 reflecting the new lender and the new lender will acknowledge acceptance of the letter or amendment in writing.

(b) *Substitution of borrowers.* FmHA will not issue a Loan Note Guarantee to the lender who is in receipt of a Form FmHA 449–14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in the Form FmHA 449–1, item 15. All requests for exceptions must be approved by the FmHA National Office.

(c) *Changes in terms and conditions in Form FmHA 449–14.* It is the intent of FmHA that once the Form FmHA 449–14 is issued and accepted by the lender, the Commitment not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds or terms and conditions. Only minor changes will be considered, unless otherwise provided for in this subpart. All requests for changes will require National Office approval.

(d) *Additional requirements for B&I guaranteed loans.* All B&I borrowers and lenders, as applicable, must comply with Appendix D, paragraphs (I) (A) and (B); (II)(A) through (II)(A)(2)(g)(1); (II) (B) and (C); (III) (A), (B), (C), (D), and (E).

(e) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA and provide those documents and certifications required in §§ 1980.60 and 1980.61 of Subpart A of this part. Only when the FmHA B&I Chief or Loan Specialist, as required in Paragraph B. (Administrative) of this section, is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

(f) *Loan closing.* When loan closing plans are established, the lender will notify FmHA.

(g) *Closing of working capital loans.* The State Director will not issue a Loan Guarantee for a working capital loan prior to the completion of all proposed construction for the project. Working capital loan funds will not be used to pay short-term notes.

Administrative

A. *The State Director reviews:* 1. The loan agreement between the borrower and lender which provides for the frequency of submission of financial statements to the State Director. Monthly financial statements should be required on new business enterprises or those needing close monitoring. However, the annual audit report will always be required.

2. Plans for inspections made on construction projects. These should be coordinated with the lender and borrower. Form FmHA 424–12, "Inspection Reports," may be used by the State Engineer or Architect who will make an inspection of the projects which involve substantial construction. The inspection shall be completed prior to the issuance of the Loan Note Guarantee to assure all construction is complete. The State Loan Specialist or Chief may also participate in the inspections.

3. Cost overruns, if any, and how they will be met. State Directors may approve cost overruns for projects in any amount or percentage within their loan approval authority not to exceed 10 percent in loan amounts between $1 million and $10 million.

4. Basic credit requirements of all loans.

B. In all cases, the Program Chief or the B&I Loan Specialist will conduct a preguarantee review before issuance of the Loan Note Guarantee to assure that all requirements of the application, Conditional Commitment for Guarantee and Loan Agreement have been met including the required certifications using language specified by the regulations, and

will provide such verification in the loan file, including arrangements for annual audit reports. In the conduct of this review, all requirements of § 1980.60(a) of Subpart A of this part will be reviewed and special attention should be paid to reviewing current financial statements of the borrower to assure that no adverse change has taken place. The District Director may participate in the review.

C. The State Director or any other FmHA personnel shall not sign any documents other than those specifically provided for in Subparts A or E of this part. No certificates shall be signed except the "Certificate of Incumbency and Signature" as set forth as Appendix B of this subpart.

D. *Par (a) Transfer of Lender.* The State Director will analyze all requests for substituted lenders including the servicing capability, eligibility and experience of the new lender before the request is approved. If approved, notify the Finance Office of the change using Form FmHA 1980–42, Do not deobligate and reobligate the loan if the Form FmHA 449–14 was issued in a previous fiscal year.

E. *Par (b) Substitution of borrowers.* The State Director will review any request for exceptions to substitution of borrowers and forward such requests with a memorandum of facts and recommendations to the National Office for a decision. The National Office will not approve any request where the legal entity is changed, such as from a corporation to a partnership, etc., or if the ownership changes more than 20 percent.

F. *Par (c) Changes in terms and conditions in Form FmHA 449–14.* The State Director will review any requests for changes to Form FmHA 449–14 and forward such request with a memorandum of facts and recommendations to the National Office for a decision. The National Office will approve only minor changes which do not materially affect the project, its capacity, employment, original projections or credit factors. Changes in legal entities or where tax considerations are the reason for change will not be approved when modifying any loan guarantee or conditions of guarantee, in order to identify the number and types of action taken, the following procedures are to be followed when return of this type are approved by FmHA.

1. Start with the number 1 when the first modification is approved and enter this number in the upper right hand corner of the Letter of Concurrence and on the related "Modification or Administration Action" sheet.

2. Next to the modified wording on the work copy of the Conditional Commitment for Guarantee and the Term Loan Agreement or any form which has been modified, pencil in a short cross reference to the modification and identify the number given it.

3. File the copies of the "Modification or Administrative Action" sheet and related Letters of Concurrence numerically in the docket directly on top of the affected original documents of conditions.

4. This order of recordkeeping should include any requests which were declined by the National Office.

§§ 1980.455 Through 1980.460 [Reserved]

§ 1980.461 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

[See § 1980.61 of Subpart A, of this part]

Administrative

A. *Par (a) of Subpart A, § 1980.61.* The original Form FmHA 449–35 will be retained in the FmHA loan file.

B. *Par (b)(1) of Subpart A, § 1980.61. Copies of all issued Loan Note Guarantees will be kept in the FmHA loan file.*

C. *Par (b)(2) of Subpart A, § 1980.61.* The State Director will approve all substitutions of Loan Note Guarantee or Contracts of Guarantee.

D. It is imperative that the original loan covered by a Contract of Guarantee is current.

E. *The Registered Holder will transmit to the State Director:* 1. Request for substitution together with the original Contract of Guarantee.

2. Copies of the notes with lender's identification numbers. (All requirements of the Lender's Agreement will be complied with before any new notes are issued.)

3. Certification that the loan is current and in good standing.

4. Certification of outstanding principal amount of the loan.

5. Executed Lender's Agreement. (FmHA provides form to Lender).

6. Executed Form FmHA 1980–19. (See § 1980.21 of Subpart A of this part for calculation of fee due).

7. Payment for appropriate guarantee fee.

F. *State Director will:* 1. Review all the requirements of Paragraph E of this section.

2. Verify the submitted request and if in order, send the guarantee fee and Form FmHA 1980–19 to Finance Office with a notation of the date the new Loan Note guarantee will be issued. (Note: The substitution of a Loan Note Guarantee for the Contract of Guarantee is not to be considered as a new loan for recordkeeping purposes).

3. Complete the Loan Note Guarantee (appropriate number for attachment to each note), date and sign the instrument. The following statement will be entered at the top of the form: "This Loan Note Guarantee is issued in substitution of Contract of Guarantee dated _____." The State Director will transfer from the Contract of Guarantee all information pertaining to the Loan Note Guarantee.

4. Execute Lender's Agreement.

5. Cancel the original Contract of Guarantee.

6. Transmit to the lender the original Loan Note Guarantee and a copy of executed Lender's Agreement and retain in the loan file copies of the Loan Note Guarantee with attached original cancelled Contract of Guarantee, a copy of Form FmHA 1980–19 and the original Lender's Agreement.

All applicable provisions of this subpart and Subpart A of this part apply to the loan when the Loan Note Guarantee is signed.

G. *Alternate Procedure:* If the Registered Holder does not want to deliver the original contract of Guarantee with his/her request for substitution, the State Director will accept a copy of the Contract of Guarantee and proceed as above. However, the Loan Note Guarantee will be delivered only upon receipt of the original Contract of Guarantee.

H. *Par (b)(3) of Subpart A, § 1980.61.* For reporting purposes where multi-notes are issued, the loan to the borrower will be counted as one loan regardless of the number of notes issued.

I. *Par (b)(4) of Subpart A, § 1980.61.* The State Director will notify the Finance Office of the transaction.

J. *Par (d) of Subpart A, § 1980.61.* A copy of Form FmHA 449–36 will be kept and a copy of executed Lender's Agreement retained in loan file along with copies of the Loan Note Guarantee with attached original cancelled Contract of Guarantee, copy of Guarantee Fee Report and the original Lender's Agreement.

K. *Par (e) of Subpart A, § 1980.61.* State Director signs all Forms FmHA 449–13, "Denial Letter."

L. *Par (g) of Subpart A, § 1980.61.* The State Director will: 1. Review Form FmHA 1980–19 for completeness.

2. Deposit the guarantee fee through concentration banking and include the amount in the total collections on the Daily Activity Report.

3. Submit Form FmHA 1980–19, Guaranteed Loan Closing Report with the Daily Activity Report and other attachments to Finance Office in the salmon envelope marked "CR". This form is used *in lieu of* the 451–2, "Schedule of Remittance."

4. On the Daily Activity Report, Form 1980–19 will be counted as one in the item count as if it were a card or coupon.

5. Ascertain that originals or copies, as appropriate, are retained in the FmHA Loan file.

§§ 1980.462 through 1980.468 [Reserved]

§ 1980.469 Loan servicing.

The lender is responsible for loan servicing and for notifying the FmHA of any violations in the Lender's Loan Agreement. (See Paragraph X of Form FmHA 449–35).

(a) All B&I guaranteed loans in the lender's portfolio will be classified by the lender as soon as it is notified by the State Office to do so and again whenever there is a change in the loan which would impact on the original classification. The State Director will notify the lender of this requirement for all existing loan guarantees, when new Loan Note Guarantees are issued to a lender and/or when the State Office becomes aware of a condition that would affect the classification and justification of the classification will be sent to the State Office. The loans will be classified according to the following criteria:

(1) *Substandard Classifications*— Those loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in

this category must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that the lender and FmHA will sustain some loss.

(2) *Doubtful Classification*—Those loans which have all the weaknesses inherent in those classified Substandard with the added characteristics that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(3) *Loss Classifications*—Those loans which are considered uncollectible and of such little value that their continuance as bankable loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

(b) There is a close relationship between classifications; and no classifications category should be viewed as more important than the other. The uncollectibility aspect of Doubtful and Loss classifications are of obvious importance; however, the function of the Substandard classification is to indicate those loans that are unduly risky which may result in future claims against the B&I guarantee.

(c) Substandard, Doubtful and Loss are adverse classifications. There are other classifications for loans which are not adversely classified but which require the attention and followup of the lenders and FmHA. These classifications are:

(1) *Special Mention Classification*—Those loans which do not presently expose the lender and FmHA to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving the lender's close attention. Failure to correct these deficiencies could result in greater credit risk in the future. This classification would include loans that the lender is unable to supervise properly because of a lack of expertise, an inadequate loan agreement, the condition of or lack of control over the collateral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the borrower's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this designation. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(2) *Seasoned Loan Classification. A loan which:* (i) Has a remaining principal guaranteed loan balance of two thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(ii) Is in compliance with all loan conditions and B&I regulations.

(iii) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(iv) Is secured by collateral which is determined to be adequate to ensure there will be no loss on the guaranteed loan.

(3) *Current Non-problem Classification*—Those loans which have been current for 23 or fewer months and are in compliance with the loan conditions and B&I regulations. These loans would not be considered as posing a credit risk to the lender or FmHA. All loans not classified as Seasoned or Current Non-problem will be reported on the quarterly status report with documentation of the details of the reason(s) for the assigned classification.

Administrative

Refer to Appendix G of this subpart (available in any FmHA Office) for advice on how to interact with the lender on liquidations and property management.

A. While the lender has the primary responsibility for loan servicing and protecting the collateral, the State Director is responsible for seeing that servicing as required by the Lender's Agreement and regulation is properly accomplished. Loan servicing is intended to be a preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

B. *Paragraph II of the Lender's Agreement.* 1. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. As used herein, the phrase "use of loan funds for unauthorized purposes" refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purposes" means any purpose not listed by the Lender in the completed application as approved by FmHA.

2. With respect to the negligent servicing and use of loan funds for unauthorized purposes, the Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by negligent servicing and use of loan funds for unauthorized purposes regardless of the time FmHA acquires knowledge of the negligent servicing or use of loan funds for unauthorized purposes by the lender. Only the amount of the loss caused by negligent servicing or use of loan funds for unauthorized purposes can be withheld from the final loss claim submitted by the lender. The dollar amount withheld from the final loss claim must be ascertainable. In order to determine the final loss amount, the guaranteed loan collateral and any collateral of the guarantor(s) must be liquidated and settled or a settlement with the guarantor(s) reached. In the event there is reason to suspect the lender of negligent servicing or use of loan funds for unauthorized purposes during the life of the loan, the lender should be notified in writing that (a) the acts of negligent servicing and/or use of loan funds for unauthorized purposes will cause the guarantee to be unenforceable by the lender to the extent these acts cause a loss; (b) any decision not to honor any part of the guarantee is not possible until the loan has been liquidated and a loss established; (c) if any loss occurs FmHA will consider whether negligent acts of the lender caused a loss after the liquidation is complete; and (d) at the time FmHA determines a loss has occurred as the result of negligent servicing the lender may appeal any adverse decision.

3. When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with FmHA Instruction 2012–B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans. A borrower or lender can be sued even though criminal fraud is present. If FmHA has good reason to believe that, for example, a borrower or a lender made a false statement to obtain a loan or guarantee, or a lender submitted a loss claim to FmHA which was false or fraudulent, it should promptly call the matter to the attention of OGC—even if no payment of the loss claim has occurred yet. (This would include those situations in which a borrower lied to the lender in order to get the loan, the lender believed the borrower and made the loan—which was guaranteed by FmHA—and then the lender presented a loss claim to FmHA for payment after the borrower defaulted on the loan.) Sometimes it might be necessary to ask OIG to do an investigation to establish all the aspects of the fraud. If at all possible, this should then be done prior to referral to OGC.

4. There are two methods the Government could use to seek relief for the fraud. One of the ways the Government could seek redress for the fraud is to sue under the False Claims Act (31 U.S.C. sections 3729–3731). If fraud is proven to have occurred, the False Claims Act provides for the recovery of double damages and a $2,000 penalty (and the costs of one civil suit) for each act involving, for

example: (a) knowingly submitting to a Government employee of false or fraudulent claim for payment or approval, (b) knowingly making or using a false record or statement to get a false or fraudulent claim paid or approved, or (c) conspiring to defraud the United States by getting a false or fraudulent claim allowed or paid. Suit under the False Claims Act must be filed within six years from the date of the commission of the act (e.g., presentation of the claim to FmHA for payment). The double damage feature ought to be a good incentive to convince OIG to undertake necessary investigations to help establish the fraud.

5. In order to decide whether to file suit, the Department of Justice will need to know such things as: What was the amount of the loan or the loss paid to the lender or holder? How much did the scheme cost the Government? What is the difference in money between what the Government paid out and what it should have paid out? Does the borrower or lender have enough assets to make it worth suing? If FmHA can answer these questions before referral to OGC—either on its own or by using OIG—than OGC can refer the matter that much more quickly to the Justice Department.

6. There is also a way to bring suit for civil fraud by alleging that "common law" fraud occurred. This would just involve proving that a borrower or a lender falsely represented by their words or actions, a matter of fact either by alleging something in a false or misleading manner or by concealing something that should have been disclosed; and that FmHA was deceived by this conduct, and relied on it to its detriment. Under "common law" fraud, only single damages could be recovered, and there would be no $2,000 penalty assessed. The action would generally have to be brought within three years from the date of the discovery of the fraud.

7. Neither the False Claims Act nor the right to bring a "common law" action for fraud precludes the Government from just suing to recover the money wrongfully or mistakenly paid by its employees. If the Justice Department decides not to pursue a civil frauds claim under the False Claims Act or "common law," it will return the matter to OGC. Depending on what stage the proceedings were in when the matter was first referred, FmHA could then continue to negotiate with the lender or OGC could re-refer the case to Justice for any contract-based actions, including fraud or misrepresentation based on the terms of the guarantee.

C. *The State Director will assure that:* 1. The lender understands upon initial contact during loan application and in particular at loan closing that the lender is responsible for loan servicing and that *annual audited financial statements are required.*

2. A timetable for routine site, borrower and lender visitations by FmHA personnel is established before the Loan Note Guarantee is issued. As a guide, visits to newly established borrowers with the lender represented should be scheduled monthly. Visits to established, nonproblem borrowers must be made at least annually except for seasoned loans which will be visited at least bi-annually. Special attention problem accounts should be visited as frequently as the need demands. If possible, these visitations should be coordinated with the lender's visits.

3. During or in preparation for field visits, the following functions are to be performed:

(a) Current financial information is obtained in advance and analyzed for trends.

(b) Any issues revealed or problems not resolved from the last visitation are included in the agenda.

(c) Collateral is observed and its condition, maintenance, protection and utilization by the borrower appears to be satisfactory.

(d) A report of the visit is made on Form FmHA 449-39, "Field Visit Review (Business and Industrial Loans)," or otherwise documented and included in the loan file. The report should include an opinion of the borrower's status based upon observations made during the visit.

(e) Any instructions or directions to the lender should be confirmed by letter.

4. The Program Chief or Loan Specialist will conduct an annual meeting with each lender or its agent with whom a Loan Note Guarantee(s) or Contract of Guarantee(s) is outstanding. This cannot be redelegated. These meetings may be scheduled at the time FmHA makes periodic field inspections to the borrower's place of business. At the meeting, a review will be made of the lender's performance in loan servicing, including enforcement of conditions and covenants in the loan agreements. The observations and results of the meeting will be documented. Form FmHA 449-39 may be used for this purpose. Servicing exceptions on the part of the lender which are noted by FmHA will be confirmed by letter to the lender.

5. The lender performs an adequate analysis of borrower financial statements for FmHA. FmHA in turn will evaluate the lender's analysis and follow up with the lender on servicing action(s) required or negative observations not detected through the lender's analysis. The financial statement analysis of the lender, the financial statement and a memorandum reflecting FmHA's analysis, including a comparison to previous and projected performance of the borrower, will be forwarded to the National Office, Attention: Business and Industry Division, only for the following loans:

(a) All loans within the first year of loan closing.

(b) Loans over one year old as determined by the State Director or a National Office assigned loan reviewer who is participating in a field review. In event of a disagreement between the State Director and an assigned loan reviewer as to which loans should be included, the assigned loan reviewer's decision will take precedence.

(c) All problem and delinquent loans.

(d) Loans that the State Director would like reviewed by the National Office.

6. Meetings are arranged between the lender, borrower and FmHA to resolve any problems of late payment, etc.

D. *State Director authorities.* 1. The State Director may delegate authority for the conduct of all functions listed in § 1980.469 Administrative B., except item C. 4. in Administrative B.

2. The State Director may approve B&I guaranteed loan servicing actions as authorized in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter.

3. Servicing actions on loans which exceed the State Director's loan approval authority are to be referred together with the State Director's recommendations to the Director, Business and Industry Division, for prior review and concurrence.

§ 1980.470 Defaults by borrower.

[See § 1980.63 of Subpart A, of this part.]

Administrative

Refer to Appendix G of FmHA Instruction 1980-E (available in any FmHA Office) for advice on how to interact with the lender on liquidations and property management.

A. In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the State Director, or its designee, and borrower to resolve the problem. A memorandum of the meeting, individuals who attend, a summary of the problem and proposed solution will be prepared by the FmHA representative and retained in the loan file. When the State Director receives a notice of default on a loan, he/she will immediately notify the National Office in writing of the details and will subsequently report the problem loan to the National Office on the quarterly status report. The State Director will notify the lender and borrower of any decision reached by FmHA.

B. In considering servicing options, some of which are identified in paragraph X. A of Form FmHA 449-35, the prospects for providing a permanent cure without adversely affecting the risks of the FmHA and the lender must become the paramount objective. Within the State Director's authority temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interests of the lender and FmHA. Some of these actions may require concurrence of the holder(s). A deferral, rescheduling, reamortization or moratorium is limited by the period of time authorized by this subpart for the purpose for which the loan(s) is made or the remaining useful life of the collateral securing the loan. For example, if the promissory note on a working captial loan is scheduled to mature in 2 years the loan could be rescheduled for 7 years or the remaining life of the collateral whichever is the lesser of the two.

C. Subsequent loan guarantee requests will be processed in accordance with provisions of § 1980.473 of this subpart.

D. If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In these situations when FmHA is holder of some of the notes, the State Director may endorse the notes back to the lender after the State Director has sought the advice and guidance of OGC, provided a proper receipt is received from the lender which defines the

reason for the transfer Under no circumstances will FmHA endorse the original Form FmHA 449–34 to the lender.

E. The State Director's authority to approve servicing actions is defined in § 1980.469, Administrative D.2.

F. Consultant services may be recommended by the State Director to assist FmHA and the lender in determining which servicing action is appropriate. Requests for consultant services should be made by the State Director and addressed to the Administrator, Attn: Business and Industry Division. A full explanation of the loan history, an evaluation and scope of the proposed study and the need should be included in the request.

G. When the National Office determines it is necessary on individual cases, due to some special servicing requirements, it may, at its option, assume the servicing responsibility on individual cases.

H. The State Director will report all delinquent and problem loans quarterly to the Director, Business and Industry Division, by the 10th day of January, April, July and October.

I. The State Director will notify the Finance Office by memorandum of any change in payment terms such as reamortizations or interest rate adjustments and effective dates of any changes resulting from servicing actions.

§ 1980.417 Liquidation.

(See § 1980.64 of Subpart A of this part.)

Refer to Appendix G of this subpart (available in any FmHA Office) for advice on how to interact with the lender on liquidations and property management.

(a) Collateral acquired by the lender can only be released after a complete review of the proposal.

(1) There may be instances when the lender acquires the collateral of a business where the cost of liquidation exceeds the potential recovery value of the collection. Whenever this occurs the lender with the concurrence of FmHA can abandon the collateral in lieu of liquidation.

(2) Sale of acquired collateral to the former borrower, former borrower's stockholder(s) or officer(s), the lender or lender's stockholder(s) or officer(s) must be based on an arm's length transaction with the concurrence of FmHA.

Administrative

A. The State Director determines which FmHA personnel will attend meetings with the lender

B. Introduction to Paragraph XI and Paragraph XI B of the Lender's Agreement. FmHA will exercise the option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When there is reason to believe the lender will not initiate efforts that will maximize recovery through liquidation, the State Director will forward the lender's liquidation plan, if available with appropriate recommendations, along with the State Director's exceptions to the lender's plan, if any, to the Director, Business and Industry Division, for evaluation and approval or rejection of the State Director's recommendation regarding liquidation. Only when compromise cannot be reached between FmHA and the lender on the best means of liquidation will FmHA consider conducting the liquidation. The State Director has no authority to exercise the option to liquidate without National Office approval. When FmHA liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. In such instances the State Director will send to the Finance Office Form FmHA 1980–45, "Notice of Liquidation Responsibility."

C. State Directors are authorized to approve lender liquidation plans as authorized on separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter. Within delegated authorities, the State Director may approve a written partial liquidation plan submitted by the lender covering collateral that must be immediately protected or cared for in order to preserve or maintain its value. Approval of the partial liquidation plan must be in the best interest of the government. The approved partial liquidation plan is only good for those actions necessary to immediately preserve and protect the collateral and must be followed by a complete liquidation plan prepared by the lender in accordance with the requirements of paragraph XII A of the Lender's Agreement.

D. Paragraph XI D. State Directors are responsible for review and acceptance of accounting reports as submitted by lenders and for submission of such reports to lenders when FmHA is conducting liquidation, after they have been submitted with the State's recommendations to the Director, Business and Industry Division for prior review.

E. Paragraph XI E 2. State Directors are authorized to approve final reports of loss from the lender in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter. The State Director will submit to the Finance Office for payment any loss claims of the lender on Form FmHA 499–30, "Loan Note Guarantee Report of Loss." The Finance Office forwards loss payment checks to the State Director for delivery to lender. When a loss claim is involved on a particular loan guarantee, ordinarily one "Estimated Loss Report" will be authorized. Only one final "Report of Loss" will be authorized. A final Form FmHA 449–30 must be filed with the Finance Office at the completion of all liquidations. Finance Office will use this form to close out the account.

F. Paragraph XI E 3. Final loss payments will be made within the 60 days required but only after a review by FmHA to assure that all collateral for the loan has been properly accounted for and liquidation expenses are reasonable and within approved limits. State Directors are responsible to see that such reviews are accomplished by the State within 30 days and final loss claims in excess of the State Director's approval authority are forwarded to be accepted or otherwise resolved by the Director, Business and Industry Division within the 60-day period. Any estimated loss payments made to the lender must be taken into consideration when paying a final loss on the FmHA guaranteed loan. The estimated loss payment must be treated as a deduction from the principal amount of the loan and interest cannot be accrued on the principal amount of the loan that is equal to the estimated loss payment. Community and Business Program Chiefs (C&BP), Business and Industry Chiefs or Loan Specialists will conduct such reviews. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See Subpart A of Part 1901 of this Chapter) will be submitted to the National Office, Business and Industry Division, for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the C&BP Chief, B&I Chief or Loan Specialist will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrence which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file. A copy of this report together with the review of the final loss claim will be included in the material sent to the Director, B&I Division, for review prior to approval of final loss payments.

§ 1980.472 Protective advances.

[See § 1980.65 Subpart A of this Part.]

Administrative

Refer to Appendix G of this subpart (available in any FmHA Office) for advice on how to interact with the lender on liquidations and property management.

A. Protective advances will not be made in lieu of additional loans, in particular, working capital loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations. Ordinarily, protective advances are made when liquidation is contemplated or in process. A precise rule of when a protective advance should be made is impossible to state. A common, but by no means the only, period when protective advances might be needed is during liquidation. At this point, the borrower and success of the project are no longer of paramount importance, but preserving collateral for maximum recovery is of vital importance. Elements which should always be considered include how close the project is to liquidation or default, how much control the borrower will have over the funds, what danger is there that collateral may be destroyed and whether there will be a good chance of saving the collateral later if a protective advance in contemplation of liquidation is made immediately. A protective advance *must* be an indebtedness of the borrower.

B. The State Director must approve, in writing, all protective advances on loans within his/her loan approval authority which exceed a total commulative advance of $500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

C. When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

§ 1980.473 Additional loans or advances.

(Refer to paragraph XIII of Form FmHA 449–35.)

Administrative

Only the State Director shall approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee. The State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

§ 1980.474 [Reserved]

§ 1980.475 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending Chapter 11 case to a liquidating proceeding under Chapter 7 or under Section 1123(b) (4) or seek dismissal of the proceedings.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a Chapter 11 reorganization, if an independent appraisal is necessary in FmHA's opinion, FmHA and the lender will share such appraisal fee equally.

(c) Expenses on Chapter 11 reorganization, liquidating Chapter 11 or Chapter 7 (unless the lender is directly handling the liquidation) cases are not to be deducted from the collateral proceeds.

Administrative

Refer to Appendix G of this subpart (available in any FmHA Office) for advice on how to interact with the lender on liquidations and property management.

A. It is the responsibility of the State Program Chief to see that FmHA is being fully informed by the lender in all bankruptcy cases.

B. All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

C. Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Liquidating 11. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses from that point forward may be shared as provided by the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee then the lender cannot claim expenses incurred under Chapter 7. If the lender directly handles the liquidation, then reasonable and customary liquidation expenses from that point forward may be shared as provided by the Lender's Agreement.

D. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. If the lender is the holder, an estimated loss payment may be filed at the initiation of a Chapter 7 proceeding or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be handled in accordance with the Lender's Agreement and carry the approval of the State Director.

E. The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

§ 1980.476 Transfer and assumptions.

(a) All transfers and assumptions will be approved in writing by FmHA. Such transfers and assumptions will be to an eligible applicant.

(b) Transfers and assumptions will be considered without regard to § 1980.451 (d) of this subpart.

(c) The borrower will submit to FmHA Form FmHA 449–4 for the required character evaluation prior to the execution of the Assumption Agreement.

(d) Available transfer and assumption options to eligible borrowers include the following:

(1) The total indebtedness may be transferred to another borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial loan can be made.

(3) Less than the total indebtedness may be transferred to another borrower on the same terms.

(4) Less than the total indebtedness may be transferred to another borrower on different terms.

(e) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

(1) FmHA must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(2) The FmHA County Committee must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of borrower's ability.

(f) Any proceeds received from the sale of secured property before a transfer and assumption will be credited on the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption transaction is closed.

(g) When the transferee makes any cash downpayment in connection with the transfer and assumption:

(1) The lender will employ an independent appraiser, subject to concurrence of both the transferor and transferee, to make an appraisal to determine the fair market value of all the collateral securing the loan. Such appraisal report fee and any other costs related thereto will be paid by the transferor and the transferee as they mutually agree.

(2) The market value of the secured property being acquired by the transferee, plus any additional security the transferee proposes to give to secure the debt, will be adequate to secure the balance of the total guaranteed loan owed, plus any prior liens. If any cash downpayment is made, it may be paid

directly to the transferor as payment for equity in the project provided:

(i) The lender recommends and FmHA approves the case downpayment be released to the transferor. The lender and FmHA may require that an amount be retained for an established period of time in escrow as a reserve account as security for use against any future default on the loan. Any interest accruing on such an escrow account may be paid periodically to the transferor.

(ii) Any payments that are to be made by the transferee to the transferor in respect to the downpayment do not suspend the transferee's obligation to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(iii) The transferor will agree not to take any actions against the transferee in connection with such transfer in the future without first obtaining the written approval of FmHA and the lender.

(iv) The lender determines that there is repayment ability for the guaranteed debt assumed and any other indebtedness of the transferee.

(h) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA review and approval, including any requirement for deposits in an escrow account as security to meet its determined equity requirements for the project.

(i) The lender will issue a statement to FmHA that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(j) FmHA will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(k) The assumption will be made on the lender's form of assumption agreement.

(l) The assumption agreement will contain the FmHA case number of the transferor and transferee.

(m) Loan terms cannot be changed by the Assumption agreement unless previously approved in writing by FmHA, with the concurrence of any holder(s) and concurrence of the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(1) An explanation of the reasons for the proposed change in the loan terms.

(2) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect and all applicable Truth in Lending requirements will be met.

(n) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA before any borrower or guarantor is released from liability.

(o) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(p) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated "report of Loss" on Form FmHA 449–30 to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on Line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form 449–30, lines 13 and 14.

Administrative

Refer to Appendix G of this subpart (available in any FmHA Office) for advice on how to interact with the lender on liquidations and property management.

A. The State Director may approve all transfer and assumption provisions if the guaranteed loan debt balance is within his/her individual loan approval authority including:

1. Consent in writing to the release of the transferor and guarantors from liability.

2. Any changes in loan terms.

Note.—The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) will be endorsed in the space provided on the form(s).

B. A copy of the Assumption Agreement will be retained in the FmHA file. The State Director will notify the Finance Office of all approved transfer and assumption cases on Form FmHA 1980–7, "Notice of Transfer and Assumption of a Guaranteed Loan," and submit Form FmHA 1980–50 for all new borrowers and Form FmHA 1980–51, "Add, Change, or Delete Guaranteed Loan Record," in order that Finance records may be adjusted accordingly.

C. Any transfer and assumption of less than the total indebtedness must be submitted to the Director, Business and Industry Division, for review and concurrence.

D. If the guaranteed loan debt balance is in excess of the State Director's loan approval authority, the State Director will forward the file, together with his/her recommendations, to the National Office for approval, ATTN: Business and Industry Division.

§§ 1980.477 through 1980.480 [Reserved]

§ 1980.481 Insured loans.

Applications from private parties for whom FmHA and such borrowers agree that a guarantee lender is not available and from public bodies shall be processed as insured loans in accordance with the applicable provisions of this subpart and Subpart A of Part 1942 of this chapter, including the credit elsewhere requirement, except as provided in § 1980.488 of this subpart which provides for the guarantee of taxable bond issues of public bodies. Loans to public bodies will be used only to finance:

(a) Community facilities as defined in § 1980.402(b) of this subpart, and

(b) Constructing and equipping industrial plants for lease to private businesses (not including loans for operating such businesses) when the requesting loan is not available under Subpart A of Part 1942 of this chapter.

Administrative

A. Without specific written delegated authority, all insured loans require National Office concurrence prior to approval.

B. Applications from private parties for insured loans will not be encouraged.

C. Loan closings on insured loans will be in accordance with this subpart, the Regional Attorney and applicable provisions of Subpart A of Part 1942 of this chapter.

§§ 1980.482 through 1980.487 [Reserved]

§ 1980.488 Guaranteed industrial development bond issues.

(a) Loans to public bodies will be guaranteed only in connection with the issuance of any class or series of industrial development bonds (as defined in section 103(c)(2) of the Internal Revenue Code of 1954, as amended (IRC)), the interest on which is included in gross income under IRC. No part of the loan guaranteed by FmHA may extend to any class or series of industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of such Code. Before the execution of any Loan Note Guarantee, the lender will furnish FmHA evidence regarding interest on bonds being taxable for Federal income tax purposes. Such evidence may be in the form of an unqualified opinion of a recognized bond counsel or a ruling from the Internal Revenue Service. Guaranteed loans to public bodies can only be used

for constructing and equipping industrial plants for lease to private businesses engaged in industrial manufacturing and does not provide funds for debt refinancing, working capital and other miscellaneous fees, charges or services. The lessee will have to provide necessary capital and sufficient financial strength to provide for a sound project.

(b) If FmHA and the applicant agree that a guaranteed lender is not available, the application may be considered for an insured loan under the provisions of § 1980.481 of this subpart.

Administrative

The lender is responsible for notifying the FmHA of the taxability of the proposed bond issue.

§§ 1980.489 through 1980.494 [Reserved]

§ 1980.495 FmHA forms and guides.

The following FmHA forms and guides, as applicable, are used in connection with processing loan guarantees; they are incorporated in this subpart and made a part hereof:

(a) Form FmHA 449–1, "Application for Loan and Guarantee," is referred to as "Appendix A."

(b) The "Certificate of Incumbency and Signature" is referred to as "Appendix B."

(c) "Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities" is referred to as "Appendix C."

(d) "Alcohol Production Facilities Planning, Performing, Development and Project Control" is referred to as "Appendix D."

(e) "Environmental Assessment Guidelines" is referred to as "Appendix E."

(f) Form FmHA 449–14, "Conditional Commitment for Guarantee" is referred to as "Appendix F," and

(g) "Liquidation and Property Management Guide" is referred to as "Appendix G."

(h) "Suggested Format for the Opinion of the Lender's Legal Counsel" is referred to as "Appendix H."

§ 1980.496 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1980.497 General administrative.

Refer to Appendix G of this subpart (available in any FmHA Office) for advice on how to interact with the OGC on liquidations and property management.

(a) *Office of the General Counsel (OGC).* In performing the FmHA functions with respect to B&I loans, the advice and assistance of OGC may be sought and followed on any legal matter. However, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA has any questions concerning the lender's resolution of these matters, OGC should be consulted. Assistance of OGC will be requested on all loans as specified herein and all liquidations and workouts.

(b) *Contact with OGC.* Initial informal contact with OGC should be made as soon as possible. FmHA State Directors should use the following format in formally requesting legal assistance on workouts.

(1) *Origination:* All written requests should come from the State Director.

(2) *Method:* Request should be made by referral memorandum to the Regional Attorney setting forth a brief statement of the facts, the reason assistance is requested, the extent of legal assistance sought, the date when FmHA's response to the lender's liquidation plan (if any) is due and:

(i) *Projected losses on collateral: e.g.,* projected losses on collateral are expected to be significant.

(ii) *Unusual or complex nature of primary collateral: e.g.,* multi-state foreclosures or foreclosure of leases or general intangibles.

(iii) *Presence of other major creditors or of senior creditors: e.g.,* guaranteed loan collateral may be subject to a prior lien or other creditors may have rights in other assets of borrower, such as inventory and accounts receivable.

(iv) *Litigation is pending or threatened: e.g.,* bankruptcy, other foreclosure suits.

(3) *Materials to submit:* Referral memorandums will be accompanied by a copy of lender's liquidation plan together with a copy of FmHA's planned response and principal loan papers, conditional commitment for guarantee, guarantee documents and any comments from the National Office. If lender refuses to prepare a plan, the State Director should so state. DO NOT SEND DOCKETS unless specifically requested by OGC.

(c) *Reviews prior to issuance of the loan note guarantee.* After the conditional commitment for guarantee has been issued and proposed with closing documents prepared by the lender and forwarded to FmHA with the lender's legal counsel's opinion in the suggested format of Appendix H of this subpart, but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations and indicating any special items, documents or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review in accordance with § 1980.451 Administrative B 5 of this Subpart and indexed and tabbed.

(d) *Please submit the following for OGC review.* Copies of:

(1) Letter from FmHA National Office authorizing loan guarantee containing conditions (if applicable);

(2) Form FmHA 449–14, including any amendments;

(3) Loan Agreement;

(4) Promissory Notes;

(5) Security documents—Real Estate Mortgage, Security Agreement, Financing Statements, and Leases (if applicable);

(6) Personal or corporation guarantees with related security documents;

(7) Proposed Form FmHA 449–35.

(8) Proposed Form FmHA 449–34.

(9) Proposed Form FmHA 449–36, if any;

(10) Proposed Lender's Certification (§ 1980.60 of Subpart A of this part); and

(11) Opinion of Lender's Counsel in form prescribed by OGC.

(e) *Do not submit for OGC review* feasibility studies, title information, or the original application unless specifically requested to do so.

(f) *OGC advice.* The Regional Attorney will review the docket and furnish advice to FmHA on whether it may issue the LOAN NOTE GUARANTEE AFTER THE LOAN IS CLOSED. SUCH ADVICE IS FOR THE BENEFIT OF FmHA ONLY AND DOES NOT RELIEVE THE LENDER OF ITS RESPONSIBILITIES UNDER FmHA REGULATIONS. The Regional Attorney at his/her option may attend the loan closing. Upon receipt of the Regional Attorney's advice, the State Director

will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

(g) *Delegation of authority.* The State Director may delegate those administrative duties and responsibilities as authorized in the Administrative sections of this subpart, except those specifically reserved to the State Director.

§§ 1980.498 through 1980.499 [Reserved]

§§ 1980.500 OMB control number.

The collection of information requirements contained in this rule have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0029.

Appendix C—Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities

(1) *Alcohol production facility.* An alcohol production facility is a facility in which alcohol, suitable for use by itself or in combination with other substances as a substitute for petroleum or petrochemical feedstocks and not suitable for beverage purposes, is manufactured from biomass.

(2) The alcohol production facility includes all facilities necessary for the production and storage of alcohol and the processing of the by-products of alcohol production. The intent is to limit the alcohol and by-products processing facilities to those facilities which are necessary to yield marketable products and necessary for the financial success of the project. Further refinements, such as gasoline blending or the construction of facilities which use the alcohol or by-products in another manufacturing process, are not considered part of the alcohol production facility.

(3) Application will be reviewed by both B&I personnel and the State Office engineer and forwarded to the National Office if approval is recommended.

(4) The maximum B&I alcohol production facilities loan(s) requested plus the outstanding balance of any existing B&I loan(s), to any one borrower, will not exceed $20 million.

(5) The applicant should have a startup *tangible* book equity of 20–25 percent. (Appraisal surplus and subordinated debt are not eligible equity items.)

(6) Loan maturity maximums will be as follows:

Real Estate = 15–20 years
Machinery & Equipment = 10 years or less depending on the estimated life of the equipment involved
Working Capital = 3 years (It is assumed that the additional equity required for these projects will provide much of the working capital needs.)

(7) Farmers Home Administration will ordinarily only finance new facilities and will not get involved in the refinancing of existing ones.

(8) Priority consideration will be given to the use of primary fuel other than petroleum or natural gas.

(9) A positive energy balance must be indicated and supported by appropriate data; i.e., the energy content of the alcohol produced at the alcohol production facility must be greater than the energy used to produce the alcohol and by-products.

(10) Plant location, in relation to feedstocks, primary fuel and markets for product and by-products, will be an important consideration.

(11) Debt refinancing will only be considered in modest amounts and only when necessary to provide a satisfactory lien position.

(12) Feasibility studies are very important and required and will be prepared by competent and knowledgeable independent parties.

(13) Participating lenders must either have expertise or the availability of expertise in this field.

(14) The proposed operating managers must have experience in this or a related field.

Appendix H—Suggested Format for the Opinion of the Lender's Legal Counsel

(Legal Opinion to be Retyped on Lender's Counsel's Letterhead)

To: (Name of Lender).

I/We have acted as counsel to (Lender) _____ in connection with a $ (amount) _____ (type) _____ loan by the (Lender) _____ (hereinafter "the Lender" to (Borrower) _____ (hereinafter "Borrower"), the terms of which loans are set forth in a certain Loan Agreement (hereinafter "the Loan Agreement") executed by the Lender and Borrower on (date) _____.

In connection with this loan, I/we have examined:

1. The corporate records of Borrower, including its Articles of Incorporation, By-Laws and Resolutions of its Board of Directors.

2. The Loan Agreement between the Lender and Borrower.

3. The Security Agreement executed by Borrower on (date) _____.

4. The Guaranty (where applicable) executed on (date) _____ by (personal guarantors) _____.

5. Financing Statements executed by Borrower and the Lender.

6. Real Estate Mortgages dated _____ and executed by Borrower in favor of the Lender.

7. Real Estate Mortgages dated _____ and/or other security documents dated_____ executed by (personal guarantors) _____ in favor of the Bank.

8. The appropriate title and/or lien searches relating to Borrower's property.

9. The pledge of stock and instruments related thereto.

10. Such other materials, including relevant provisions of the laws of this state as I/we have deemed pertinent as a basis for rendering the opinion hereafter set forth.

In Some Circumstances

11. Lease(s) between Borrower and (lessor's name) _____ for the rental of (property being rented) _____, (if real property, give the address of the premises; if machinery equipment, etc., give brief, precise description of property for a (length of lease) _____ term commencing on (date) _____.

Based on the foregoing examinations, I am/we are of the opinion and advise you that:

1. Borrower is a duly organized corporation in good standing under the laws of the Commonwealth/State of (State) _____.

2. Borrower has the necessary corporate power to authorize and has taken the necessary corporate action to authorize the Loan Agreement and to execute and deliver the Note, Security Agreement, Financing Statement, and Mortgage. Said instruments hereinafter collectively referred to as the "Loan Instruments."

3. The Loan Instruments were all duly authorized, executed, and delivered and constitute the valid and legally binding obligation of the Borrower and collectively create and valid (first) lien upon or valid security interest in favor of the Lender, in the security covered thereby, and are enforceable in accordance with their terms except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not and will not in any material respect conflict with, constitute default under, or contravene any contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.

5. All applicable Federal, State and local tax returns and reports as required have been duly filed by Borrower and all Federal, State and local taxes, assessments and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.

6. The guaranty has been duly executed by the Guarantors and is a legal, valid and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.

8. (In cases involving subordinate or other than first lien position) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g., machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts, receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgagee) _____ given as security for a loan in the amount of $_____ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) _____ given to (secured

creditor) _____ as security for a loan (state type of loan, i.e., revolving line of credit, _____ if known) in the amount of $_____.

9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.

10. There are no actions, suits or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.

11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.

12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.

13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.

14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.

15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreemnt has been duly executed by the Indemnitors and is a legal, valid and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

16. That the lease contains a valid and enforceable right of assignment and right of reassignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates or other instruments where such notations are required for proper perfection of security interests therein.

18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors rights.

Dated: January 8, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-4412 Filed 3-3-87; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 86-126]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the payment of indemnity for animals destroyed because of brucellosis by adding a breed association to the list of registered breed associations. This action is necessary in order to include in the regulations all the registered breed associations that maintain records concerning the purebreeding of animals adequate to identify an animal as a registered animal of that breed association. This action allows for proper payment of indemnities to owners of cattle destroyed because of brucellosis, thereby encouraging the elimination of reactor cattle as a disease source.

EFFECTIVE DATE: March 4, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. William E. Ketter, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8565.

SUPPLEMENTARY INFORMATION:

Background

The regulations entitled "Animals Destroyed Because of Brucellosis" (contained in 9 CFR Part 51 and referred to below as the regulations) provide for the payment of indemnities to owners of cattle, bison, and swine destroyed because of brucellosis. Under the regulations indemnity is paid to an owner of such animals destroyed because of brucellosis to encourage the owner to cooperate in the timely removal of infected animals from the herd or, in the case of herd depopulation, to remove a focus of infection in an otherwise clean area and thereby prevent transmission of brucellosis to nearby susceptible herds.

We published in the **Federal Register** on November 13, 1986 (51 FR 41108-41109), a proposal to amend the regulations by adding the "American Blonde d'Aquitaine Association" to the list of registered breed associations in § 51.1(cc).

Our proposal of November 13, 1986, invited the submission of written comments on or before December 15, 1986. No comments were received. Based on the rationale set forth in the proposal, the proposed rule is adopted as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

This final rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs of 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 its review process required by Executive Order 12291.

The economic impact of this rule allows approximately 1,500 small cattle producers owning Blonde d'Aquitaine whose cattle are registered with the American Blonde d'Aquitaine Association to receive a higher indemnity rate when such reactor cattle or exposed cattle must be destroyed because of brucellosis. There are many thousands of small cattle producers who do not own this registered breed of cattle who will not be affected by this rule.

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, 9 CFR Part 51 is amended as follows:

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

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 51.1 [Amended]

2. Section 51.1, paragraph (cc) is amended by inserting the "American Blonde d'Aquitaine Association," immediately after "The American Black Maine-Anjou Association."

Done in Washington, DC, this 27th day of February, 1987.

J.K. Atwell,

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

[FR Doc. 87–4478 Filed 3–3–87; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 78

[Docket No. 87–013]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of 12 counties in the State of Florida and 12 counties in the State of Texas from Class C to Class B. This action is necessary because we have determined that these counties meet the standards for Class B status. The amendments reduce restrictions on the interstate movement of cattle from these counties.

EFFECTIVE DATE: March 4 1987.

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

SUPPLEMENTARY INFORMATION:

Background

The interim rule published December 1, 1986 (51 FR 43170–43172), was effective on the date of publication in the **Federal Register**, and comments were solicited for 60 days ending January 30, 1987. No comments were received. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

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 its review process required by Executive Order 12291.

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

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 78

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

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 78 and that was published at 51 FR 43170–43172 on December 1, 1986.

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

Done in Washington, DC, this 27th day of February, 1987.

J.K. Atwell,

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

[FR Doc. 87–4479 Filed 3–3–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Research and Special Programs Administration

14 CFR Part 241

[Docket No. 43473; 241–55]

Aviation Economic Regulations; Passenger Origin-Destination Survey

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule reduces the size of the sample of flight coupons to be surveyed by large certificated carriers in the Passenger Origin-Destination Survey. Also, intra-Alaska markets are included in the Survey for the first time and the listing of participating carriers will be updated to eliminate duplicate reporting requirements. This action aligns the data collected with the data needed by the Department to fulfill its aviation responsibilities.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway or Donald W. Bright, Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4384.

SUPPLEMENTARY INFORMATION:

Background

The Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443) requires the Department of Transportation, under the authority of the Secretary of Transportation (49 U.S.C. 329(b)(1)), to collect and disseminate information on civil aeronautics, other than that collected and disseminated by the

National Transportation Information Safety Board, including information on the origin and destination of passengers in interstate and overseas air transportation.

In a notice of proposed rulemaking issued October 11, 1985 (Notice 85–15, 50 FR 42870, October 22, 1985), the Department proposed to reduce the Passenger Origin-Destination Survey (O & D Survey) reporting requirements contained in 14 CFR 241.19–7. This proposal was intended to reduce up to 50 percent the number of individual passenger ticket coupon records being surveyed in the sample required by the regulations (10 percent [1] of all lifted passenger coupons or each coupon with a ticket serial number ending in "0").

This rule proposed to align the O & D Survey data collected to the Department's specific requirements to effectively and efficiently administer its incumbent aviation responsibilities. Essentially the Department proposed to:

(1) Stratify the market universe and sample at least 1 percent of passenger tickets in the largest domestic markets (which include approximately 1,000 city-pairs) with the markets updated annually;

(2) Include the intra-Alaska markets; and

(3) Permit carriers to report duplicate information or allow carriers to continue reporting under the participating carrier list.

The Department also requested comments on reducing the six fare code summarizations to four and distinguishing between restricted and unrestricted fares.

Comments

Thirteen comments were received in response to the rulemaking notice. Four airlines,[2] the Air Transportation Association of America (ATA) on behalf of 15 member airlines,[3] and 8 users [4] of O & D data filed comments. In addition, answers to a few telephone inquiries were filed in the docket.

The airlines were generally opposed to making any changes in the O & D Survey other than including intra-Alaska markets. Users commented for the most part on sample size and were also generally opposed to changing existing procedures. These comments are discussed below under separate captions.

Stratified Sample and Sample Size

The Department proposed to stratify the domestic market universe and sample 1 percent at a minimum of the lifted coupons in the largest domestic markets[5] while continuing to sample the small and medium domestic markets at 10 percent. International markets would also continue to be sampled on a 10 percent basis. The 1 percent sample is designed to apply only to single coupon or two-coupon round trip tickets, with more complex itineraries still sampled at 10 percent so that the effective sample size is somewhat larger than 1 percent for the large domestic markets.

All comments, except one, were opposed to stratification and reducing the sample size and wanted the present system continued. These opposing comments were usually based on data reliability and/or cost considerations. NY/NJ supported the proposal stating that even with the changes, the O & D Survey would still provide reliable data on the New York passengers.

Data Reliability

ATA, TWA, UAL, Concours, Stewart and Oakland were opposed based on data reliability. ATA commented that he airlines are users as well as providers of O & D Survey data. From a users point of view, ATA states that the airlines are opposed because of the relatively high sampling error in the lower 250 markets of the 1 percent sample of passenger tickets. ATA points out that the sampling error range moves from 2.6 percent to 3.1 percent at 10 percent to 8.7 percent to 10.2 percent at 1 percent of passenger tickets.

United states that in certain markets the error factor will become too great and is therefore opposed. For instance, United states that the error rates for a single contributing airline are much larger than those for the industry; that when estimating passenger share, errors in airline counts and industry counts are roughly additive, yielding unreliable market share estimates; and that when carrier shares are leveraged against each other, such high error rates can lead to grossly misrepresented market performance.

Concours is opposed because the accuracy of the passenger counts for the largest city pairs would decrease, particularly in the case of coupon-level studies where single-coupon directional journeys are summarized with the same city pairs as coupons of multi-coupon tickets. In addition, Concours states that time series analyses will lose their integrity as city pairs pop on and off the largest city pair list.

TWA, a party to the ATA response, also filed a separate comment stating that since it is well recognized that the 10 percent sample is marginal from a statistical standpoint for international markets, it is hard to understand how 1 percent could produce valid information. Further, TWA states that while arguably there may be a somewhat greater regulatory need for reliable international data, there is still a demonstrated need for reasonably reliable domestic data, and given this factor, it seems irresponsible for the Department to rely on domestic data that is theoretically 9 times less reliable than international data.

Stewart and Oakland also oppose stratification. Stewart states that the shift from 10 to 1 percent of passenger tickets would be disastrous on the accuracy of the data in small markets, while Oakland states that the sampling technique will be further complicated.

Although ATA and Western are opposed to stratification and would like to see the present system continued, both propose, as an alternative sampling technique to stratification, an across the board 5 percent sample size. ATA states that if DOT was willing to accept a sampling error 10.2 percent at the bottom of the largest markets (those over 35,000 passengers per annum) it seems reasonable that a 5 percent sample which has a sampling error of 12.1 percent in a 5,000 passenger market would be acceptable. ATA contends that this approach would yield savings in the cost of data captured and reported and still produce a worthwhile survey. American, while a party to ATA's response, does not agree with ATA on the alternative sampling. American disagrees with ATA's position and feels that the O & D Survey sample should remain at 10 percent, that to propose anything less would bring the reliability in question, and that a 50 percent reduction in sample size (from

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[1] Note that fewer ticket coupon records are reported than the 10 percent of lifted ticket coupons that are sampled, because some coupons are nonreportable and carriers group identical coupons as one record.

[2] American Airlines (American), Trans World Airlines (TWA), United Air Lines (United) and Western Airlines (Western).

[3] Passenger carriers—Alaska Airlines, Braniff, Continental Airlines, Delta Air Lines, Eastern Air Lines, Hawaiian Airlines, Jet America Airlines, Midway Airlines, Northwest Airlines, Piedmont Aviation, Republic Airlines, Trans World Airlines, USAir, and Western Air Lines; and Flying Tiger, an all-cargo carrier.

[4] Airport Operators Council, Incorporated (AOCI), Aerospace Industries Association of America (AIA), State of Michigan (Michigan), Stewart International Airport (Stewart), Port of Oakland (Oakland), Port of New York and New Jersey (NY/NJ), Norfolk Port Authority (Norfolk) and Concours Data Systems (Concours). Dallas/Fort Worth International Airport filed a late comment received over six weeks after the due date which was not considered because of its lateness.

[5] Approximately 1,000 city-pairs with directional origin-destination passengers in excess of 35,000 passengers a year.

10 percent of passenger tickets to 5 percent) will reduce confidence limits to unacceptable levels for a large share of the applications.

Costs

ATA, TWA, Western and Concours also filed comments opposing stratification based on costs. All contend that there will be more work and additional expense involved with stratification. ATA, TWA and Concours state that there will be additional one-time costs involved with changing the existing systems as well as making modifications each year for the changes in the largest market city pairs. Concours alleges that in the high density markets it doubts that the number of records submitted will decrease. Finally, ATA states that the increase in processing costs caused by stratification would exceed any benefits derived.

The Department is not persuaded by these arguments. The proposal was based on the Department's need for a statistically valid sampling strategy that provides a reasonable sampling error rate for both large and small markets, as balanced against the Department's objective of reducing carrier reporting burden in handling an increasing volume of passenger ticket records. Since 1975, the total number of flight coupon records reported annually over the ten years has increased about 92 percent, to approximately 5 million records for the year 1985.

The two-tiered, stratified sample meets these dual objectives of providing for a significant reduction in the number of coupon records reported, while preserving the quality of the reported O & D Survey data. The Department's statisticians and program officials are in agreement that the stratified sample will provide valid data that are with the Department's tolerable sampling error range for their regulatory programs.

The Department cannot adopt a uniform reduced sample size, for instance a 5 percent sample size as suggested, because the Department's program officials have strongly rejected such an approach, stating that it would produce unreliable data for very small domestic markets and for all international markets. The Department's decision-makers would have no confidence in such a small sample size in very small domestic markets or international markets of several passengers per day, because the sampling error rates would exceed the range the Department finds tolerable. Therefore, it is the oversampling in very large markets, such as those in excess of 35,000 passengers per year, where significant reductions in volume of data sampled and reported are available. Further, the Department's statisticians are convinced that the two-tier, stratified sampling procedures do offer a very real and practicable opportunity for burden reduction by the elimination of unnecessary oversampling and overreporting in large domestic markets.

The opposition to a smaller sample size in the largest domestic markets because of the relatively high sampling error rates in the lower portion of the top 1,000 markets appears to be an unfounded concern. ATA's argument is true that the error rates in the bottom 250 of the top 1,000 markets would increase from 2.6 percent to 3.1 percent for a 10 percent sample of tickets to 8.7 percent to 10.2 percent for a 1 percent sample of tickets. However, these error rates pertain to a straight 1 percent sample of passenger tickets.

The 1 percent sample in the two-tiered stratified approach is not a straight 1 percent. It provides for at least a 1 percent sample of passenger tickets in the largest domestic markets form one and two-coupon tickets (single coupon and two-coupon round trips), which tickets account for about 60 percent of the ticket volume in the domestic major markets. The remaining 40 percent of the ticket volume is produced from multistop, complex itineraries, which are to continue to be sampled at the 10 percent standard. When the sampling results from these two strata are aggregated, the resulting sampling error rates would be better than those described by the opposing comments.

United's concerns that the stratified sampling procedure may produce unacceptable results for its purposes with respect to data for individual markets and for individual carriers is a reasonable concern. The Department agrees that a basic principle of statistical sampling indicates that, as the overall sample results are split into smaller, more finite bits (such as markets or carrier portions of markets), the sampling error rates for individual markets and individual carriers within those markets grow larger. This was clearly demonstrated by Attachment VI to the NPRM. That attachment disclosed that the sampling error rate for a 1 percent sample of tickets was 247.1 percent to 78.1 percent in markets with less than a 1,000 passengers per annum and only 2.5 percent to .1 percent in markets with over 1 million passengers each year. The Department considered quite carefully whether the stratified sampling procedures preserved the quality of data, not only for the overall Survey results, but also for individual carriers within individual markets.

The Department is satisfied that the two-tiered, stratified sampling procedures prescribed in this final rule will accomplish this objective. The Department took the 10 percent sample results for the domestic major markets for 1984, split the data into small bits of 10 small samples of 1 percent each and 20 small samples of 0.5 percent each and tested the results for variability and consistency. It was found that there was a threshold number of incidence in a sample for a particular carrier in a particular market that were necessary for the data to be consistent enough to be useful. This same principle also applied to the 10 percent sample size.

These tests confirmed the validity of the stratified sampling procedures. The stratified sampling procedures will produce data for the largest domestic markets that demonstrate remarkable consistency and non-variability in small slices (such as 10 simulated 1 percent samples) in the aggregate for the market and by carrier, and even by fare category within markets, provided a threshold number of incidents or observations are encountered. Even the data that were quite variable could be interpreted and made somewhat useful by aggregating the instances (such as occasional observations of unknown or foreign carriers or commuter data) for comparison with the data that were more consistent and non-variable.

Concours' comment that time series market analyses will lose their integrity as markets pop on and off the list is well taken. The Department intends that the number of changes will be minimal and can be adjusted for in any historical analyses that it may perform. The Department will annually review [6] the list of the largest domestic city-pairs, but will only revise the list when significant market changes occur.

Concerning the cost arguments, the Department acknowledges that there is burden associated with any change in reporting. However, once the system is modified, the overall reporting burden should decrease since the result of the stratified sampling will mean a lesser number of coupons to be processed for reporting.

In the NPRM, carriers were requested to give the Department input on the cost savings or burden reduction resulting from the proposed changes. The commenters who responded commented in general terms that the changes would increase and not decrease burden. From

[6] Markets will be reviewed for the 12 months ended June 30 and any significant changes will be made effective January 1 of the year following the review.

the Department's study it was estimated that the overall number of coupons to be selected and processed for individual carriers could be reduced up to 50 percent based on the number and size of the large domestic markets. The comments that the additional selection criteria will increase and not decrease burden is true for the selection process, but when that process is combined with the processing cycle, the Department still believes that an overall significant burden reduction will occur.

In summary, the Department is convinced that the two-tiered, stratified sampling procedures will result in valid data that in the aggregate and for individual carriers and markets will produce O & D Survey data that are within the Department's tolerable sampling error range. The Department is also convinced that the stratified sampling procedure will not adversely affect the quality of data in the O & D sample. Further, the Department believes that the stratified sampling technique will produce overall burden reductions for the carriers.

Nevertheless, for those carriers who do not want to change their sampling strategies, the Department will look favorably upon waiver requests from the stratified sampling procedures. In lieu of stratification, such carriers would continue their present method of surveying every zero ending ticket. For carriers who do stratify, the 1 percent sample of passengers will be conformed to the 10 percent sample of passengers by adding a zero prior to reporting the data, as discussed in the following caption. A clear identification will be maintained in the O & D Survey documentation of those carriers using stratified sampling, and those electing to report the straight 10 percent sample of tickets.

Other Comments Concerning Stratification

AOCI and Norfolk also oppose stratification for reasons other than data reliability or cost. AOCI states that some carriers have failed to report quarterly and there has been virtually no enforcement by the Government. AOCI believes that the Government's first objective should be to improve the compliance by having all carriers reporting before anyone can reasonably determine the extent to which the sample size may be reduced. In light of these problems, AOCI feels that the two-tiered reporting will complicate matters.

Norfolk is opposed to changing the present survey stating that the 10 percent sampling must be mandatory for all Tables of the O & D Survey publication. Also Norfolk states that all new entrants should be required to report true origination and destination of the passengers.

The Department has made a conscientious effort to have new carriers report O & D Survey data. It has a rigorous enforcement program to assure compliance with its reporting requirements. In some cases it has taken a few carriers using nonstandard tickets longer than usual in getting their collection systems in place. The Department, however, does not believe that the impact of a few carriers' reporting practices would change the overall merits or stratified sampling.

Norfolk's comment that the 10 percent sample should be mandatory for all O & D Survey tables is worth considering. The Department concurs that the data presented in the O & D output tables should be stated on a uniform basis to facilitate their use. When sampling at 1 percent, carriers will add a zero to the sample results before submitting their data. Therefore, all data received and published will be on a uniform basis, as if it were a 10 percent sample of the universe.

Duplicate Reporting

The Department proposed to accept duplicate reporting. That is, carriers could report the O & D Survey data for every ticket coupon that is sampled. This means that on a reportable ticket with 3 carriers in the itinerary, each carrier may report the same data. This method is now being used by approximately 50 percent of the reporting carriers with the Department eliminating the duplicate data. The other carriers report the data from a reportable ticket only if a participating carrier did not precede them in the itinerary. Under this second method duplicate reporting is greatly reduced. The list of participating carriers using this second method had not been updated since 1979.

ATA and Western expressed opposition to the proposal stating that the present procedures should be continued. United concurred with ATA. Concours, on the other hand, states the proposal has merit.

The Department has decided to continue the present method of reporting, using the participating carrier list. Instead of maintaining a static list of participating carriers, the Department will review the participating carrier list annually and update it as necessary for changes caused by carriers entering and existing the marketplace. The participating carrier list will be reviewed each June 30 and any revisions will be made effective January 1 of the following year.

Those carriers who begin operating after the annual review is made will still be required to file O & D data. When the next review is made, these carriers will be added to the participating list. Any duplicate reporting resulting because of the lag in adding a carrier to the participating list will be eliminated by the Department through its edit program.

This change will for the most part permit standardized reporting for the industry and will substantially eliminate duplicate reporting. Nevertheless carriers wishing to continue their present method of reporting can do so provided they notify the Director, Office of Aviation Information Management at the address shown in the "For Further Information Contact" section. This will permit the necessary edit criteria to be maintained.

Intra-Alaskan Markets

The Department proposed to eliminate the restriction against including intra-Alaskan markets in the O & D Survey.

ATA, United, Western and Concours concur in the proposal. Concours stated that the additional data on these markets is timely in light of the increased interest in these markets.

This final rule will eliminate the outmoded restrictions and require the reporting of intra-Alaskan markets.

Fare Codes

Presently, fare codes are summarized into six categories—first class, first class discounted, coach, coach discounted, unknown and other. The Department requested comments on the usefuless and format of these summarizations. It also requested comments on whether the present codes should be constricted further into only four codes—first class full fare, first class discounted or retricted, coach full fare, and coach discounted or restricted.

ATA opposed changing the present classifications and summarizations, stating that the effect of the proposal would be to increase staff and processing costs. TWA and United concur with ATA. Western supports the reduction or even elimination, stating that the fare codes have little value to Western.

The Department has decided to maintain the *status quo* for reporting summary categories of fare basis code data, since fare code data is still needed. Department analysts, however, feel that fare code data would be more useful if restricted fares were known. The staff believes that further work is needed in this area before it can be decided if the

benefits would outweight the burden involved if the changes were made. The Department may look at the reporting of fare categories in a future rulemaking.

In a related issue, the Department's staff are faced with the issue of carrier code-sharing arrangements and similar cooperative agreements. Under these arrangements the O & D Survey does not necessarily portray the actual carriers who participated in the transportation of the passenger. For instance, when a smaller carrier uses/shares a larger carrier code on the passenger ticket, the larger carrier rather than the carrier that actually transported the passenger is likely to be the carrier code reflected in the O & D Survey. Currently, the Department's policy is that the O & D Survey is intended to reflect the data sampled from the ticket. The Department's statisticians believe that the overall validity of the Survey would be enhanced by reporting the code for the carrier who actually transported the passenger. The actual carrier code could only be reflected, however, if the data entry personnel recording the O & D Survey were to recognize and substitute the smaller carrier's code in lieu of the larger carrier's code. The Department does not know whether this or some other method is feasible from a burden standpoint, and may consider this issue further in a future rulemaking.

Other Comments

Nonstandard Ticketing

United believes that procedures are needed to improve or at least maintain the current reporting requirements for online O & D data for nonstandard tickets. Exemptions should not be granted to reporting on a flight segment basis United feels, since it distorts online O & D data and allows other carriers a competitive advantage in analyzing other carriers online O & D data.

The final rule provides for continuing the current data collection flexibility that permits carriers using nonstandard ticketing procedures, or those who do not interline, to report their actual online passenger O & D data. The requirement that departures from prescribed O & D Survey procedures must be approved by the Director, Office of Aviation Information Management is also retained. The Department is sensitive to the complaint that some carriers using nonstandard tickets were reporting segment data rather than true online origin-destination data. The Department will continue to insist upon compliance with the regulations by all carriers, utilizing enforcement sanctions as necessary. Where nonstandard ticketing or other special circumstances justify a waiver to permit an individual carrier to report actually on-line O & D data instead of true O & D, the Department does and will continue to monitor the submissions. If the data are found to be merely point-to-point data, as for instance, where a carrier reportedly enplanes and deplanes all traffic at a hub when obviously some of the traffic consists of "through passengers," the carrier will be contacted and required to improve the quality of reported data.

Length of Reported Routings

The Department proposed to reduce the maximum number of reported routings from 23 stages to 7 stages, while giving carriers submitting O & D Survey data before 1979 the option of continuing to report up to 23 stages.

Concours felt that passengers using a ticket with more than seven coupons was insignificant, that most of them are used in the international sector, and that it would be better to leave the maximum at 23 coupons per ticket sinced the information from the international sector is sparse anyway.

The major international carriers who are currently reporting up to 23 stages did not comment on this reduction.

The Department is not persuaded by Concours' comment and will finalize the rule as proposed.

Uniform Reporting

Michigan and Norfolk commented that they would like to see uniform reporting established between the large certificated carriers and small certificated and commuter carriers. Large certificated carriers report the 10 percent O & D Survey data while the small certificated and commuters report the 100 percent online origin-destination data. The standardization proposed by Michigan and Norfolk is not germane to this proceeding and will not be addressed here.

Rulemaking Process

Stewart stated that it was concerned that participation by others would be precluded in defining future sample sizes. This is not the case. The rule section defines the sample sizes as 1 and 10 percent. These sizes cannot be changed at the whim of the Department, but must be done through the administrative rulemaking process. This process gives everyone a chance to make their views known.

Intraline Reporting

Oakland commented that it would like to see intraline connections reported the same as interline connections in Table 10 of the Survey Tables. The NPRM stated that content, form and media of end products would not be considered in this rulemaking. The data Oakland wants already appears in the O & D Survey. For instance, Tables 12 and 16 show in great detail, by ticket coupon, the intraline and interline passenger movements.

City Versus Airport

New York/New Jersey commented that the Survey Tables should portray airport-to-airport rather than city-to-city as they do in some cases because some flights were incorrectly coded. If a ticket is coded erroneously with the "city" instead of the airport in a multi-airport market, the Department has no efficient way of deciding which airport was used and of necessity must publish the city code.

Data Use

AIA commented that it did not care which survey method was used, 1 and 10 or straight 10 percent, as long as it could continue receiving the data. The Department has no plans to curtail the users of the Survey. A future rulemaking will review the confidentially requirements of the O & D Survey at which time changes could be made to the disclosure requirements for release of Survey data. Users will have ample opportunity to make their views known in that proceeding.

Transmission of Data

The Department is actively exploring the concept of accepting computer-generated "floppy discs" as a reporting medium for O & D data. A pilot project is currently underway to test the feasibility of disc submissions. Volunteer carriers are needed for this pilot project. Interested carriers should write to Richard King, Office of Aviation Information Management at the address listed in the "For Further Information Contact" section of this rule. Mr. King can also be contacted by telephone on (202) 366-4375.

Carrier Procedures and O & D System Documentation

Participating carriers are requested to resubmit or recertify their O & D System procedures and flow chart documentation effective July 1, 1987, because this rule implements a major change in sampling strategy. Further some new carriers have not submitted their O & D Survey system procedural statements and flow charts, as required by the Survey instructions (see Exhibit A for revised instructions), and other carriers have not updated these submissions in several years. However,

where system procedures and flow charts are unchanged, it is sufficient for the carrier to submit a statement to the Department confirming this re-certification as of July 1, 1987. Subsequently, resubmissions are required only as changes in procedures and work flow occur.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting provisions contained in 14 CFR 241.19–7 have been approved by the Office of Management and Budget (OMB) and have been assigned the control number 2138–0017.

Regulatory Evaluation and Regulatory Flexibility Act Determination

This final rule was evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures dated February 26, 1979. This rule is not considered to be "major," as defined by E.O. 12291, because it will not have an annual effect on the economy of $100 million or more; it will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or regions; and it will not have a significant adverse effect on competition or any other aspect of the economy. Its economic impact is minimal and full regulatory evaluation is not required. The rule is considered to be significant under DOT's Regulatory Policies and Procedures because it concerns a matter in which there is substantial public interest. The rule should have no environmental impact.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. The rule affects only large certificated air carriers. The net effect of this rule is a reduction in reporting burden.

List of Subjects in 14 CFR Part 241

Air carriers, Uniform system of accounts and reports.

Final Rule

PART 241—[AMENDED]

Accordingly, the Department of Transportation amends 14 CFR Part 241, *Uniform System of Accounts and Reports for Large Certificated Air Carriers* as follows:

1. The authority for Part 241 continues to read:

Authority: Secs. 101, 204, 401, 402, 403, 404, 407, 411, 416, 417, 901, 902, 1002, 1601, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 758, 766, 769, 771, 783, 784, 788; 76 Stat. 145; 92 Stat. 1744; 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1472, 1482, 1551; sec. 43, Pub. L. 95–504, 92 Stat. 1750, 49 U.S.C. 1552.

2. Section 19–7 is revised to read as follows:

19–7 Passenger origin-destination survey.

(a) All U.S. large certificated air carriers conducting scheduled passenger operations (except helicopter carriers) shall participate in a Passenger Origin-Destination (O & D) Survey covering domestic and international operations, as described in the instructions manual entitled, *Instructions to Air Carriers for Collecting and Reporting Passenger Origin-Destination Survey Statistics* (Appendix A to this section), and in *Passenger Origin-Destination Directives* issued by the Department's Research and Special Programs Administration (RSPA), Office of Aviation Information Management (OAIM). Copies of these *Instructions* and *Directives* are provided to each large carrier participating in the Survey. Copies are also available from the Office of Aviation Information Management, RSPA, Department of Transportation, DAI–1, 400 Seventh Street, SW., Washington, DC 20590.

(b) Those participating air carriers having access to automatic data processing (ADP) services must utilize magentic tape, floppy discs or other ADP media for transmitting the prescribed data. Those carriers without ADP capability will use RSPA Form 2787. Before the initial submission of floppy discs, carrier should contact the Director of the Office of Aviation Information Management at the address in paragraph (a) of this section to set the necessary procedures in motion.

(c) A statistically valid sample of light coupons shall be selected for reporting purposes. The sample shall consist of at least 1 percent of the total lifted ticket flight coupons for all large domestic markets listed in the Instructions and 10 percent for all others—including domestic and international markets. The sample shall be selected and reported in accordance with the requirements of paragraph (a) of their section, except that the participating O & D carriers with nonstandard ticketing procedures, or other special operating characteristics, may propose alternative procedures. Such departures from standard O & D Survey practices shall not be authorized unless approved in writing by the Director, Office of Aviation Information Management under the procedures in Sec. 1–2 of 14 CFR Part 241. The data to be recorded and reported from selected lifted ticket flight coupons, as stipulated in the *Instructions* and *Directives* shall include the following data elements: Point of origin, carrier on each flight-coupon stage, fare-basis code for each flight-coupon stage, points of stopover or connection (interline and intraline), point of destination, number of passengers, and total dollar value of ticket (fare plus tax).

(d) Data covering the operations of foreign air carriers that are similar to the information collected in the Passenger Origin-Destination Survey are generally not available to the Department, the U.S. carriers, or U.S. interests. Therefore, because of the damaging competitive impact on U.S. carriers and the adverse effect upon the public interest that would result from unilateral disclosure of the U.S. survey data, the Department has determined its policy to be that the international data in the Passenger Origin-Destination Survey shall be disclosed only as follows:

(1) To an air carrier directly participating in and contributing input data to the Survey or to a legal or consulting firm designated by an air carrier to use on its behalf O & D data in connection with a specific assignment by such carrier.

(2) To parties to any proceeding before the Department to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the Administrative Law Judge or by the Department's decision-maker. Any data to which access is granted pursuant to this section may be introduced into evidence subject to the normal rules of admissability of evidence.

(3) To agencies and other components of the U.S. Government.

(4) To other persons upon a showing that the release of the data will serve specifically identified needs of U.S. users which are consistent with U.S. interests.

(5) To foreign governments and foreign users as provided in formal reciprocal arrangements between the foreign and U.S. governments for the exchange of comparable O & D data.

(e) The Department reserves the right to make such other disclosures of the O & D data as is consistent with its regulatory functions and responsibilities.

3. RSPA Form 2787 and the Survey manual *Instruction to Air Carriers for Collecting and Reporting Passenger Origin-Destination Survey Statistics* are added as Appendix A to Sec. 19–7 of Part 241 as set forth below.

APPENDIX A to Sec. 19–7—Instructions to Air Carriers for Collecting and Reporting Passenger Origin-Destination Survey Statistics

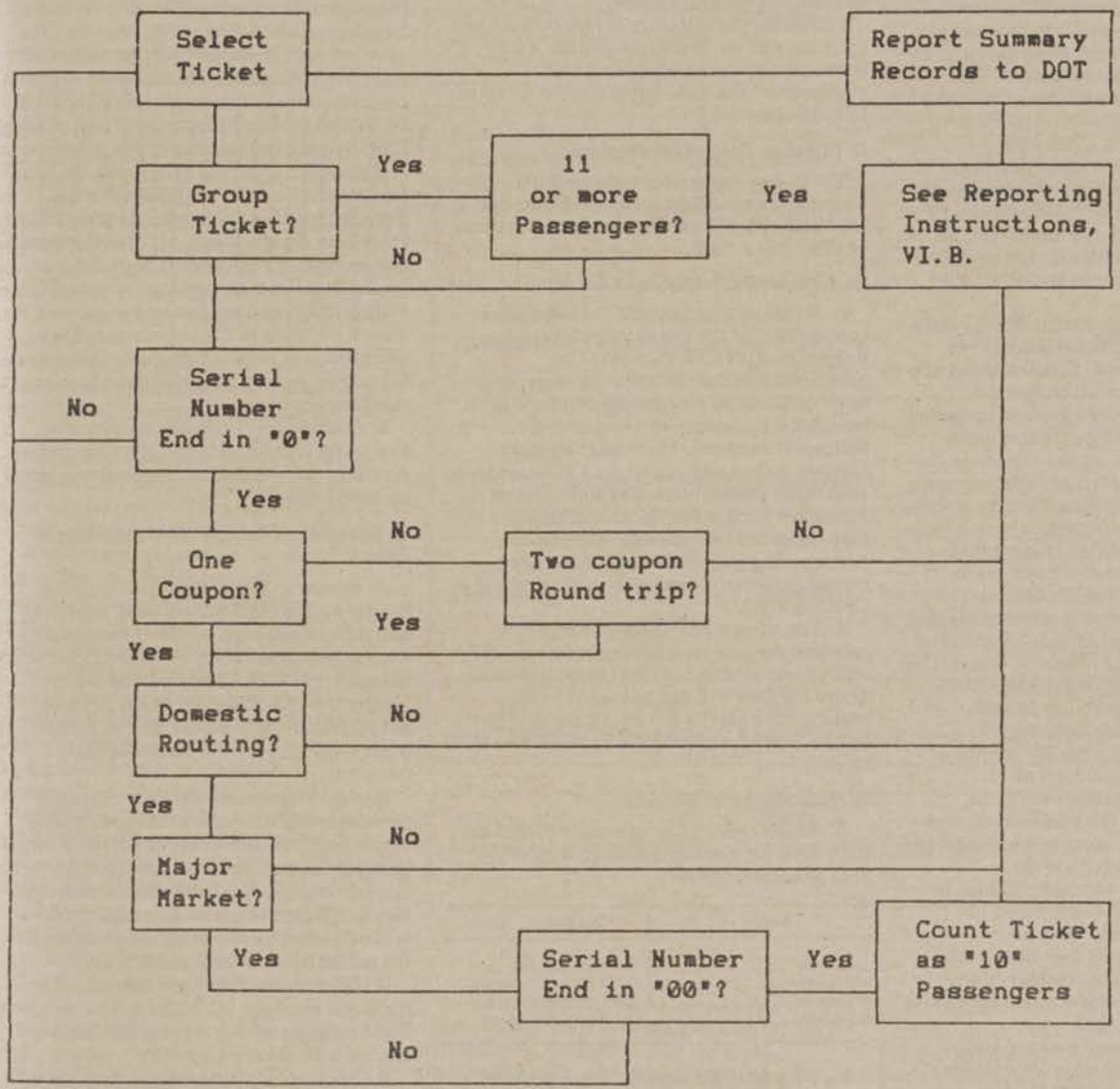
All questions, comments, extension and waiver requests should be addressed to:

Robin A. Caldwell, Director, Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, Room 4125, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone (202) 366–9059.

BILLING CODE 4910–62–M

I. GENERAL DESCRIPTION OF O&D SURVEY

A. Flow Chart of O&D Reporting From Tickets



BILLING CODE 4910-62-C

B. Narrative Description

A single O&D Survey is conducted continuously by the large U.S. certificated air carriers. Foreign air carriers do not directly participate in the Survey, although some of their data are captured in the Survey, since passengers who share a ticketed itinerary between a U.S. carrier and a foreign carrier may be sampled by the U.S. carrier. The authority for these instructions is found in 14 CFR Part 241, section 19–7, and in the CAB Sunset Act of 1984 (Pub. L. 94–443).

The Survey samples revenue passenger trips moving in whole or in part on domestic and/or international scheduled services of the carriers participating in the Survey. In general, these requirements do not apply to small certificated, all-cargo and all charter carriers.

The source documents for the Survey data are passenger tickets. These data are collected from the "lifted" flight coupons of tickets (a portion of a multi-part ticket booklet of three [1] or more coupons, including one for each stage of the passenger's trip itinerary which is lifted by the carrier as the passenger boards a particular flight segment).

The Survey data are taken from the coupon that is lifted by a participating carrier, unless it is apparent from the lifted coupon that another participating carrier has already recorded and reported the data, in which instance the ticket coupon is non-reportable for the second honoring/participating carrier. The complete passenger itinerary, and related data on type of fare and dollar value of the ticket, is recorded as one entry from the sampled, reportable flight coupon.

The recording of data from the sampled flight coupon normally consists of transcribing the information exactly as indicated on the ticket. The detail recorded for each trip shows the complete routing from the origin city (airport code) to the destination city (airport code) including, in sequence from the origin, each point of transfer and stopover (intraline and interline), the summarized fare-basis code shown for each flight coupon stage of the itinerary, and the total dollar value of the fare and tax for the entire ticket.

Prior to 1987, the Survey was generally based on a 10-percent sample of passenger tickets. Beginning July 1, 1987, the Survey is collected primarily on the basis of a stratified, scientific sample of at least 1 percent of tickets in domestic major markets and 10 percent of tickets in all other domestic and in all international city-pair markets. The Survey data are taken from the selected flight coupons of the tickets sampled: single-coupon or double-coupon round trips in domestic major markets where the ticket serial number ends in double zero (00) and all other ticket coupons ending in zero (0). This procedure yields a "two-tiered" stratified sample.

Group tickets are included on the basis of a 10-percent sample when the number of passengers on such a group ticket is 10 or less. Group tickets with more than 10 passengers on each ticket are included on the basis of a 100 percent census, *i.e.*, all such tickets are sampled, regardless of serial number, and the total data listed are conformed to a 10 percent sample for inclusion in the O&D Survey.

Following the selection of reportable flight coupons and the recording of data, each participating carrier shall edit and summarize [2] the data into a quarterly report to the Department.

II. Effective Date of Instructions

These data collection and reporting instructions are effective on and after July 1, 1987 and apply to all flight coupons lifted on or after July 1, 1987.

III. Carriers Participating in Survey

A. *Participating carriers.* As defined in section 19–7 of the Department's Economic Regulations (14 CFR Part 241), the participants in the O&D Survey include all large certificated air carriers conducting scheduled passenger services (except helicopter carriers). These participating carriers collect and report data in accordance with these Instructions, and suplemental *Passenger Origin-Destination Directives* that may be issued periodically. The list of participating carriers will be issued by reporting directive under the authority in 14 CFR 385.27(b).

B. *Amendments to list of participating carriers.* As new carriers begin service, they will be required to file O&D Survey Data. These carriers will not be added to the participating carrier list automatically, but will be added when the next annual review is made.

IV. Submission of Reports

A. *Period covered by reports.* Reports are to be filed for each calendar quarter of the year as shown below:

Report	Time period covered
1st quarter	Jan. 1 through Mar. 31.
2nd quarter	Apr. 1 through June 30.
3rd quarter	July 1 through Sept. 30.
4th quarter	Oct. 1 through Dec. 31.

B. *Filing date for reports.* Reports are to be filed with the Department on or before the dates listed below. The mailing address is on the inside cover to these instructions.

Report	Due date [1]
1st quarter	May 15
2nd quarter	Aug. 15
3rd quarter	Nov. 15
4th quarter	Feb. 15

[1] Due dates falling on Saturday, Sunday or national holiday will become effective the first following work day.

C. *Format of report.* The report may be submitted in any one of the following formats:

(1) ADP media including magnetic tapes and floppy discs.[3]

(2) Hard copy RSPA Form 2787, in typewritten form, for carriers that lack computer capability. Sample formats of the required data appear in Sections IX and XII. Supplies of blank Form 2787 are available, upon request, from the Director, Office of Aviation Information Management (address on inside cover). Any reasonable facsimile of Form 2787 will be acceptable in lieu of Form 2787, if approved in advance by the Director.

D. *Number of copies of report to be filed.* A participating carrier shall file with the Department a single copy of its quarterly O&D data report. When ADP submissions are transmitted, the package is to contain a transmittal letter describing the contents, and stating the overall record and passenger counts included in the submission. Each submission is to be labeled externally as to submitting carrier and time period of the O&D Survey data.

E. *Address for filing reports.* Reports should be submitted to the Director, Office of Aviation Information Management (address on inside cover).

V. Selection of Sample and Recording of Data.[4]

A. *Sampling Basis.* Each participating carrier in this O&D Survey shall search all listed flight coupons, whether the coupons are its own ticket stock or on the ticket stock of another U.S. or foreign carrier (either standard IATA and ARC ticket stock or nonstandard ticket stock), and is to *select for reporting purposes* the following flight coupons:

(1) *Major domestic markets.* All single-passenger flight coupons that are either a single flight coupon ticket or part of a round trip, two coupon ticket where the ticket serial number ends in the digits double-zero (00).

Note.—The list of major domestic markets will be issued by reporting directive under the authority in 14 CFR 385.27(b).

(2) *International markets and all other domestic markets.* (a) All single-passenger flight coupons with ticket serial numbers ending with the digit zero (0);

(b) Those group-ticket flight coupons with 10 or fewer passengers with ticket serial numbers ending with the digit zero (0);

(c) Those group-ticket flight coupons with 11 or more passengers without regard to serial number; and

[1] Each ticket booklet is comprised of one or more *flight coupons* for passenger travel in a city-pair market, plus a *passenger coupon* (the traveler's receipt) and the *auditor coupon* (for the carrier's internal controls).

[2] These summarization procedures include showing two or more passengers with the same itinerary as one O&D record and compressing extremely lengthy itineraries (such as around-the-world tickets) into a standard trip stage length limit (which may be either seven or twenty-three stages, at the carrier's option), as explained in Section V.D.

[3] Magnetic tapes, floppy discs and similar media will be returned to the carriers, upon request, following completion of the processing cycle by the Department.

[4] Upon approval of the Director, Office of Aviation Information Management, carriers may continue current reporting procedures (up to twenty-three stages of a passenger flight) and may report a uniform 10 percent sample of tickets lifted (each zero ending lifted coupon) without reducing the sample size from 10 percent to 1 percent for domestic major markets. Note that the domestic major markets will be reviewed each year at June 30, based on the prior 12 months O&D data, and the list amended as necessary. The list could remain static for more than a year, although it will be reviewed annually. Necessary amendments will be effective on January 1 of the following year.

(d) Itineraries in major domestic markets that comprise more than two coupons are sampled on a uniform 10 percent basis, by selecting all ticket serial numbers ending with the digit zero (0).

B. *Selection of Reportable Flight Coupons.* The flight coupons identified above are to be examined to isolate the reportable flight coupons, *i.e.* coupons from which data are to be recorded. Flight coupon data are reported only by the first honoring and participating carrier listed on the lifted flight coupon. Such carriers shall report the required data for the entire ticketed itinerary.

If a participating carrier has preceded the examining carrier on any stage in the trip itinerary, including any stage in a conjunction itinerary and any stage in a reissued ticket (either before or after reissue), that coupon is not reportable.

Intra-Alaska tickets (those for which the entire ticketed itinerary is wholly within the State of Alaska) are now included in the O&D Survey.

Conjunction tickets do not require special treatment and are governed by the above rules for regular tickets. No adjustment is made in the Survey for alterations or changes in trip itinerary subsequent to the stage coverd by the reportable coupon.

C. *Optional Use of Other Sampling Procedures.*

(1) Alternative sampling procedures or alternative O&D data systems may be proposed by participating carriers with nonstandard ticketing procedures, or other special operating characteristics. Data reported under proposed alternative procedures must approximate the usefulness and statistical validity of the O&D Survey.

(2) Such departures from the prescribed O&D Survey practices shall not be authorized unless approved in writing by the Director, Office of Aviation Information Management (address inside front cover). The proposed alternative O&D Survey procedures must be described in detail in the letter requesting the waiver.

D. *Recording of Data from Reportable Flight Coupons.*

(1) The following items are to be reported from the reportable flight coupons:

(a) Point of origin,

(b) Carrier on each flight coupon stage,

(c) Fare-basis on each flight coupon, F, FD, Y, YD, UK, or Z,

(d) Points of stopover or connection (interline and intraline),

(e) Point of destination,

(f) Number of passengers, and

(g) Total dollar value of ticket (fare plus tax).

(2) The individual items are to be recorded in the sequence of occurrence in the itinerary as follows:

(a) All entries for *points* (airport codes [5]) in an itinerary are to be recorded in three-letter airport code data to fit into the stage-length limitation (seven or twenty-three stages at the carrier's option), all airport codes are to be reported, including data on commuter, foreign, intra-state and other carriers' portions of itineraries. Normally codes are recorded as they appear on the ticket. However, if a code is obviously incorrect, *record the correct code.* For instance, if a ticket is coded DCA–NYC or Washington/National to New York when the flight stage actually operated from Washington, Dulles to Newark (EWR), record the correct airport code. When only name spellings of a city appear on the ticket for multi-airport cities (such as Washington, New York, San Francisco, or Los Angeles), record the specific *three letter airport code.* In cases where two airport codes are shown on the ticket for a point, such as when the passenger arrives at an airport such as San Francisco and departs from another local airport such as Oakland, record the code for the arrival airport, enter a surface segment indicator (—) to the departure airport, and record the departure airport code. (When the surface portion is at the beginning or end of an itinerary, the surface indicator is to be omitted). For example:

```
   000001      UCA    URY              JFK        TWY
Passenger(s), Utica, EMPIRE,        New York, TRANS WORLD,
                     & Coach fare, Kennedy,  & Coach
```

```
    SFO          --
San Francisco, Surface segment,
```

```
   OAK     UAY       LAX         WA        SLC
Oakland, United,  Los Angeles, Western, Salt Lake,
         & Coach,              & Coach
```

```
   NW        PHX      WA         LAX          WN
Northwest, Phoenix, Western, Los Angeles, Southwest
```

```
     UK                NRT              1500
Unknown Carrier(s), Tokyo,  Dollars of Fare and Tax
                    Narita
```

In the above example, the passenger trip stages or segments are compressed into the maximum of 7 stages so that several intermediate city-pairs (Los Angeles to Seattle to Anchorage, or LAX—SEA—Anc) and the related carriers have not been recorded, as prescribed below in this Section V.D.(3)(e). In addition, after the fourth city-pair (Los Angeles-Salt Lake City), the passenger trip itinerary moves from the initial four-part ticket booklet onto another "conjunction" ticket, and the summary fare code data are not recorded beyond the initial four-part ticket.

(b) All entries for *carrier* on a coupon stage of an itinerary are to be recorded in a *two letter* alphabetic code, as in the above example. Note that in the above example, the carrier has properly inserted the fare code summary together with the carrier code, *i.e.*, UR for Empire and Y for Coach class service. When a two-letter carrier code is shown on the ticket, record that code. However, if a code is obviously incorrect, record the correct code. If a carrier's name is used instead of the code, record the correct code. Code sharing cooperative arrangements between carriers are not considered as "incorrect" carrier codes. The carrier of record on the ticket coupon is to be reported in the O&D Survey. Generally the sampled data are limited to those which can be obtained on the face of the ticket coupon. For example, if NW is the carrier code of record (rather than HP, even though HP actually carries the passenger), the traffic data will be attributed to NW in the O&D Survey. Except for the infrequent compression of data to fit into the stage-length limitation (seven or twenty-three stages at the carrier's option), all carrier codes are to be recorded, *including data on air taxis, commuters, intra-state and other carrier portions of itineraries.* On tickets involving interchange service or other cooperative carrier arrangements, the juncture point(s) where the passenger moves from one carrier system to another is to be recorded as an intermediate point in the itinerary, even when not shown on the ticket and even though the flight may overfly the juncture point.

(c) Entries for *fare-basis* codes are to be taken from the "fare-basis" and "fare description" portions of the ticket. No

[5] Codes to be used are those appearing in the *Official Airline Guide* at the time the data are being recorded. If a code is not found in the OAG, contact the Director, Office of Aviation Information Management (address inside front cover).

attempt shall be made to determine and record fare-basis codes for that portion of a conjunction ticket appearing in the ticket. Fare-basis codes are to be recorded in one-character or two-character alphabetic codes. When a single-character code is shown on a flight coupon, record that code in the left-hand position of the two-position field. When a two-character code is shown on the coupon, record that code with the prime (entitlement) code in the left-hand position and secondary (qualifying) or discount code in the right-hand position.

However, if a code is obviously incorrect, record the correct code. In recording excursion fare-basis codes, disregard any suffixes denoting the number of days or months of validity.

For example, YE–21 is to be recorded as YD, and FE–2M is to be recorded as FD. Where a fare-basis code of more than two alphabetic characters is shown on the ticket the code is to be *compressed* to a two-character code by recording the prime code in the left-hand position and by substituting the discount code "D" in the right-hand position in place of the remainder of the code combination. For example, YDG would be recorded as YD. All acceptable code combinations after compression to two characters are included in the Passenger Origin-Destination Directives which are issued periodically. Refer to Directive No. 138 which has further information on the summarization of the fare-basis codes into the several categories shown below. The fare-basis codes YMA and YMZ, which designate Military Categories A and Z travel, and other Military fare codes are included—together with thrift, economy and youth fares and other very low fares—in the "Z-Other" summary category below, as provided by Directive No. 138. When special ticket forms other than the standard forms are used which do not show a fare-basis code but from which a fare basis code is evident, such as shuttle tickets, identify and record the appropriate fare-basis code, using the universally accepted codes applicable to interline ticketing. If none is determinable, or if the code is not shown, as may be the case in "open" tickets, no fare-basis code is to be recorded. Where carriers use individual fare codes that are more than one or two alphabetic characters (such as, for instance, YE 21–45), the carrier will compress the fare descriptions into one of the following six summary fare code categories:

F—First Class (Includes supersonic fare codes).

FD—Discounted First Class.

Y—Coach Class.

YD—Discounted Coach Class (Includes Business Class).

UK—Unknown (This fare category is used when none is shown on a ticket coupon, or when a fare category is not discernable, or when two or more carrier fare codes are compressed into a single stage of a passenger trip).

Z—Other (This fare code is used for Military, Youth, Thrift and other very low fares).

(d) In recording the number of passengers, each single-passenger ticket is to be recorded as one passenger. A half-fare passenger, such as a child, is to be counted as one passenger. A fractional-fare passenger, such as a family plan fare, is also to be counted as one passenger. Tickets for infants under two years of age *not occupying a seat* are not to be counted. A revenue passenger is defined in Section X.

For group tickets of 10 or fewer passengers per ticket record the actual number of passengers on each ticket, *i.e.*, either 2, 3, 4, 5, 6, 7, 8, 9 or 10. For group tickets with 11 or more passengers (those sampled at a 100-percent rate) record the actual number of passengers traveling on each ticket, but keep these entries separate from the group ticket records with 10 or fewer passengers and from the single-passenger ticket records. Group tickets with 11 or more passengers are to be sorted and summarized to combine all passengers for all itineraries which are identical in every respect, *i.e.*, points, carriers, fare basis codes, and average dollar value (as defined in paragraph (e), below). The total number of passengers on each summarized record is to be divided by 10, rounding to the nearest whole passenger. If the quotient ends in 0.5 or more, raise to the next whole passenger. If the quotient ends in less than 0.5, drop the fraction. These large group-ticket records, after division by 10 for compatibility with the other data, are to be merged with the single-passenger records and with the group-ticket entries from tickets of 10 or fewer passengers for the quarterly O&D Survey report.

(e) The total dollar value shall be taken from the "Total" box on each ticket and shall be the sum of the fare plus tax for the entire ticket. Record this amount in whole U.S. dollars, with the cents dropped. Do not round cents to nearest whole dollar.

Amounts on tickets stated in foreign currency are to be converted to U.S. dollar equivalents. For *all group tickets*, the dollar value to be recorded shall be the average amount per passenger, determined by dividing the total dollar value for the entire group by the number of passengers on the group ticket, dropping cents in the average amount.

(3) The *length of the itineraries to be recorded is limited* to a maximum of seven stages or twenty-three stages, at the carrier's option. This recognizes that the vast majority of tickets sampled have seven stages or fewer and that the rare occurrences of extremely lengthy itineraries do not impact the overall Survey results enough to justify their reporting burden. Therefore, trips longer than these limits are *compressed* to fall within the stated maximums. The ticketed origin and destination are retained, but the *intermediate routing is compressed* by applying the following rules, in sequence:

(a) Combine any contiguous open, unknown carrier, or surface stages eliminating the connecting point, and ignoring the fare-basis codes, if different:

(b) Combine any contiguous stages via the same non-U.S. carrier, eliminating the connecting point, and ignoring the fare-basis codes, if different;

(c) Combine any contiguous stages via different non-U.S. carrier, making the carrier "UK", eliminating the connecting point, and ignoring fare-basis codes, if different:

(d) Combine any contiguous stages via the *same U.S. carrier*, eliminating the connecting point, and ignoring the fare-basis codes, if different, and;

(e) If the trip, after applying the four steps above, is still too long, record the compressed routing through to the stage length limitation city (seventh or twenty-third city), enter UK as the final carrier, and then record the ticketed destination as the next (the 8th or 24th) city.

VI. Summarization of Recorded Data

A. *General.* Prior to the submission of each quarterly report to the Department, each carrier is to summarize the data in accordance with the rules in Section VI.B. In special hardship cases, carriers may submit a waiver request (with justification under Section 1–2 of 14 CFR Part 241) requesting permission to report their flight coupon records exactly as represented on their lifted tickets. Waiver requests must provide the documentation described in Section VI.C. so that the Department can develop the necessary procedures and edit routines to ensure the accuracy and reliability of the overall O&D Survey results. The granting of such waivers will depend upon the availability of resources for the Department to assume this addtional burden, which can only be determined on a case by case basis, after evaluating each carrier's need.

B. *Rules for Summarization.* Sort the recorded entries into sequence by the entire record (excluding the passenger field), *i.e.*, by origin, complete routing (including fare-basis codes), tickets destination, and dollars value of ticket. *All identical records are then to be combined into one summary record.* The number of passengers on the summary record is to be the sum of the passenger amounts of all the individual records combined. Passengers are only summarized where records are identical in all respects except in number of passengers including dollar value of ticket. NOTE: DO NOT SUMMARIZE DOLLARS OVER IDENTICAL RECORDS. This summarization is to include the entries from group tickets, but only after the entries for *group tickets with 11 or more passengers* have been *summarized and divided by 10*, as stated in Section V.D.(2)(d). Carriers submitting quarterly O&D Survey reports on magnetic tapes or similar formats such as "floppy discs" will follow the ADP INSTRUCTIONS in Section IX. Carriers filing reports on hardcopy RSPA Forms 2787 are to enter, on the last page of the report, the overall total of the number of passengers in the report.

C. *Waiver Requests.* Requests for permission to depart from the required O&D Survey procedures should include a *procedural statement* describing the process the carrier proposed to emply in *examining, selecting and editing* the data from reportable flight coupons for the O&D Survey, as well as a flow chart diagramming the proposed procedures.

D. *Quantity and Quality Controls.* Carriers are expected to establish and maintain *continuous quantity and quality* controls on the flow of all lifted flight coupons through their system processes to determine the total

number of coupons handled and the number of reportable *coupons selected*. Such data controls and tests have not been specified by the Department, and necessarily must be developed by each carrier. Each participating carrier shall develop and use on a continuous basis such control tests as are necessary to ensure that all reportable coupons are being selected, recorded and reported as intended by these O&D Survey Instructions. Such controls should extend over all ADP processing, both in-house and that from external service bureaus.

VII. Editing of Recorded Data

A. *City and Airport Codes.* Prior to submission of O&D Survey reports, each carrier is to edit the recorded data to validate city and airport codes. This edit is to verify that the codes recorded are valid official codes, and it is independent of whether or not the carriers shown actually operated into or out of the airport shown. Any questions about airport codes should be addressed to the Director, Office of Aviation Information Management (see inside of cover).

B. *Edit Responsibility of Carriers.* Each carrier is responsible for developing edit procedures and internal controls over its data entry and processing procedures so that valid and reliable data are captured in the O&D Survey inputs and are properly summarized in the outputs. Since the carriers have many different statistical systems, it is not practicable for the Department of Transportation to prescribe specific controls in this area, and each carrier is responsible for developing the appropriate internal control procedures to edit the O&D Survey data and ensure the integrity of these data. The Department will control the accuracy of its processing of the sampled data upon receipt from the carriers.

C. *System Documentation of Edits.* Carriers are required to maintain written O&D Survey procedural statements and flow charts. As provided in Section VIII, these must be established, or re-certified as of July 1, 1987, and thereafter when significant procedural revisions occur.

VIII. Control of Sample Selection and Data Recording

A. *Sample Accuracy and Reliability.* In order to maximize the accuracy and reliability of the sample selection and data recording, each carrier is to:

(1) Develop a written statement describing the procedures it will employ in examining and selecting reportable flight coupons and in recording, summarizing, editing, and testing the Survey data.

(2) Submit any proposed changes in the above procedures to the Department's Office of Aviation Information Management, prior to implementation of such changes.

(3) Establish continuous quantity controls on the flow of all lifted flight coupons through the carrier's accounting processing to determine the total number of coupons handled, and the number of reportable coupons selected. Tests are to be made continuously to assure that all reportable coupons are being selected and the data recorded. Such tests should be completed while the "lifted" flight coupons (representing earned passenger revenues for flight segments operated) remain in the possession of the carrier. Establish such other internal control procedures as are necessary for supervising and monitoring the accuracy of the recording of data from reportable flight coupons.

B. *Staff Review.* The OAIM staff will review the carrier procedures and practices and may request modifications or the use of special procedures necessary to improve the sample or to bolster the controls for accuracy and reliability.

IX. ADP Instructions

Each carrier electing to submit its Survey reports in machine listing form or magnetic media in lieu of hardcopy RSPA Form 2787 is to be governed by the following instructions:

A. Instructions for Submitting Records on Magnetic Media [6]

(1) *Identification record.* This identification record is to include the reporting carrier and the reporting period. It is designed to fall at the beginning of each file when sorted on columns 7 through 200. The record is to be in the format shown as follows:

BILLING 4910-62-M

[6] Each reel of tape will be returned to the individual carrier upon request.

Field	Tape Positions (From - To)	TAPE RECORD LAYOUT
Passengers	1-6	1. Passenger field must contain leading zeros, and not blanks.
1st city	7-9	
1st carrier	10-13	
2nd city	14-17	2. City fields contain the three-letter alpha code for the city or airport in the first three positions. The fourth position, provided for all cities except the first and 24th city or the 8th city, where carriers are compressing to 7 stages, is to be blank.
2nd carrier	18-21	
3rd city	22-25	
3rd carrier	26-29	
4th city	30-33	
4th carrier	34-37	
5th city	38-41	
5th carrier	42-45	
6th city	46-49	3. Carrier fields are to contain the two-letter alpha carrier code in the first two positions. Unknown carrier is to be coded "UK" and surface carrier is to be coded "--" (dash dash). The third and fourth positions are to contain the one or two-character alpha fare-basis summary codes. If only a one-character fare is shown, enter the code in the third position, and leave the fourth blank
6th carrier	50-53	
7th city	54-57	
7th carrier	58-61	
8th city	62-65	
8th carrier	66-69	
9th city	70-73	
9th carrier	74-77	
10th city	78-81	
10th carrier	82-85	
11th city	86-89	
11th carrier	90-93	4. Portion of record for sorting, summarization, and sequencing includes columns 7 through 200.
12th city	94-97	
12th carrier	98-101	
13th city	102-105	
13th carrier	106-109	5. Dollar amount in positions 197-200 is right justified.
14th city	110-113	
14th carrier	114-117	
15th city	118-121	6. Positions 65-192 are used only by those carriers who want to report more data, and are not compressing to 7 stages (See Section V.D.(3) for compression rules).
15th carrier	122-125	
16th city	126-129	
16th carrier	130-133	
17th city	134-137	
17th carrier	138-141	
18th city	142-145	
18th carrier	146-149	
19th city	150-153	
19th carrier	154-157	
20th city	158-161	
20th carrier	162-165	
21st city	166-169	
21st carrier	170-173	
22nd city	174-177	
22nd carrier	178-181	
23rd city	182-185	
23rd carrier	186-189	
24th city	190-192	
Blank	193-196	
$US value of ticket	197-200	

Field	Columns	Remarks
Reporting carrier.	1-2	Alpha code.
Reporting period:		
Year	3-4	Tens and units position.
Quarter	5	1, 2, 3, or 4.
Blanks	6-200	

(2) *Detail record:*. (a) All records are to be summarized on the complete itinerary [7] (columns 7 through 200) and the summary record *only* for each itinerary is to be submitted. The tape file, including the identification record, is to be in sequence by complete itinerary.

(b) The tape record layout is shown on the following page.

(3) Magnetic Tape Instructions: (a) All tapes are to be written using the standard IBM extended binary coded decimal interchange code (EBCDIC).

(b) The recording density can be either 6250 or 1600 B.P.I.

(c) All tape will contain standard IBM volume header, and trailer records.

(d) External labels will contain the carrier, name, the report date, file identification, and an address for returning the tapes.

(4) *Transmittal letter.* The tape shall be accompanied by a transmittal letter which shows the number of records reproted and the total number of passengers contained in the report.

B. *Editing of Tape Records.* Prior to submission of data, each carrier is requested to edit and correct its data so that its O&D Survey report may be as error-free as is reasonably practicable. The methods to be used in editing are left to the carriers' discretion, but with assistance available upon request from the Department's Office of Aviation Information Management. To aid the carriers in maintaining a current file of editing criteria, OAIM will issue updates to the city/airport-carrier file to each carrier. Application of these updates to the file for the immediately preceding quarter will update it to current quarter status. These updates will be transmitted to the carriers by "Passenger Origin-Destination Directive" which will include a copy of a computer listing of the update transactions in the following format:

Field	Columns (From-To)	Field description and instructions
1	1-2	Year and quarter, e.g., 33 = third quarter 1983.
2	3-5	Airport/city alpha code.
3	6-7	Two-letter carrier code.
4	8	Operative: "A" means add the airport/city with the associated carrier code to edit criteria for immediately preceding quarter. "D" means delete the airport/city with the associated carrier code from the edit criteria for the immediately preceding quarter.
5-37	9-74	These 33 fields consist of fields 2, 3, and 4, repeated as a group 11 times.
38	75-80	Reserved

C. *Format of Machine Listing.* The original copy of the machine listing is to be submitted to the Department in the format described below by any carrier not submitting data on magnetic media or hardcopy RSPA Form 2787. Note that carriers submitting magnetic media are NOT required to submit a redundant machine listing.

(1) *Titling of listing.* The first page of each listing is to be labeled with the title of the Survey, name of the reporting carrier, and the reporting period of the data. All successive pages are to bear an abbreviated title at the top of the data, as shown in the example below. All pages are to be numbered in sequence. For example, the titling of pages 1 and 2 of a report would appear as follows on the machine listing:

Page 1: Passenger Origin-Destination Survey Report (RSPA form 2787), XYZ Airways, Inc., First Quarter 1987.

Page 2: RSPA Form 2787 ZO 1Q87 page 2: In coding the title for page 2 and following pages, indicate the time period by the codes 1Q for the first quarter, 2Q for the second quarter, etc. Indicate the year by the last two digits, *i.e.*, 87 for 1987, 88 for 1988, etc.

(2) *Illustration.* Following is an example of the format of the machine listing. It shows that some carriers report more fare codes than the Department uses, and the Department summarizes these into six basic fare code summary categories.

Format of Machine Listing—Passenger Origin-Destination Survey Report

(RSPA FORM 2787)

XYZ Airways, Inc.—First Quarter 1987

1 OAK ZOYQ EWR ZOYQ OAK.....618
1 OAK ZOYQ FRA ZOYQ OAK.....1047
1 OAK ZOYQ HNL.....174
1 OAK ZOYQ HNL.....279
1 OAK ZOYQ HNL ZOYC OGG ZAYC LIH ZOYC HNL ZOYD OAK.....407
* * * * *

RSPA Form 2787 Z0 1Q87 Page 22

* * * * *
4 OAK ZOYQ HNL ZOYQ OAK.....418
7 OAK ZOYR HNL.....338
1 OAK ZOYW HNL ZOYW ZAYD LIH HNL ZOYD OAK.....418
1 OAK ZOYX HNL.....209

526,700 Overall Total, all Cities
Number of Records—157,900

X. Glossary of Terms

Selected terms used in the foregoing instructions are here defined and explained in the context of the O&D Survey.

ADP. An abbreviation for automated data processing, which is the term applied to all forms of machine processed data.

Carrier. Any scheduled air carrier, U.S. or foreign, that appears on a coupon stage in a ticketed itinerary, including helicopter, air taxi, commuter, intra-Alaska carriers, and intra-state carriers.

City or origin. (See origin.)

Conjunction ticket. Two or more tickets concurrently issued to a passenger and which together constitute a single contract of carriage.

Connecting point. An intermediate point in an itinerary at which the passenger deplanes from one flight and boards another flight, either on the same carrier or from the flight of one carrier to a flight of another carrier, for continuation of the journey.

Coupon stage. (See flight-coupon stage.)

Destination. The last point in the itinerary and the last point at which the passenger is to deplane at the completion of the journey. (In roundtrip itineraries, the destination and the origin are the same.)

Dollar value of ticket. (See total dollar value of ticket.)

Domestic. Itineraries within or between the 50 U.S. States and the District of Columbia are considered domestic for this Survey.

Fare basis code. The alphabetic code(s) or combination of alphabetic and numeric codes appearing in the "Fare basis" box on the flight coupon which describe the applicable service and discount to which the passenger is entitled. All fare basis codes are summarized into basic categories; namely, F-first class, FD-discount first class, Y-coach.

[7] Itinerary includes total dollar value of ticket.

YD-discount coach, UK-unknown and Z-other.

Fare ladder. The "For-issuing-office-only" box of a ticket.

Flight-coupon stage. The portion of an itinerary which lies between two contiguous points in the itinerary and between which points the passenger is to travel on a single flight.

Group ticket. A single ticket valid for the transportation of two or more passengers over the same itinerary.

Interline transfer. An occurrence at an intermediate point in an itinerary where a passenger changes from one carrier to another carrier, with or without a stopover.

Intermediate point. Any point in an itinerary, other than the origin or destination, at which the passenger makes an interline or intraline connection or stopover.

International. The world area outside the 50 U.S. States and the District of Columbia. Itineraries between points outside the 50 States are considered as international for this Survey, as well as itineraries between the 50 States and U.S. possessions, and between or within U.S. possessions.

Intraline transfer. An occurrence at an intermediate point in an itinerary where a passenger changes from a flight of one carrier to another flight of that same carrier, with or without stopover, or where the passenger changes from one class of service to another class of service on the same flight.

Itinerary. All points in the passenger journey, beginning with the origin, followed by the routing, and ending with the destination, in the sequence shown on the ticket.

Origin. The first point in the itinerary and the point where the passenger first boards a carrier at the beginning of the itinerary.

Participating carrier. A carrier which is governed by the Survey data collection and reporting instructions contained herein and which is required to file Survey reports with the Department of Transportation.

Point. A city or airport (always identified by its airport code).

Reissued ticket. A ticket issued in exchange for all or part of the unused portion of a previously issued ticket.

Reportable flight coupon. A flight coupon in an itinerary in which the carrier examining the coupon is the first participating carrier to lift a flight coupon in the itinerary and from which coupon the examining carrier records the Survey data.

Reporting carrier. The carrier in a given itinerary which has lifted the reportable flight coupon in that itinerary and which carrier is required to record the Survey data for that itinerary for the report to the Department.

Revenue passenger. A passenger transported for which more than a service charge or nominal remuneration is received by the air carrier. Passengers traveling for a zero fare, because of the frequent flyer or mileage programs are considered revenue passengers, since the revenue considerations for passenger travel were included in their previously purchased tickets.

Routing. The carrier on each flight-coupon stage in an itinerary and the intermediate points of routing stopover or connection (interline or intraline) in the sequence of occurrence in the movement of the passenger from origin to destination. The routing also includes fare-basis summary codes on each flight-coupon stage, to the extent these are available from the ticket.

Scheduled service. Transport service operated on a certificated large air carrier's routes pursuant to published flight schedules, including extra sections of scheduled flights.

Stage. (See flight-coupon stage.)

Total dollar value of ticket. The sum of the fare plus tax for the entire ticketed itinerary, in whole U.S. dollars with cents dropped. For a group ticket, the amount is the average per passenger. For fares stated in foreign currency, it is the equivalent in U.S. dollars.

Transfer. (See interline transfer and intraline transfer.)

BILLING CODE 4910-62-M

XI. Sample of RSPA Form 2787

PASSENGER

ORIGIN-DESTINATION

SURVEY REPORT

Reporting Carrier: __________
(Two letter carrier code)

Reporting Period: __________
(Indicate reporting qtr.)

Number of Passengers	City Code (1)	Car. Fare Code	City Code (2)	Car. Fare Code	City Code (3)	Car. Fare Code	City Code (4)	Car. Fare Code	City Code (5)	Car. Fare Code	City Code (6)	Car. Fare Code	City Code (7)	Car. Fare Code	City Code (8)	Amount of Fare plus Tax in U.S. Dollars

Car. Fare Code = Two character alphabetic carrier code followed by fare basis code, such as TWFD, indicating Trans World as the carrier and coach discount as the fare basis summary group code.

City Code = Three character alphabetic airport code, such as EWR for Newark, OAK for Oakland, and SJC for San Jose.

Amount = Dollar amount of ticket, stated in whole U.S. dollars.

No. of passengers = Tickets sampled at one-percent are to be multiplied by 10 for reporting on this form. Note that all passenger data are presented as a ten-percent sample.

RSPA Form 2787

BILLING CODE 4910-62-C

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

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 87-4208 Filed 3-3-87; 8:45 am]

BILLING CODE 4910-62-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9176]

Orkin Exterminating Co., Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: This Final Order requires an Atlanta, Georgia-based exterminating company to roll back the "lifetime" annual renewal fees on contracts signed prior to 1975 to the set fee established prior to a 1980 raise in price. Respondent is also required to notify each affected customer.

DATES: Complaint issued May 8, 1984. Final Order issued Dec. 15, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Katherine B. Alphin, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., Room 1000, Atlanta, GA 30367. (404) 347-4836.

SUPPLEMENTARY INFORMATION: In the Matter of Orkin Exterminating Company, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: S 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-45 Maintain records; 13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Discriminating in Price Under Sec. 5, Federal Trade Commission Act: S 13.870 Charges and prices. Subpart—Furnishing False Guaranties: S 13.1053 Furnishing false guaranties.

List of Subjects in 16 CFR Part 13

Exterminating services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

[1] Copies of the Complaint, Initial Decision and Opinion of the Commission are available from the Commission's Public Reference Branch, H-130, 6th & Pa. Ave., NW., Washington, DC 20580.

Before Federal Trade Commission

[Docket No. 9176]

Final Order

In the matter of Orkin Exterminating Company, Inc., a corporation.

Commissioners: Daniel Oliver, Chairman; Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

This matter has been heard by the Commission upon the appeals of the respondent, Orkin Exterminating Company, Inc. ("Orkin"), and complaint counsel from the initial decision, and upon briefs and oral argument in support of and in opposition to the appeals. For the reasons stated in the accompanying opinion, the Commission has determined to deny the appeals of both Orkin and complaint counsel and to affirm the initial decision of the administrative law judge. Accordingly,

It is ordered, that the findings of fact and initial decision of the Administrative Law Judge be adopted insofar as they are not inconsistent with the findings of fact and conclusions of law contained in the accompanying opinion.

It is further ordered, that the following Order to cease and desist be, and the same hereby is, entered:

The following definitions shall apply in this order:

A. "Customer" means any consumer or business owning or holding a pre-1975 contract or guarantee, as defined below, entered into or issued by Orkin and any successor in interest to such a consumer or business.

B. "Contract" means any agreement entered into by Orkin to supply services to control termites, wood-infesting organisms, moisture, or wood decay.

C. "Guarantee" means any guarantee extended by Orkin in connection with a contract.

D. "Pre-1975 contract" means any currently effective contract entered into by Orkin during the period from January, 1966, to February, 1975, that includes the term "lifetime" and that does not provide for adjustments to or increases to the annual fee except and unless the treated premises are structurally modified, altered or otherwise changed after the date of initial treatment.

E. "Pre-1975 guarantee" means any guarantee extended by Orkin in connection with a pre-1975 contract.

I

It is further ordered that Orkin, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any product or service to protect a house, building or other structure from termites, wood-infesting organisms, moisture, or wood decay, shall forthwith cease and desist from:

A. Charging, requesting, collecting or accepting under any pre-1975 contract or pre-1975 guarantee any annual renewal fee that is greater than the fee specified therein except in accordance with any clause in that contract or guarantee that applies if the treated premises have been structurally modified, altered or otherwise changed after the date of initial treatment.

B. Refusing to accept the amount of the annual fee stated in the pre-1975 contract or pre-1975 guarantee as payment in full for renewing a pre-1975 guarantee.

C. Refusing to perform the services specified in any pre-1975 contract or guarantee upon timely tender of the annual fee stated therein.

D. Charging, requesting, collecting or accepting under any contract or guarantee any annual fee that is greater than the fee specified therein unless the contract or guarantee clearly and conspicuously discloses that such annual fee may be increased at Orkin's option.

E. Modifying, changing, altering or attempting to modify, change or alter, the amount of the annual renewal fee or the duration of the level of that fee in any contract and/or guarantee unless the contract or guarantee clearly and conspicuously discloses that such a modification, change or alteration may be made at Orkin's option.

Provided, however, that nothing contained in this Order shall prevent Orkin from seeking modification or novation of its pre-1975 contracts and pre-1975 guarantees that would permit, *inter alia,* a change in the annual fee to be paid or the services to be rendered, *provided further,* that Orkin may not seek such a modification or novation until after the second anniversary of the renewal of any pre-1975 contract or guarantee that is renewed after the date this Order becomes final; *provided further,* that in any attempt to seek modification or novation of a pre-1975 contract as provided in this Order, Orkin may not represent, directly or by implication, that a customer is required to agree to the modification or novation being sought. Orkin shall include with the reports on compliance required by Part V of this Order

(1) Documents showing each and every representation, whether oral or written, made during the period covered by the report in connection with each such attempt to seek a modification or novation of any pre-1975 contract and/or pre-1975 guarantee;

(2) The names and addresses of any holder of a pre-1975 contract or guarantee with whom the respondent has communicated concerning modification or novation during the period covered by the report; and

(3) Copies of each contract that is modified or subjected to novation as a result of these communications during the period covered by the report.

II

It is further ordered that, within 60 days after the date this Order becomes final, Orkin shall send a notice in the form prescribed below to each customer (except those customers for whom Orkin has previously rescinded its 1980 fee increase). The notice shall be sent by first class mail to the billing address provided for each such contract or guarantee and, where the address of the treated structure is different from the billing address, to the address of the covered structure. The notice shall be sent no later than two months before the anniversary date of the initial treatment under such contract or guarantee and shall read as follows:

Dear Customer:

This letter contains important information about a *decrease in the annual renewal fee.* Please read it.

Beginning in 1980, Orkin increased the annual renewal fee for lifetime guarantees offered in certain of its termite and related pest control contracts, including yours. The Federal Trade Commission has ordered Orkin to rescind this fee increase and to roll back your annual fee to the amount stated in your contract or guarantee. Under the terms of the Federal Trade Commission order, you will continue to receive the lifetime protection that Orkin has guaranteed as long as you pay the annual fee specified in the contract.

The Federal Trade Commission's order does not alter Orkin's right to terminate the guarantee or increase the fee under the terms of your original agreement if you have structurally modified the treated property. Absent such a structural modification, Orkin may not now or in the future increase that fee without your consent.

If you would like to continue your guaranteed protection, please submit your annual fee in the amount specified in your contract along with the enclosed invoice. We suggest you check the amount of the annual fee stated in your contract or guarantee with that of the enclosed invoice. If there is any discrepancy or you have any other questions, please call your local branch.

Sincerely yours,

President of Orkin

(or other Orkin official)

Each envelope containing the foregoing notice shall bear the following legend in red, 14 point print on its face: Important Notice of Annual Fee Reduction Enclosed.

III

It is further ordered that, within 30 days after the date this order becomes final, Orkin shall distribute a copy of this Order to each of its officers, directors, district managers and branch managers, and to each person who assumes any of these positions during each of the first two years of the date on which this order becomes final, and that Orkin shall secure from each of these persons a signed statement acknowledging receipt of said Order.

IV

It is further ordered that Orkin shall maintain for a period of five years after the date on which this Order becomes final records showing the manner and form of Orkin's compliance with this Order and shall make them available for inspection by the Commission within 30 days of receipt of a request for an inspection.

V

It is further ordered that Orkin shall within 60 days after the date this order becomes final and every 180 days thereafter for a period of three years, file with the Commission a written report setting forth in detail the manner and form in which it has complied and is complying with this Order, and shall file such other reports of compliance as the Commission may from time to time require.

VI

It is further ordered that Orkin shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent corporation, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

Issued: December 15, 1986.

By the Commission.

Emily H. Rock,

Secretary.

Separate Statement of Chairman Oliver

I concur in the majority's conclusion that respondent Orkin Exterminating engaged in an unfair practice when it unilaterally raised the contracted-for annual renewal fees in its pre-1975 contracts. I differ from the majority, however, in the application of the Commission's unfairness standard to the facts of this case. I write separately to explain: First, why I believe careful application of the unfairness standards is important; second, the circumstances that warrant the Commission's intervention in such disputes; and third, the way in which I would apply that analysis to the case before us.

I. Guidance of Commission Opinions

The Commission's written opinions do more than reflect the outcome of a particular matter. They should help in the development of workable rules and provide guidance that both explains and demonstrates the reach of the legal principles involved. The Commission's analysis is particularly important in unfairness cases because of the broad ambit of Section 5. It was criticism of the Commission's broad discretion to define practices as legally "unfair" that led to adoption of the Policy Statement on Unfairness in 1980. In that statement, the Commission promised to "construe its jurisdiction in limited, specific, and market-oriented terms" and to define it "with sufficient particularity to answer criticisms that the law is excessively uncertain."[1]

There are a variety of reasons underlying the Commission's desire, and need, to provide as careful an explanation as possible for its conclusions in an unfairness case. First, our opinions provide direction within the Commission. They are the records available for future Commissioners to ascertain why we acted or failed to act under particular circumstances. In addition, they provide counsel to the Commission staff in its case selection criteria and can thus affect the analysis employed in many other circumstances. Application of careful reasoning also aids the Commissioners in ensuring that we exercise our discretion carefully.

Second, the patent limitations on the Commission's ability to detect all law violations suggests that a principal benefit to be gained from a litigated Commission decision is the assistance it provides to businesses attempting to comply with the law. Reliance on the "Commission's discretion not to bring cases that would be unreasonably burdensome . . . gives no comfort to the seller who is endeavoring to comply with the law, since he cannot tell how

[1] *Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction*, letter from the FTC to Senators Ford and Danforth, December 17, 1980 ("Unfairness Statement") at 11. Reprinted at Trade Reg. Rep. (CCH, Transfer Binder, Current Comment 1969–1983 Par. 50, 421 at 55,948).

the Commission will exercise its discretion . . ."

International Harvester Co., 104 F.T.C. 949, 1060 n.40 (1984). If we do not explicate carefully the rationale in a given case, we either forfeit the possibility of providing useful guidance for business or encourage excessive precaution. In both instances consumers ultimately bear the costs.

Third, the states, almost all of which have their own "Little FTC Acts," look to Commission decisions for guidance interpreting those Acts. Several of these statutes specifically incorporate the Commission's case law.[2] With a large number of states there is, of course, potential for great diversity in applying the law. This could be exacerbated if the courts reach inconsistent results on similar facts. Again, such a result is unlikely to aid consumers and should be avoided, if possible, by careful action on the Commission's part.

This problem is compounded by the fact that many states provide private rights of action and frequently allow treble damages as a remedy in such private disputes.[3] State courts have repeatedly struggled with litigants' attempts to use those statutes to provide increased damage awards for contract breaches. It is apparent from a review of such cases that the courts have had difficulty distinguishing unfairness cases from breach of contract actions. At times they have resorted to a "bad faith" standard, or have sought other methods of providing some distinguishing features in order to prevent these state statutes from swallowing the common law.[4] To the extent that the Commission can clearly articulate its rationale for reaching a result it can also aid these courts in interpreting their own state statutes.

II. Boundaries of the Unfairness Jurisdiction

Given the enormous numer of private contracts operative in the economy that are negotiated, performed, or breached without the involvement of the government (excepting the courts, on occasion) it seems to me apparent that regulation of the great majority of these private agreements was never intended to fall within the jurisdiction of the Federal Trade Commission. However, I have concerns that the majority opinion does not provide readily apparent standards that explain why our jurisdiction is properly invoked in this case. It may prove helpful to explain the rationale and analysis that I believe underlie the Commission's determination that the actions of Orkin in breaching the contracts at issue here constitutes an unfair act or practice.

The analytic tool the Commission has applied to circumscribe its unfairness authority is the tripartite test laid out in the Commission's Policy Statement on Unfairness. The focus of this test is consumer injury. Determination of whether that injury is "unfair" as a legal matter requires consideration not only of the quantum of injury, and any countervailing benefits that the practice produces, but also of the economic forces at work. The Commission's Policy Statement on Unfairness incorporates this economic inquiry of market failures in its discussion of whether injury is reasonably avoidable, stating that:

> Normally we expect the marketplace to be self-correcting, and we rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention—to govern the market.[5]

Put differently, "In making this determination [that a practice is unfair], the FTC and the courts should examine whether any market failure justifying government intervention actually exists; what economic justifications, if any, support the practice; what costs would result from FTC intervention; and finally, whether the remedy is likely to be cost effective or efficient." Gellhorn, *Trading Stamps, S&H, and the FTC's Unfairness Doctrine*, 1983 Duke L.J. 903, 955 (1983).

I have no difficulty agreeing with Orkin's proposition that a breach of contract, without more, does not violate Section 5. It is normally not our role to become involved in breaches of contract because private enforcement of private agreements is generally more efficient than governmental intervention. The appropriate question, however, is whether other circumstances apart from simple breach of contract bring this case within the Commission's unfairness jurisdiction.[6] In other words, is there a market failure present in this case?

The only market failure that I perceive on the record presented here is the fact that private actions for damages were not likely to be effective. The Unfairness Statement itself recognizes that in those circumstances injury may not be reasonably avoidable by consumers. "In some senses any injury can be avoided—for example, by hiring independent experts to test all products in advance, or by private legal actions for damages—but these courses may be too expensive to be practicable for individual consumers to pursue." Unfairness Statement, n.19 at 7. In this case some, perhaps many, Orkin customers were unable or unwilling to avail themselves of their private remedies because the individual losses are so small.[7] When that is the case the normal incentives provided by the common law of contracts do not operate in the same fashion that they would in most instances.

The common law provides a framework within which parties can structure private agreements. Contracts are entered against the background of the existing rules that define obligations and remedies. The common law generally does not require that parties perform under their agreements. To cite Judge Posner: "it is not the policy of the law to compel adherence to contracts but only to require each party to choose between performing in accordance with the contract and compensating the other party for any injury resulting from a failure to perform." R. Posner, *Economic Analysis of Law* 88 (2d ed. 1977) (hereinafter Posner).[8] The knowledge

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[2] *See, e.g.*, Mass. Gen. Laws Ann. ch. 93A, section 2(b) ("It is the intent of the legislature that . . . the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act . . . .")

[3] *See, e.g.*, Mass. Gen. Laws Ann. Ch. 93A, section 11 (providing private rights of action and treble damages); N.C. Gen. Stat. § 75-16 (same).

[4] *See Marshall* v. *Miller*, 276 S.E.2d 397, 401 (N.C. 1981), where the Court "expressly overrules" "any possible implication" that "a party must show bad faith in order to recover treble damages" for violation of the State little FTC Act. The same case also rejected the lower court's determination that intentional wrongdoing had to be established. *Id.* at 402. Similarly, in *United Roasters* v. *Colgate-Palmolive Co.*, 649 F.2d 985 (4th Cir. 1981), the Court recognized that in interpreting the North Carolina statute the state courts had not limited it to cases where there was injury to consumers, *Id.* at 991, but concluded that the statutory terms "must mean something more than an ordinary contract breach." *Id.* at 992. *See also Pepsi-Cola Metropolitan Bottling Co.* v. *Checkers, Inc.*, 754 F.2d 10, 17-19 (1st Cir. 1985), where the court upheld a treble damage award under the Massachusetts little FTC Act because of a "calculated refusal to pay a clearly owed indebtedness" in a dispute between two businesses, finding the actions a "wilful violation."

[5] Statement on Unfairness, *supra*, at 7.

[6] Orkin is correct that many of the Commission's past cases involved some defect in the information available to parties when entering contracts, either through misrepresentation, duress, coercion, or the like. *See* Unfairness Statement at 7; Craswell, *The Identification of Unfair Acts and Practices By the Federal Trade Commission*, 1981 Wisc. L. Rev. 107. This does not mean, however, that the Commission's role is limited to those stituations.

[7] I am not suggesting that this is the only market failure that could justify an unfairness action when a breach of contract is involved.

[8] The Restatement (Second) of Contracts also reflects this policy. "The traditional goal of the law of contract remedies has not been compulsion of the promisor to perform his promise but compensation of the promisee for the loss resulting from breach." Introductory Note, Chapter 16, at 100.

that the alternative to performance is compensation provides an incentive not to breach except in situations when the party breaching a contract is better off after paying damages to the other party.

If compensation for breach can be avoided, however, there is a breakdown in the normal incentive systems created by the common law of contracts. This not only encourages inefficient breaches, but also alters the underlying agreement by shifting costs or risks from the party who voluntarily assumed them to the other, nonbreaching party. As explained more fully below, then, an unfairness analysis of this record reveals a situation different from the "mere breach of contract" that Orkin posits.

This analysis is hardly unprecedented. It explains many previous Commission decisions. Common law causes of action would have been available in many other Commission cases. But Commission intervention was appropriate because those actions were unlikely to supply an effective remedy. The Supreme Court recognized this early in the Commission's history, when the Court found that something more than a mere private dispute was needed to justify an action "in the public interest." *FTC* v. *Klesner,* 280 U.S. 19, 28 (1929). In a decision written by Justice Brandeis, one of the key actors in the Commission's creation,[9] the Court noted that it may be in the public interest to bring an action "because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it." *Id.* In my view, the Commission's decision in this matter must rest on precisely this basis.

III. Application of Unfairness to the Facts of This Case

The focus of the Commission's unfairness analysis is consumer injury. In considering whether conduct is unlawful as an unfair act or practice, the Commission determines whether that injury is: (1) Substantial; (2) not outweighed by any offsetting consumer or competitive benefits that the practice produces; and (3) one which consumers could not reasonably have avoided. *International Harvester Co.,* 104 F.T.C. 949, 1061 (1984).

[9] *See* Exposition Press, Inc. v. FTC, 295 F.2d 869, 877 (2d Cir. 1961), Friendly, J., dissenting. ("It is deeply significant that the Klesner opinion was written by Mr. Justice Brandeis. For 'he more than any other man, was the begetter' of the Federal Trade Commission.")

A. Substantial Injury

The injury to consumers resulting from Orkin's breach of some 207,000 pre-1975 contracts resulted in actual and substantial consumer injury. The harm resulting from Orkin's conduct consists of increased costs for services previously bargained for, and would be equivalent to the contract damages to which consumers would be entitled.

The Commission's requirement that consumer injury be substantial rests in part on the practical difficulties that would ensure if the Commission were to bring cases based on trivial or speculative harm. Without this anchor the Commission would be able to determine that any injury, such as an offense to the good taste of an audience for an advertisement, was actionable. It would be possible to develop many theories of consumer injury that were intangible or wholly subjective, or that would be based simply on the personal perceptions of a majority of the five Commissioners.

Moreover, the requirement that consumer injury be substantial makes good practical sense because it is one component of the cost/benefit analysis upon which the Commission's unfairness jurisdiction is based. In some cases the Commission must, of course, make its best estimate of likely consumer injury. The Commission's deception cases, a subset of unfairness, provide a ready example.

In this case, however, a large part of the consumer injury is complete and readily quantifiable, and I agree with the majority's conclusion that it is substantial. Consumer injury consists of the increased fees they are subject to because of Orkin's breach. They have paid at least $7.5 million in increased renewal fees as a result of Orkin's fee increase.

B. The Injury Is Not Outweighed by Countervailing Benefits

The next step in analyzing this case is to determine whether the consumer injury is outweighed by any countervailing benefits to consumers or competition. On the facts of this case, I can see nothing that consumers gained from Orkin's breach of these contracts. Similarly, Orkin's contentions that its actions benefited its competitors, and thus competition, is unpersuasive. Simply put, Orkin drafted contracts assigning to itself the risk of inflation. It later sought to impose that risk on consumers. There is nothing in the record indicating the presence of any offsetting benefits from that action.

C. The Injury Was Not Reasonably Avoidable by Consumers

The next element of the unfairness analysis is inquiring whether the injury could be reasonably avoided by consumers. If consumers can choose among competitors or are otherwise able to protect themselves it is not the Commission's role to second guess the wisdom of their decisions. A central focus of determining whether the injury was reasonably avoidable, therefore, is ascertaining whether there is some impediment preventing consumers from protecting themselves—whether there is a "market failure."[10]

The issue in this case, therefore, is whether there were any steps that consumers could reasonably have taken to avoid the injury stemming from Orkin's breach of contract. Thus it is necessary to inquire whether consumers could have acted before entering these contracts, whether they could have avoided the injury after breach by mitigating their damages, and whether they could have reasonably pursued legal action for compensation.

1. *Avoidance Prior to Contracting.* The first question is whether Orkin's pre-1985 customers reasonably could have avoided the injury suffered from the increase of their annual renewal fees at the time of contracting. There is nothing in the record indicating that consumers could or should have known that Orkin would unilaterally raise its annual renewal fee. Moreover, the contracts themselves are quite explicit in providing a fixed annual fee. As a result, there was no reason for these consumers to anticipate Orkin's actions and they could thus not have avoided them prior to entering the contracts.

2. *Avoidance Through Mitigation.* Similarly, mitigation was not a reasonable alternative for consumers to have pursued in this case. Neither the Orkin accommodation program nor the possibility of attempting to get one of Orkin's competitors to assume these contracts provided an effective avenue for avoiding injury.

Orkin asserts that customers with pre-1975 contracts could have simply transferred their business to one of Orkin's competitors, and that those

[10] As the Commission stated in its discussion of this element in its Policy Statement: "Normally we expect the marketplace to be self-correcting, and we rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention—to govern the market. We anticipate that consumers will survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory." Policy Statement at 7.

competitors would have assumed the obligations contained in these Orkin contracts for either the original renewal fee or for less than the amount that Orkin increased them to. To the extent that this was a possibility for Orkin customers, however, there is at a minimum injury resulting from the transaction costs expended by Orkin consumers in locating another company and entering a new contract.[11]

Moreover, even granting Orkin all reasonable inferences it has not raised genuine issues of material fact necessitating trial on this issue. The affidavits of Orkin's competitors state that they have assumed Orkin contracts at the same annual renewal fee promised by Orkin.[12] However, none of the competitors identified in these affidavits state that they had a fixed renewal fee that did not go up. As a result, consumers who went elsewhere were still subject to the risk of inflation. It was that risk that Orkin agreed to assume in these contracts.

Moreover, there was more to these contracts than the cost of the annual renewal fee, and the affidavits offered by Orkin do not indicate that the competitor's services were comparable to Orkin's. There is no indication, for example, that treatments used by other companies were as effective as those of Orkin. This matters because the annual inspections that were performed after the annual renewal fee was paid also included any necessary retreatment.

Complaint counsel has demonstrated that Orkin's breach deprived consumers of the benefits from a fixed annual renewal fee. Orkin has provided no indication that consumers had any alternative means of obtaining that feature, and has thus failed to raise a genuine issue of material fact on this point.

3. *Avoidance Through Legal Action.* There is no allegation that Orkin intended anything other than performance when it offered a fixed annual renewal fee. It is efficient for parties to be able to plan for future events and contingencies by entering contracts for performance at a subsequent time. Such agreements are only practical, of course, when they can be enforced.[13] The enforcement mechanism for breach of contract has been developed through the common law. The rules developed through the judicial system provide a framework for private agreements, and in most cases provide the appropriate incentives for parties to either perform or breach and pay damages.[14]

With a large number of small contracts, however, the cost of litigating an individual loss may be greater than the expected individual recovery. In such situations the market may not provide an adequate disincentive for contract breach. Thus, the question for purposes of this element of the unfairness test is whether actions for contract damages are an economically feasible method of damage avoidance.

This type of market failure underlies many of the Commission's enforcement initiatives. In deception cases common law rights of action are frequently available to consumers, but the individual damages are normally to small to justify the necessary litigation. Similarly, the Commission's Mail Order Rule [15] tends to encourage compliance with what are fundamentally contract rights.

When these principles are applied to the instant case it becomes readily apparent that this is more than a simple breach of contract, and the Orkin's actions in unilaterally raising the annual renewal fees in these contracts is an unfair act within the meaning of Section 5. Individual private actions for damages would not have been effective in this case, given the small dollar amount of the increase in the annual renewal fee charged to each consumer.[16] Moreover, class actions are often not effective vehicles for obtaining relief.[17] In addition, of course, it is unlikely that Orkin customers realized that they were being deprived of legally enforceable right.

I therefore conclude that the respodent's pre-1975 customers could not reasonably have avoided or mitigated the injury that they sustained as a result of Orkin's increase of their annual renewal fee. I conclude that the respondent's increase of the annual renewal fees on its pre-1975 contracts constituted an unfair act or practice in violation of Section 5, and I concur in entry of the order [18] proposed by the majority.

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[11] It is possible that the most effective means of mitigation under the circumstances was to pay the increased fees subject to later legal action for damages. *See* Restatement (Second) of Contracts Section 350, comment e, at 130 ("If the party in breach offers to perform the contract for a different price, this may amount to a suitable alternative").

[12] *See* affidavits of Hromada (Terminix), Murphy (Radar) and Tindol (TNA).

[13] Without some enforcement mechanism for contractual relations, parties would have difficulty determining in advance which companies would abide by those agreements. If consumers have no assurance that the other party will either perform, or provide the monetary equivalent of performance, they would be unable to make rational decisions about which party to contract with. In this case, for example, consumers might well have chosen to deal with a different company had they known that Orkin would subsequently repudiate a material term of these contracts.

[14] It is not necessary that parties always perform. In fact, it is sometimes more efficient for parties to breach if it costs less to compensate the other party than it does to perform. An example may help illustrate the point. The Arctic Earmuff Company contracts to sell 1000 earmuffs to the Boston Earmuff Emporium for $.50 a pair. The Boston Emporium plans to resell them for $1.00 a pair. Unfortunately, AEC has old machinery that breaks down and is irreparable. If AEC must perform, it would be required to obtain new machinery at substantial cost. The Arctic Earmuff Company might prefer to pay damages and not buy more machinery, and exit this declining industry. The Boston Emporium would probably be just as happy with the lost profits ($.50 X 1000=$500). If so, it is indifferent between performance and breach. Requiring Arctic to perform could result in a substantial societal loss if it could not recover the costs for new machinery from other business.

[15] 16 CFR Part 435 (1986). CCH para. 38,040. This is made explicit in the Statement of Basis and Purposes of the Rule, 40 FR 51582, 51585 (1975). "The high costs of going to court as well as jurisdictional limitations prevent consumers from seeking remedial legal action. 'From the consumer's point of view . . . in many cases the amount of money involved is significant, but not enough to make it worthwhile to the consumer to force the seller to fill the order, or to try to recover his money through the use of legal remedies. In these situations, the individual is simply at the mercy of the mail-order merchandiser'." *Id.* at 37.

[16] Even where private actions are brought under state Little FTC Acts for breaches of contract like the present one this market failure may still be involved. Consumers in situations like the current one might well contend that the problem was that the company breached the contracts in circumstances where they knew or should have known that individual breach of contract actions were not likely.

[17] "The class action remains . . . a very troublesome procedure." F. James & G. Hazard, Civil Procedure § 10.18 at 507 (2d ed. 1977). *See* Pitofsky, Beyond Nader: Consumer Protection and the Regulation of Advertising, 90 Harv.L.Rev. 661, 667–68 (1977) ("consumer class units often are impossible to bring because of decisions in the federal system making it impossible to aggregate separate claims in order to satisfy the $10,000 jurisdictional amount and because of the impracticality in many states of maintaining a class action.")

[18] The final order requires Orkin to roll back the contract price to its consumers with the Pre-1975 contracts, and wait at least two years before seeking modifications of the contracts. This is, in essence, a requirement of specific performance. As such, it raises the usual issues that courts have considered regarding whether that remedy is appropriate. In such orders the courts—and in this case the Commission—confron the difficulty of determining whether firms subject to specific performance mandates are living up to all the terms of their agreements. As a general matter, I believe that the Commission should avoid placing itself in such situations.

Possibly the most effective remedy that could be provided in this matter would be monetary compensation for the consumers involved. Specific performance is normally granted only when the remedies at law are inadequate. Although I understand the desire of Commissioners Calvani and Strenio to require Orkin to pay damages in this

Continued

Concurring Statement of Commissioners Calvani and Strenio

The Commission today has determined that Orkin has been acting in violation of section 5 of the Federal Trade Commission Act by unilaterally changing the terms of agreements with some 200,000 customers. These violations have increased Orkin's revenues by over $7.5 million thus far. While the Commission declares Orkin's acts to be unfair, its Order allows Orkin to retain the money. We concur in the Commission's decision but do not think that it goes far enough. Restitution is appropriate here.[1] Indeed, restitution may be the only effective remedy.[2] We would have ordered Orkin to refund its ill-gotten gains.

[FR Doc. 87-4459 Filed 3-3-87; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-125 (Oklahoma-3); Order No. 465]

High-Cost Gas Produced From Tight Formations; Order Remanding Jurisdictional Agency Recommendation for Tight Formation Designation

Issued: February 27, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Remanding Jurisdiction Agency Recommendation For Tight Formation Designation.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission remands the recommendation by the Oklahoma Corporation Commission that the Upper and Lower Cherokee (Red Fork) formations located in portions of Custer, Washita, Beckham, and Roger Mills Counties, Oklahoma, be designated as tight formations pursuant to § 271.703 of the Commission's rules and regulations.

EFFECTIVE DATE: This order is effective February 27, 1987.

FOR FURTHER INFORMATION CONTACT:

Douglas Law, (202) 357-5447
C.W. Gray, Jr., (202) 357-8731.

SUPPLEMENTARY INFORMATION: .

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On June 30, 1982, the Commission received a recommendation, pursuant to § 271.703 of the Commission's regulations (18 CFR 271.703), from the Oklahoma Corporation Commission (OCC), that the Upper and Lower Cherokee (Red Fork) formations located in portions of Custer, Washita, Beckham, and Roger Mills Counties, Oklahoma, be designated as tight formations. The recommendation was proposed in a notice of proposed rulemaking by the Director, Office of Pipeline and Producer Regulation, issued August 31, 1982 (47 FR 38907, September 3, 1982). The notice provided for a 45-day comment period which ended October 15, 1982. Three parties [1] submitted comments in support of the recommendation. The Oklahoma Fertilizer Manufacturer's Association (OFMA) [2] submitted comments expressing concern about the sufficiency of the information filed in support of the recommendation. OFMA also noted that OCC denied two other tight formation applications which involved many of the same witnesses and utilized the same types of tests in estimating permeability in an area immediately adjacent to the geological formation in this proceeding.[3] These applications were denied by OCC essentially because the method used for estimating permeability in those cases were deemed to be unreliable.

Under the tight formation program, as detailed in § 271.703 of the Commission's regulations, tight formation recommendations submitted to the Commission by the various jurisdictional agencies are approved under the Commission's rulemaking authority. The Commission is not limited by the evidence in the record presented to it by the jurisdictional agency and the various commenters, and accordingly is free to request or to develop any additional evidence which it deems necessary in order to issue a rule in a tight formation designation proceeding.[4]

Review of OCC's recommendations, which were based on an application filed by GHK Company (GHK), indicates that certain documents submitted in support of the recommendation were not included in the OCC submittal.

On November 18, 1982, Commission staff requested from OCC the documents missing from its recommendation, as well as certain additional data supporting findings contained in OCC's recommendation. A partial response was received from OCC on June 1, 1984. On March 20, 1985, the Commission staff requested an explanation from OCC of how the data utilized in GHK's application differed from data used in the two applications previously denied. This letter also requested additional data and documentation which had not been submitted in response to the inquiries transmitted in November 1982. No response was received from OCC.

On October 1, 1986, Commission staff requested OCC to inform it of the status of the subject recommendation and that if additional information was not provided, the matter would be submitted to the Commission based solely on the existing record. The Commission staff also informed the OCC that it could withdraw the tight formation recommendation if it wished to do so. On November 14, 1986, GHK notified OCC that there was no longer any merit in pursuing its application. OCC forwarded this notification to the Commission by letter dated November 25, 1986.

Based on a review of OCC's recommendation to designate the

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proceeding I do not share their confidence that such a remedy is available in the Commission's enforcement arsenal. Given those circumstances, I support entry of the final order included in the majority opinion.

[1] The Commission has long held that it has the power to order restitutionary relief. *MacMillan, Inc. et al.*, 96 F.T.C. 208 (1980); *Raymond Lee Organization*, 98 F.T.C. 481 (1978); *Credit Card Service Corp.*, 191 (1973); *Curtis Publishing Co.*, 78 F.T.C. 1472 (1971). *But see Heater v. FTC*, 503 F.2d 321 (9th Cir. 1974). *Accord, Barrett Carpet Mills, Inc. v. CPSC*, 635 F.2d 299, 301 (4th Cir. 1980); *Congoleum Indus. Inc. v. CPSC*, 602 F.2d 220 (9th Cir. 1979). (However, the Commission has consistently asserted its disagreement with *Heater*. *See, e.g., Francis Ford, Inc.*, 94 F.T.C. 564, 622-23 (1979), *rev'd sub nom. Ford Motor Co. v. FTC*, 673 F.2d 1008 (9th Cir. 1981), *cert. denied*, 459 U.S. 999 (1982); *Genesco, Inc.*, 89 F.T.C. 451, 478 (1977); *Electronic Computer Programming Institute*, 86 F.T.C. 1093, 1095 (1975)).

[2] *Credit Card Service Corp.*, 82 F.T.C. 207 (1973).

[1] The GHK Companies, Champlin Petroleum Company, and Grace Petroleum Corporation.

[2] OFMA is an industry association which represents fertilizer manufacturers with production facilities in Oklahoma.

[3] Inexco Oil Company (Cause U.S. No. 18134, Order No. 246640) and Hamilton Brothers Oil Company (Cause U.S. No. 15884, Order No. 252844).

[4] *High-Cost Gas Produced from Tight Formations*, Docket No. RM79-76-098 (Montana-1) (23 FERC ¶ 61,047, April 7, 1983).

Cherokee formation as a tight formation, the Commission finds that the recommendation is not adequately supported by the record. The record reveals that discrepancies exist in the evidence filed in support of the recommendation, that requests for explanations and additional data were not submitted, and that the producer applicant no longer wishes to pursue the application. In these circumstances, the Commission is unable to determine that the Cherokee formation meets the Commission's tight formation guidelines. Accordingly, the Commission will remand this tight formation recommendation to the OCC for such further action as it may find reasonable or necessary in light of this order and GHK's letter.

The Commission orders:

The subject tight formation recommendation is hereby remanded to the OCC. This action is without prejudice to OCC's resubmittal of the recommendation pursuant to § 271.703 of the Commission's regulations.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4545 Filed 3-3-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of 1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP) and 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP) into Schedule I; Correction

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final order published on January 23, 1987 (52 FR 2515–6) which placed the narcotic substances, 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP) and 1-(2-phenethyl)-4-phenyl-4-propionoxypiperidine (PEPAP) into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). 21 CFR 1308(g) must be amended to show that MPPP and PEPAP have been removed from the list of temporarily controlled substances.

EFFECTIVE DATE: March 4, 1987.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: MPPP and PEPAP were placed into Schedule I of the CSA pursuant to 21 U.S.C. 811(a) by the Administrator of the Drug Enforcement Administration (DEA) by an order published in the **Federal Register** on January 23, 1987 (52 FR 2515–6). Coincident with this action MPPP and PEPAP were to be removed from the listing of substances temporarily scheduled in 21 CFR 1308.11(g). These substances had been temporarily placed into Schedule I pursuant to an order of the Administrator of DEA on July 10, 1985 (50 FR 28098). As of January 22, 1987 MPPP and PEPAP were listed in 21 CFR 1308.11(g) as (1) and (2). The final rule placing MPPP and PEPAP into Schedule I published on January 23, 1987 (52 FR 2515–6) removed substances listed as 21 CFR 1308.11 (g)(2) and (g)(3) from temporary scheduling. The correct listings to be removed are 21 CFR 1308.11 (g)(1) and (g)(2) which correspond to MPPP and PEPAP.

PART 1308—[AMENDED]

Accordingly, in the rule published on January 23, 1987 (52 FR 2515–6), amendatory language item 3, appearing on page 2516 in the middle column under "§ 1308.11 [Amended]" is corrected to read as follows:

§ 1308.11 [Amended]

3. Section 1308.11 is amended by removing paragraphs (g)(1) and (g)(2) and redesignating existing paragraphs (g)(3) through (g)(11) as (g)(1) through (g)(9).

Dated: February 24, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-4505 Filed 3-3-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS KAUFFMAN (FFG–59) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval frigate. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS KAUFFMAN (FFG–59) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), regarding the arc of visibility of the forward masthead light; Annex I, section 2(a)(i), regarding the height above the hull of the forward masthead light; and Annex I, section 3(b), regarding the horizontal relationship of the sidelights to the forward masthead light, without interfering with its special function as a naval frigate. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS KAUFFMAN (FFG–59) is a member of the FFG 7 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to this vessel.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.8 [Amended]

1. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i). Annex I
USS KAUFFMAN	FFG-59	1.6

2. Table Four of § 706.2 is amended by adding to the existing paragraph 8 the following vessel:

8. * * *

USS KAUFFMAN—FFG–59.

3. Table Four of § 706.2 is amended by adding to the existing paragraph 9 the following vessel:

9. * * *

Vessel	Number	Distance of sidelights forward of masthead light in meters
USS KAUFFMAN	FFG-59	2.75

Dated: December 11, 1986.

John Lehman,

Secretary of the Navy.

[FR Doc. 87–4506 Filed 3–3–87; 8:45 am]

BILLING CODE 3810-AE-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Amendments to the Veteran's Job Training Act

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans' Compensation Rate Increase and Job Training Amendments of 1985 extended the deadline for a veteran to apply to train under the Veterans' Job Training Act, and the deadline for beginning a training program. One provision for an extension went into effect when funds for Fiscal Year 1986 to make payments to employers were not appropriated and made available to the Veterans Administration (VA) before February 1, 1986. The law provides that in that event veterans have one year to apply from the date that funds are appropriated and made available to the VA. Training programs must be begun within 18 months of that date. The Urgent Supplemental Appropriations Act of 1986 was enacted on July 2, 1986. This law appropriates funds for payments to employers. Consequently, the regulations which state the deadlines for applying for a job training program and for beginning a job training program are amended.

EFFECTIVE DATE: July 2, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont NW., Washington, DC 20420 (202) 233–2092.

SUPPLEMENTARY INFORMATION: By appropriating funds for making payments to employers, Pub. L. 99–349, The Urgent Supplemental Appropriations Act of 1986, extends the deadline for applying for a job training program and for beginning a job training program. The regulations dealing with these matters are amended accordingly.

The VA finds that good cause exists for making these amended regulations final without previous publication of a notice of proposed rulemaking. The changes contained in these regulations are directly based upon the law. The VA must make the Code of Federal Regulations agree with the law. Public participation in this rulemaking is, therefore, unnecessary. Since a Notice of Proposed Rulemaking is unnecessary and will not be published, this change does not come within the term "rule" as defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2), and is therefore not subject to the requirements of that Act.

Nevertheless, these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601 through 612. Although small entities will be affected by the extension of the Veterans' Job Training Act, all the effects will derive from the change in the law upon which the regulations are based. The regulations themselves will have no effect upon small entities.

The VA has determined that these amended regulations do not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.121.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 16, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

§ 21.4632 [Amended]

1. In 38 CFR 21.4632(e)(2)(i) remove the words on "January 31" and add, in their place, the words "July 2".

2. In 38 CFR 21.4632(e)(2)(ii) remove the words "July 31, 1987" and add in their place, the words "January 2, 1988".

(Pub. L. 99–108)

[FR Doc. 87–4455 Filed 3–3–87; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 36

Loan Guaranty; Loans Sold With or Without Rights of Recourse

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its regulation on the sale of loans to provide for sale either with or without rights of recourse.

EFFECTIVE DATE: April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, Veterans

Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3668.

SUPPLEMENTARY INFORMATION: When a VA-guaranteed loan goes into default and is subsequently foreclosed, the VA has the option of either paying the guaranteed portion of the loan, or if it is in the best interest of the VA, to acquire and resell the property securing the loan. When the VA resells the property, many times it is with VA financing as a vendee loan. Periodically, vendee loans are sold to investors. These loans, known as "4600" loans, are currently sold to investors with a repurchase agreement pursuant to 38 CFR 36.4600. If the loan goes into default and the default cannot be cured, the VA takes back the loan and makes a cash payment to the holders of the loan consisting of the price paid to the VA when the loan was purchased, less repayments received by the holder which were applied to the principal, plus any advances made by the holder to cover maintenance, repairs, taxes, assessments, and other allowable items.

On September 22, 1986, the VA published in the **Federal Register** (51 FR 33623) a proposed amendment to the regulation which would authorize the sale of vendee loans without recourse. Section 1810(a)(5) of title 38, United States Code, authorizes the Administrator of Veterans Affairs to sell loans upon such terms and for such prices as the Administrator determines to be reasonable. VA's historical practice was to sell all vendee loans with repurchase agreements, based on the fact that the VA guarantee results in a higher price being obtained for a loan than would be obtainable if the loan were sold without a guarantee of payment. Under the revised regulation, VA would also be able to sell loans without a repurchase agreement; i.e., without recourse. One public comment was received concerning the proposed regulation change.

The commentator indicated that elimination of the recourse provision would adversely affect the marketability of the loans and the prices that would be offered to VA. The commentator also expressed a reluctance to bid for such loans because of lack of information regarding the VA's underwriting process. These issues have previously been considered, and the regulation is adopted as proposed. This regulation change will allow VA to initiate a pilot program to offer vendee loans for sale without repurchase agreements. It will not affect VA's authority to sell loans with recourse. Current plans provide for VA to continue selling most of its loans with recourse during the pilot program. Upon completion of the program, the Administration will be able to compare the results and determine which procedure is more advantageous to the Government.

The Administrator hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, sections 601–612. This change will affect only the nature of the investment which is offered when the VA sells some of its vendee loans without recourse (i.e., not Federally guaranteed). All investors in the market place will make independent decisions on whether to bid on such an investment, and their bids will set the market value of such loans. Therefore, while this change will slightly alter the nature of some of these investments, no regulatory, paperwork, administrative, or any other type of burden would be imposed on small entities by this change. Also, vendee loans have historically been purchased for the most part by large financial institutions, rather than by small entities. Pursuant to 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The regulation has been reviewed under Executive Order 12291, entitled Federal Regulation, and is not considered a major regulation change as defined in the Executive Order. This regulation will not impact on the public or private sectors as a major rule. It will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will it have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program number is 64.114.

These amendments are adopted under authority granted the Administrator by sections 210(c) and 1820 of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: February 11, 1987.

Thomas K. Turnage,

Administrator.

PART 36—[AMENDED]

In 38 CFR, Part 36, LOAN GUARANTY, § 36.4600 is amended by revising paragraphs (a), (b) and (c) introductory text to read as follows:

§ 36.4600 Sale of loans, guarantee of payment.

(a) Whenever loans are sold by the Veterans Administration, they will be clearly identified as loans sold with or without recourse.

(b) The payment of all loans sold with recourse shall be guaranteed in accordance with the provisions of this section.

(c) Wherever the term "holder" appears in this section it shall mean the purchaser of a loan sold by the Administrator and any subsequent transferee or assignee of such loan. The holder of each loan sold subject to guaranty shall be deemed to have agreed with the Administrator as follows (38 U.S.C. 210(c); 1820):

* * * * *

[FR Doc. 87–4456 Filed 3–3–87; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–3164–4]

Designation of Areas for Air Planning Purposes Attainment Status Designations; Minnesota—Correction

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking; notice of correction.

SUMMARY: This notice corrects an error contained in a notice of final rulemaking approving a request by the State of Minnesota on June 13, 1985, to redesignate Duluth and Rochester, Minnesota for carbon monoxide (CO). This final rulemaking was published in the December 18, 1986, **Federal Register** (51 FR 45319).

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin, (312) 353–3849.

SUPPLEMENTARY INFORMATION: Correction: The error is located on page 45320 of the December 18, 1986, **Federal Register**, in the first column under the codification section of the redesignation. In the December 18, 1986, **Federal Register**, the title of the codification

section read "PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—INDIANA". However, this should have read "PART 81—DESIGNATION OF AREAS FOR AIR QUALTIY PLANNING PURPOSES—MINNESOTA".

Today's correction does not change in any way the substance of USEPA's December 18, 1986 (51 FR 45319), redesignation of Duluth and Rochester, Minnesota for CO. Therefore, today's correction does not extend the rights for judicial review of the redesignation, under section 307(b) of the Clean Air Act, beyond the original date of February 17, 1987.

Dated: February 13, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87-4495 Filed 3-3-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 17

Enforcement of Nondiscrimination on the Basis of Handicap in Department of the Interior Programs

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This regulation requires that the Department of the Interior operate all of its programs and activities to ensure nondiscrimination against qualified handicapped persons. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for handicapped person and qualified handicapped person, and establishes a detailed complaint mechanism for resolving allegations of discrimination against the Department of the Interior. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, in programs or activities conducted by Federal executive agencies.

EFFECTIVE DATE: May 4, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph A. Canedo, Program Manager, Office for Equal Opportunity, U.S. Department of the Interior, Washington, DC 20240; (202) 343-1647 (voice) or (202) 343-3434 (TDD). These are not toll free numbers. Copies of this regulation are available on tape for those with impaired vision. They may be obtained from the above address.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of the Interior. This rule applies to all programs and activities conducted by the Department of the Interior. Thus, this rule regulates the activities of all the component bureaus, offices, and subunits of the Department, including, for example, the Office of the Secretary, Office of Territorial and International Affairs, Bureau of Indian Affairs, Bureau of Land Management, Bureau of Mines, Bureau of Reclamation Minerals Management Service, National Park Service, Office of Surface Mining Reclamation and Enforcement, U.S. Fish and Wildlife Service, and the U.S. Geological Survey.

As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794 (amendment italicized)).

On September 11, 1985, the Department of the Interior published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by the Department of the Interior. 50 FR 37006. The NPRM invited comments from all interested parties.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies be submitted to the appropriate authorizing committees of Congress and that such regulations take effect no earlier than the thirtieth day after they have been so submitted. Concurrent with the publication of this final rule the Department is submitting this regulation to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor pursuant to section 504. The regulation will become effective May 4, 1987.

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this final rule and the Federal government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F. 2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir. 1983).

This interpretation is supported by the recent decision of the Supreme Court in *Alexander* v. *Choate*, 105 S. Ct. 712 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications 105 S. Ct. at 721, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*id.* n.21) (emphasis added).

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation

consistent with the Federal government's section 504 federally assisted regulations, as interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis*, subsequent lower court cases interpreting *Davis*, and *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agency believes that there are no significant differences between this final rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 comp., p. 298).

It has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 comp., p. 127) since it affects only the programs and activities conducted by the Department, and its employment practices, and will not have more than a $100 million gross annual effect on the economy nor result in major increases in costs or prices for consumers, individual industries, Federal, state or local governments, agencies, or geographic regions. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities since it affects only the programs and activities conducted by the Department, and its employment practices. It is not, therefore, subject to the Regulatory Flexibility Act. (5 U.S.C. 601–612). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Analysis and Response to Comments

Section 17.502. Comments were received concerning the limitation of the rule to activities and facilities "within the limits of the United States." Section 504 by its terms, limits coverage to individuals "in the United States." Under accepted definitions the United States includes the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas Islands including Saipan, and the Trust Territory of the Pacific, and the regulations will apply to the agency's facilities and programs in those areas. However, programs or activities conducted outside the United States are excluded from coverage if they do not involve handicapped persons in the United States. Nevertheless, as a matter of policy, the provisions of the regulations will be followed where the agency provides funds for the operation and maintenance of sites outside the territory of the United States, for example, Roosevelt Campobello International Park.

Section 17.503. Several commenters requested that attendant services be added to the list of "auxiliary aids" in the regulation. Attendant services may be equated to those of a reader for personal use or study, or other devices of a personal nature. Just as the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature, it need not provide attendant services. However, this does not preclude the agency from providing attendant services to its employees when on official duty.

One commenter suggested that the agency have wheelchairs on hand to accommodate disabled persons. A wheelchair is an accommodation useful for some persons with impaired mobility, although it is not normally classified as an auxiliary aid. (Auxiliary aids are addressed directly in § 17.560, Communications). The agency may make wheelchairs available for mobility impaired persons at appropriate locations, for example, where long distances are prohibitive for mobility impaired persons.

Several comments were received concerning the definition of "Facility." One commenter suggested that it be expanded to include National Historic Sites, Structures, Districts, and Landmarks. National Historic Sites are designated by the Secretary of the Interior under authority of the Historic Sites Act of 1935 and include historic structures which preserve important segments of the Nation's heritage. National Historic Sites within the National Park System are administered by the agency and are subject to this rule pursuant to § 17.502.

National Historic Sites and other miscellaneous areas that are neither Federally owned nor directly administered by the agency, but which utilize agency resources are considered Affiliated Areas. All Affiliated Areas draw on technical or financial assistance from the agency and are subject to 43 CFR Part 17, Subpart B which applies to recipients of Federal financial assistance from the agency, and to each program or activity that receives such assistance.

A National Historic Landmark is a building, structure, site, district, or object declared eligible for recognition as a property of national significance by the Secretary of the Interior under the provisions of the Historic Sites Act of 1935. Not all of these properties are administered by the agency. National Historic Landmarks which are administered and/or maintained by the agency are subject to this rule, and neither Federally owned nor directly administered by the agency, but which draw on technical or financial assistance from the agency are subject to 43 CFR 17, Subpart B.

One commenter requested that the phrase "or interest in such property" not be deleted from the definition of "facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the terms "rolling stock or other conveyances, outdoor recreation and program spaces, park sites (and) developed sites" have been added as they are appropriate to the agency's programs and activities. The phrase, "or interest in such property," has been deleted, because the term "facility", as used in this regulation, refers to structures and does not include intangible property rights. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest.

Another commenter requested that the language discussing the definition of "facility" in the preamble be incorporated into the definition. The agency believes that the regulation, taken as a whole, makes it clear that it applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency.

The term "facility" is used in § 17.549, § 17.550, and § 17.570(f).

One commenter requested that examples of handicapping conditions be reinstated under the term "physical or mental impairment." Examples of handicapping conditions which appeared in the proposed rule following the term "physical, mental, or sensory impairment" appear in the final rule.

Several commenters asked that the term "qualified handicapped person" be further defined and clarified. The definition of "qualified handicapped person" is a revised version of the

definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) of the definition of "qualified handicapped person" as stated in this rule is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs [see, e.g., 45 CFR 84.3(k)(2)]. It provides that a handicapped person is qualified for preschool, elementary, or secondary education programs conducted by the agency, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, a handicapped person is qualified, if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Implementation of this rule assures that persons meeting the definition [paragraph (1)] of "qualified handicapped person" as stated in § 17.503 will not be discriminated against on the basis of handicap in education programs or services conducted by the agency.

Paragraph (2) of the definition states that a "qualified handicapped person" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment is a handicapped person who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision.

In *Davis*, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training that a nursing program normally gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways", *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The definition of "qualified handicapped person" has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § 17.550(a)(3) and § 17.560(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) of the definition adopts the existing definition in the coordination regulation of "qualified handicapped person" with respect to services for programs receiving Federal financial assistance [28 CFR 41.32(b)]. Under this part of the definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

Several commenters requested that the agency's rule reference the Department of Education's regulations as stated in 34 CFR Part 104, Subparts D and E. The afore-mentioned regulations specifically apply to recipients of Federal financial assistance, and it would be inappropriate and confusing to reference them in this rule, which is specifically addressed to federally conducted programs and activities.

Paragraph (4) explains that "qualified handicapped person" is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613. 702(f), which is made applicable to this part by §17.540. Nothing in this part changes existing regulations applicable to employment.

Section 17.510. One commenter suggested that the self-evaluation promulgated in § 17.510 include (1) an assurance that the effects of the discriminatory policy will be eliminated; (2) a transition plan for compliance; and (3) specific modification requirements affecting persons including those with impaired vision or hearing. Section 17.550 as stated in the proposed rule and adopted in the final rule addresses points (2) and (3). The agency believes a requirement for an assurance would duplicate the requirement for written plans.

Section 17.511. Several commenters requested that the final rule specifically require that information effectively apprise persons of their rights and protection against discrimination. Section 17.511 as stated in the proposed rule and adopted in the final rule requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of information posters in service centers and other public places; or the broadcast of information by television or radio.

Section 17.511 is, in fact, a broader and more detailed version of the proposed rule's requirement [at § 17.160(d)] that the agency provide handicapped persons with information concerning their rights. Because § 17.511 encompasses the requirements of proposed § 17.560(d), that latter paragraph has been deleted as duplicative.

Section 17.530. One commenter suggested that section 17.530 be revised in order to be consistent with the federally assisted rule, by forbidding federal agencies to "aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing aid, benefit, or services to beneficiaries of the recipient's program."

This regulation does not include this provision. To the extent that assistance from the agency would provide significant support to an organization it would constitute Federal financial assistance, and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision is inappropriate in a regulation applying only to federally conducted programs or activities.

Section 17.540. One commenter wrote that § 17.540 did not give enough attention to the employment, recruitment, hiring, reasonable accommodation of, and review of pre-employment examinations, inquiries, and tests of disabled persons.

Section 17.540 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris,* 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. U.S. Postal Service,* 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service,* 662 F.2d 292, 302–304 (5th Cir. 1981). *Contra McGuiness v. U.S. Postal Service,* 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. U.S. Postal Service,* 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith,* 742 F.2d at 262; *Prewitt,* 662 F.2d at 304. Accordingly, section 17.540 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section § 17.570(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

This final rule has not been changed, except that a reference to the EEOC has been added. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp. p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 17.550. Several commenters addressed the agency's interpretation of the Supreme Court's decision in *Davis, supra,* specifically those sections of the proposed regulation which relieved the agency from having to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. This § 17.550 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 17.550(a)(1)). However, § 17.550, unlike 28 CFR 41.56–41.57, places explicit time limits on the agency's obligation to ensure program accessibility [§ 17.550(a)(2), (a)(3)].

The "undue financial and administrative burdens" language found at § 17.550(a)(3) (and § 17.560(d), discussed below) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis,* circuit courts have applied this limitations on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association,* v. *Lewis, supra (APTA).*

This interpretation is also supported by the Supreme Court's recent decision in *Alexander* v. *Choate,* 105 S. Ct. 712 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from twenty (20) to fourteen (14) days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination prohibited by section 504 or its implementing regulation (*id.,* n.20) (citations omitted).

Alexander supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus the failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This provision is therefore unchanged from the proposed rule.

The agency has carefully considered the comments on the process that it should follow in determining whether a program modification would result in undue financial and administrative burdens and has adopted procedural requirements for application of the "fundamental alteration" and "undue financial and administrative burdens" language. The agency believes that, in most cases, making an agency program accessible will not result in undue burdens. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity are to be considered. The burden of proving that compliance with § 17.550(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be

made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 17.570. Finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the agency must still take action, short of that outer limit, that will open participation in the agency program to disabled persons to the fullest extent possible.

Several commenters requested that the decision that an action would result in undue burdens be based on the resources of the agency as a whole. The agency believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the agency's budget can be earmarked for specific purposes and are simply not available for use in making the agency's programs accessible to disabled persons.

Section 17.550. Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty (60) days.

Section 17.551. One commenter suggested that the agency's rules adopt the Uniform Federal Accessibility Standards (49 FR 31528, August 7, 1984) as criteria to be met with in conjunction with the standards of the Architectural Barriers Act (42 U.S.C. 4151–4157). This is already accomplished by reference to 41 CFR 101–19.600 to 101–19.607, the General Service Administration (GSA) regulation that incorporates the Uniform Federal Accessibility Standards (UFAS) into GSA's Architectural Barriers Act regulation. The UFAS provide uniform standards for the design, construction, and alteration of buildings so that physically handicapped persons will have ready access to and use of them pursuant to and in accordance with the Architectural Barriers Act. The UFAS meet or exceed the requirements in the Architectural and Transportation Barriers Compliance Board Minimum Guidelines and Requirements for Accessible Design, 36 CFR Part 1190.

Section 17.570. Several commenters recommended that the regulation should inform complainants of the address to which complaints should be sent. Section 17.570(c) has been amended to include this information which will eliminate confusion and provide for timely processing of complaints. In conjunction with this, § 17.570(d) has been amended to reflect the agency's responsibility to investigate complaints over which it has jurisdiction.

Several commenters stated that the agency's obligation to refer complaints to other government entities when it does not have jurisdiction is absolute and should not be limited to "reasonable efforts." Section 17.570(e) has been amended to eliminate any confusion and to reflect the agency's obligation in this area.

Several commenters proposed that if the agency receives a complaint which is not complete, that the complainant should be notified of the fact and given an opportunity to remedy any existing defect(s) in the complaint.

If a complaint is not complete when it is filed, the agency Director of the Office for Equal Opportunity must notify the complainant within thirty (30) days that additional information is needed. The complainant must furnish the necessary information within thirty (30) days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirement of subparagraph (d) but the timeframes governing the agency's obligation to process the complaint do not begin until the agency Director of the Office for Equal Opportunity receives a complete complaint.

Several commenters suggested that the agency state in its rules that the existence of the agency's internal complaint procedure did not curtail the right of a complainant to obtain direct judicial relief. The acceptance of a private cause of action for adjudication by the courts is a matter left to the discretion of the courts.

One comment requested the addition of a provision whereby the agency would award attorneys fees to complainants. Nothing contained in Title V of the Rehabilitation Act provides for the agency award of attorneys fees in administrative proceedings other than those involving Federal employment.

List of Subjects in 43 CFR Part 17

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, National Register of Historic Places, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, Title 43 Code of Federal Regulations Part 17 is amended as follows:

Subpart E is added to read as follows:

PART 17—[AMENDED]

Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior

Sec.

Authority: 29 U.S.C. 794

Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior.

§ 17.501 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 17.502 Application.

This part applies to all programs and activities conducted and/or administered and/or maintained by the agency except for programs or activities conducted outside the United States that do not involve handicapped persons in the United States.

§ 17.503 Definitions.

For purposes of this part, the term—

"Agency" means Department of the Interior.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describe the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complainant or behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, outdoor recreation and program spaces, park sites, developed sites, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical, mental, or sensory impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical, mental, or sensory impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical, mental or sensory impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental, physical, or sensory impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—(i) Has a physical, mental, or sensory impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical, mental, or sensory impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate state or local government body.

"Qualified handicapped person" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from that program or activity.

(4) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 17.540.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 17.504-17.509 [Reserved]

§ 17.510 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the

agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 17.511 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by Section 504 and this regulation.

§§ 17.512–17.529 [Reserved]

§ 17.530 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 17.531–17.539 [Reserved]

§ 17.540 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 17.541–17.548 [Reserved]

§ 17.549 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 17.550, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 17.550 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 17.550(a) would result in such an alteration or burdens. The decision that compliance would result in such

alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible locations, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 17.550(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 17.550(a)(2) or (a)(3), alternative, methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible.

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(3) *Recreation programs.* In meeting the requirements of § 17.550(a) in recreation programs, the agency shall provide that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. When it is not reasonable to alter natural and physical features, accessibility may be achieved by alternative methods as noted in § 17.550(b)(1).

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§17.551 Program accessibility: New Construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157) as established in 41 CFR 101–19.600 to 101–19.607 apply to buildings covered by this section.

§§ 17.552–17.559 [Reserved]

§ 17.560 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, attendant services, or other devices of a personal nature.

(2) Where the agency communicate with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §17.560 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

If an action required to comply with this section would result in such alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§17.561–17.569 [Reserved]

§17.570 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director of the Office for Equal Opportunity. Complaints filed pursuant to this section shall be delivered or mailed to the Director, Office for Equal Opportunity, U.S. Department of the Interior, Washington, DC 20240. If any agency official other than the Director of the Office for Equal Opportunity receives a complaint, he or she shall immediately forward the complaint to the agency's Director of the Office for Equal Opportunity.

(d)(1) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(2) If the agency Director for the Office of Equal Opportunity receives a complaint that is not complete, he or she shall notify the complainant, within thirty (30) days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete and submit the requested information within thirty (30) days of receipt of this notice the agency Director of the Office for Equal Opportunity shall dismiss the complaint without prejudice.

(3) The agency Director of the Office for Equal Opportunity may require agency employees to cooperate and participate in the investigation and resolution of complaints. Employees who are required to cooperate and participate in any investigation under this section shall do so as part of their official duties.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within ninety (90) days of receipt from the agency of the letter required by § 17.570(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Under Secretary.

(j) The agency shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have sixty (60) days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this may be extended for an individual case when the Under Secretary determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§ 17.571–17.999 [Reserved]

Dated: January 5, 1987.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 87–4463 Filed 3–3–87; 8:45 am]

BILLING CODE 4310–RE–M

Bureau of Land Management

43 CFR Public Land Order 6640

[CO–940–07–4220–10; C–39308]

Colorado Public Land Order No. 6625, Correction; Withdrawal of National Forest System Land for Protection of Recreational Values

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct Public Land Order 6625 of October 10, 1986, to include an aliquot part which was omitted from the land description in the original order.

EFFECTIVE DATE: March 4, 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, it is ordered as follows:

The land description in Public Land Order No. 6625 dated October 10, 1986, FR Doc. 86–23350, published on pages 36808 and 36809 in the issue of Thursday, October 16, 1986, in the last line of column three on page 36808 which reads "NE¼SW¼, and NE¼SE¼, that portion" is corrected to read "NE¼SW¼, NW¼SE¼, and NE¼SE¼, that portion."

February 24, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87–4528 Filed 3–3–87; 8:45 am]

BILLING CODE 4310–JB–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 31, 32 and 64

[CC Docket No. 86–111, FCC 86–564]

Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action establishes a system of accounting that separates the costs of regulated and nonregulated activities of telephone companies and their affiliates. In this Order, this

Commission adopts (1) cost allocation standards, and for certain carriers, a requirement that a cost allocation manual be filed with this Commission; (2) rules for recording transactions between regulated telephone companies and their corporate affiliates; and (3) accounting procedures, audit requirements, and other implementation and enforcement mechanisms. These measures are designed to prevent cross subsidization or inaccurate allocations of common costs between regulated and nonregulated activities.

EFFECTIVE DATE: April 3, 1987 except amendments to Part 32 which are effective January 1, 1988.

ADDRESS: Federal Communications Commission, 2000 L Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Jackson, Attorney, Common Carrier Bureau, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 86–111, adopted December 23, 1986 and released February 6, 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.

Summary of Report and Order

1. On April 17, 1986, we released a Notice of Proposed Rulemaking seeking comment on methods for separating the costs of regulated telephone service from the costs of the nonregulated activities of telephone companies and their affiliates. We proposed to develop a system of accounting separation that would inhibit carriers from imposing on ratepayers for regulated interstate services the costs and risks of nonregulated ventures. Our ultimate, statutory goal was to promote just and reasonable rates for services in the interstate jurisdiction. We tentatively concluded that, to achieve our purposes, it would be necessary to deter cost shifting both in the form of misallocation of joint and common costs and in the form of improper intracorporate transfer pricing. In this Order we affirm that conclusion by adopting (1) cost allocation standards and, for certain carriers, a requirement that a cost allocation manual be filed with this Commission; (2) rules for recording transactions between regulated telephone companies and their corporate affiliates; and (3) accounting procedures, audit requirements, and other implementation and enforcement mechanisms.

2. In this Order we adopt cost allocation standards for use in apportioning costs between regulated and nonregulated activities. These standards reflect a fully distributed costing methodology, with emphasis on direct assignment and cost causation. Costs are to be directly assigned either to regulated or nonregulated activities to the maximum extent possible. Costs which cannot be directly assigned are to be grouped into homogeneous cost categories and allocated in accordance with direct or indirect measures of cost causation. Telecommunications plant cost categories will be apportioned based on projected relative demand at the point during the average life of the plant in the category when demand is expected to peak. Residual costs which cannot be apportioned on any cost-causative basis will be apportioned in the same ratio as the directly assigned and directly and indirectly allocated expenses.

3. The cost allocation standards we are adopting herein will be used to segregate (a) the costs of activities which have never been subject to regulation as communications common carrier offerings, and (b), the costs of preemptively deregulated activities, from the costs which are subject to Part 67 of our Rules, the Jurisdictional Separations Manual. Costs of intrastate services which have been removed from tariff regulation in a state will continue to be separated in accordance with Part 67, and will not be subject to the cost allocation standards adopted in this Order. Billing and collection for interstate services will continue to be subject to Part 67, and interstate costs attributable to billing and collection services will continue to be determined in accordance with Part 69 of our Rules. Treatment of any interstate services which we may deregulate in the future will be decided on a case-by-case basis.

4. All local exchange carriers and dominant interexchange carriers will use these cost allocation standards, but only companies with more than $100 million in operating revenues will be required to file and obtain approval of their cost allocation manuals. A Bell operating company will be required to obtain approval of its manual before it ceases to conduct its customer premise equipment (CPE) business in accordance with the Computer II structural separation conditions. Each company required to file a manual will also be required to submit annually the results of an independent attestation audit attesting that the cost allocation manual has been properly implemented and that the company's cost allocations are the product of accurate methods. Companies will be permitted to choose their own auditors.

5. We also adopt affiliate transaction rules which generally require that transactions between carriers and their affiliates be recorded on the carrier's books at market price, if market price can be determined from a price list or tariff. In the absence of a list or tariff price, assets transferred from the carrier to the nonregulated entity are to be recorded at the higher of net book cost or fair market value, while assets transferred from the nonregulated entity to the carrier are to be recorded at the lower of net book cost or fair market value. Services for which there exists no list or tariff price are to be valued in accordance with the cost allocation standards.

6. Finally, we amend Part 32 of our Rules, the Uniform System of Accounts, so as to discontinue the use of separate books of account for nonregulated activities that share common plant with regulated operations. Such activities will be recorded in operating accounts; accounting separation will be maintained using subsidiary records and reports.

Ordering Clauses

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementations of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

8. It is ordered, that pursuant to sections 4(i), 4(j), 201–205, 215, 218 and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 215, 218 and 220, the policies, rules and requirements set forth herein are adopted.

List of Subjects

47 CFR Part 31

Uniform System of Accounts for Class A and Class B Telephone Companies.

47 CFR Part 32

Uniform System of Accounts for Telephone Companies.

47 CFR Part 64

Miscellaneous Rules Relating to Common Carriers.

Rule Changes

PART 31—[AMENDED]

47 CFR Part 31, "Uniform System of Accounts For Class A and Class B Telephone Companies," is amended as follows:

1. The authority citation for Part 31 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 219, 220, 48 Stat. 1077 as amended, 1078; 47 U.S.C. 219, 220.

2. Section 31.01–10 is added to read as follows:

§ 31.01–10 Accounting requirements—Nonregulated activities.

(a) This section describes the accounting treatment of activities classified for accounting purposes as "nonregulated." Preemptively deregulated activities and activities (other than incidental activities) never subject to regulation will be classified for accounting purposes as "nonregulated." Activities that qualify for incidental treatment under the policies of this Commission will be classified for accounting purposes as regulated activities. Activities that have been deregulated by a state will be classified for accounting purposes as regulated activities. Activities that have been deregulated at the interstate level, but not preemptively deregulated, will be classified for accounting purposes as regulated activities until such time as this Commission decides otherwise. The treatment of nonregulated activities shall differ depending on the extent of the common or joint use of assets and resources in the provision of both regulated and nonregulated products and services.

(b) When a nonregulated activity does not involve the joint or common use of assets and resources in the provision of both regulated and nonregulated products and services, carriers shall account for these activities on a separate set of books consistent with instructions set forth in §§ 31.106 and 31.317. Transfers of assets and sales of products or services between the regulated activity and a nonregulated division shall be accounted for in accord with the rules prescribed in § 31.01–11, Transactions with Affiliates. In the separate set of books, carriers may establish whatever detail they deem appropriate beyond what is necessary to provide this Commission with the information required in §§ 31.106(b) and 31.317.

(c) When a nonregulated activity does involve the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, carriers shall account for these activities within accounts prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Carriers shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not provided for elsewhere shall be recorded in a separate subaccount of Account 316, Miscellaneous Income. Amounts assigned or allocated to regulated products or services shall be subject to Part 67 of this Chapter.

(d) To the extent that the instructions in this section are inconsistent with those prescribed elsewhere in this Part, the instructions in this section shall govern.

3. Section 31.01–11 is added to read as follows:

§ 31.01–11 Transactions with affiliates.

(a) Unless otherwise approved by the Chief, Common Carrier Bureau, transactions with affiliates involving asset transfers, or the provision of products or services, into or out of the regulated accounts shall be recorded by the carrier in its regulated accounts as provided in paragraphs (b) through (f) in this section.

(b) Charges for assets purchased by or transferred to the regulated telephone activity of a carrier from affiliates shall be recorded in the operating accounts of the regulated activity at the invoice price if that price is determined by a prevailing price list held out to the general public in the normal course of business. If the assets received by the regulated activity are not marketed by the affiliated supplier to the general public under a prevailing price list, the charges recorded by the regulated activity for such assets shall be the lower of their cost to the originating activity of the affiliated group less all applicable valuation reserves, or their fair market value.

(c) Assets sold or transferred from the regulated accounts to affiliates shall be recorded as operating revenues, incidental revenues or asset retirements according to the nature of the transaction involved. If such sales are reflected in tariffs on file with a regulatory commission or in price lists held out to the general public, the associated revenues shall be recorded at the prices contained therein in the appropriate revenue accounts. If no tariff or prevailing price list is applicable, the proceeds from such sales shall be determined at the higher of cost less all applicable valuation reserves, or estimated fair market value of the asset.

(d) Services provided to an affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rates. Services provided by an affiliate to the regulated activity, when the same services are provided by the affiliate to unaffiliated persons or entities, shall be recorded at the market rate. When a carrier provides substantially all of a service to, or receives substantially all of a service from, an affiliate, and such service is not also provided to unaffilated persons or entities, the services shall be recorded at cost, which shall be determined in a manner that complies with the standards and procedures for the apportionment of joint and common costs between the regulated and nonregulated operations of the carrier entity.

(e) Income taxes shall be allocated among the regulated activities of the carrier, its nonregulated divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by the carrier and other members of the affiliated group, the income tax expense to be recorded by the carrier shall be the same as would result if determined for the carrier separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the carrier shall be recorded by the carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.

(f) The principles set forth in this section shall apply equally to corporations, proprietorships, partnerships and other forms of business organizations.

4. Section 31.106, "Nonregulated investments," is revised to read as follows:

§ 31.106 Nonregulated investments.

(a) This account shall include the carrier's investment in nonregulated activities accounted for in a separate set of books as provided in § 31–01.10(b).

(b) This account be subdivided as follows:

106.1 Permanent investment.

106.2 Receivable/payable.
106.3 Current net income or loss.

5. Section 31.317, "Income from nonregulated activities," is revised to read as follows:

§ 31.317 Income from nonregulated activities.

(a) This account shall be used by those companies who offer nonregulated activities that do not involve the joint or common use of assets or resources used in the provision of both regulated and nonregulated products and services, and which have not established a separate subsidiary for that purpose.

(b) All revenues and expenses (including taxes) incurred in these nonregulated activities shall be recorded on separate books of account for such operations. Only the net of the total revenues and total expenses shall be recorded in this account, with a contra debit or credit to account 106.3.

PART 64—[AMENDED]

47 CFR Part 64, "Miscellaneous Rules Relating to Common Carriers," is amended as follows:

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

Authority: Part 64 issued under secs. 1, 4, 201, 202, 203, 204, 205, 218, 48 Stat. 1064, 1066, 1070, as amended, 1071, 1072, 1077; 47 U.S.C. 151, 154, 201, 202, 204, 205, 218 and E.O. 11092 of Feb. 26, 1963.

2. A new Subpart is added to read as follows:

Subpart I—Allocation of Costs

§ 64.901 Allocation of costs.

(a) Carriers required to separate their regulated costs from nonregulated costs shall use the attributable cost method of cost allocation for such purpose.

(b) In assigning or allocating costs to regulated and nonregulated activities, carriers shall follow the principles described herein.

(1) Tariffed services provided to a nonregulated activity will be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service.

(2) Costs shall be directly assigned to either regulated or nonregulated activities whenever possible.

(3) Costs which cannot be directly assigned to either regulated or nonregulated activities will be described as common costs. Common costs shall be grouped into homogeneous cost categories designed to facilitate the proper allocation of costs between a carrier's regulated and nonregulated activities. Each cost category shall be allocated between regulated and nonregulated activities in accordance with the following hierarchy:

(i) Whenever possible, common cost categories are to be allocated based upon direct analysis of the origin of the cost themselves.

(ii) When direct analysis is not possible, common cost categories shall be allocated based upon an indirect, cost-causative linkage to another cost category (or group of cost categories) for which a direct assignment or allocation is available.

(iii) When neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated based upon a general allocator computed by using the ratio of all expenses directly assigned or attributed to regulated and nonregulated activities.

(4) The allocation of central office equipment and outside plant investment cost between regulated and nonregulated activities shall be based upon the relative regulated and nonregulated usage of the investment at the highest forecast relative nonregulated usage over the life of the investment.

PART 32—[AMENDED]

47 CFR Part 32, Uniform System of Accounts for Telecommunications Companies, is amended as follows:

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 219, 220

2. Section 32.14 paragraphs (c), (d), (e), and (f) are revised to read as follows:

§ 32.14 Regulated accounts.

* * * * *

(c) In the application of the detailed accounting requirements contained in this Part, when a regulated activity involves the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, companies shall account for these activities within the accounts prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets used and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Companies shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not provided for in regulated accounts shall be recorded in Account 7991, Other nonregulated revenues.

(d) Other income items which are incidental to the provision of regulated products and services shall be accounted for as regulated activities.

(e) All costs and revenues related to the offering of regulated products and services which result from arrangements for joint participation or apportionment between two or more telephone companies (e.g., joint operating agreements, settlement agreements, cost-pooling agreements) shall be recorded within the detailed accounts. Under joint operating agreements, the creditor will initially charge the entire expenses to the appropriate primary accounts. The proportion of such expenses borne by the debtor shall be credited by the creditor and charged by the debtor to the account initially charge. Any allowances for return on property used will be accounted for as provided in Account 5240, Rent Revenue.

(f) All items of nonregulated revenue, investment and expense that are not properly includible in the detailed, regulated accounts prescribed in Subparts A through F of this Part, as determined by paragraphs (a) through (e) of this section shall be accounted for and included in reports to this Commission as specified in § 32.23 of this subpart.

3. Section 32.23 is revised to read as follows:

§ 32.23 Nonregulated activities.

(a) This section describes the accounting treatment of activities classified for accounting purposes as "nonregulated." Preemptively deregulated activities and activities (other than incidental activities) never subject to regulation will be classified for accounting purposes as "nonregulated." Activities that qualify for incidental treatment under the policies of this Commission will be classified for accounting purposes as regulated activities. Activities that have been deregulated by a state will be classified for accounting purposes as regulated activities. Activities that have been deregulated at the interstate level, but not preemptively deregulated, will be classified for accounting purposes as regulated activities until such time as this Commission decides otherwise. The treatment of nonregulated activities shall differ depending on the extent of the common or joint use of assets and resources in the provision of both regulated and nonregulated products and services.

(b) When a nonregulated activity does not involve the joint or common use of assets and resources in the provision of

both regulated and nonregulated products and services, carriers shall account for these activities on a separate set of books consistent with instructions set forth in §§ 32.1406 and 32.7990. Transfers of assets, and sales of products and services between the regulated activity and a nonregulated activity for which a separate set of books is maintained, shall be accounted for in accordance with the rules presented in § 32.27, Transactions with Affiliates. In the separate set of books, carriers may establish whatever detail they deem appropriate beyond what is necessary to provide this Commission with the information required in §§ 32.1406 and 32.7990.

(c) When a nonregulated activity does involve the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, carriers shall account for these activities within accounts prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Carriers shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission. Nonregulated revenue items not provided for elsewhere shall be recorded in a separate subaccount of Account 7991, Other Nonregulated revenues. Amounts assigned or allocated to regulated products or services shall be subject to Part 67 of this Chapter.

4. Section 32.27 is added to Subpart B to read as follows:

§ 32.27 Transactions With Affiliates.

(a) Unless otherwise approved by the Chief, Common Carrier Bureau, transactions with affiliates involving asset transfers into or out of the regulated accounts shall be recorded by the carrier in its regulated accounts as provided in paragraphs (b) through (f) of this section.

(b) Charges for assets purchased by or transferred to the regulated telephone activity of a carrier from affiliates shall be recorded in the operating accounts of the regulated activity at the invoice price if that price is determined by a prevailing price list held out to the general public in the normal course of business If the assets received by the regulated activity are not marketed by the affiliated supplier to the general public under a prevailing price list, the charges recorded by the regulated activity for such assets shall be the lower of their cost to the originating activity of the affiliated group less all applicable valuation reserves, or their fair market value.

(c) Assets sold or transferred from the regulated accounts to affiliates shall be recorded as operating revenues, incidental revenues or asset retirements according to the nature of the transaction involved. If such sales are reflected in tariffs on file with a regulatory commission or in price lists held out to the general public, the associated revenues shall be recorded at the prices contained therein in the appropriate revenue accounts. If no tariff or prevailing price list is applicable, the proceeds from such sales shall be determined at the higher of cost less all applicable valuation reserves, or estimated fair market value of the asset.

(d) Services provided to an affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Services provided by an affiliate to the regulated activity, when the same services are also provided by the affiliate to unaffiliated persons or entities, shall be recorded at the market rate. When a carrier provides substantially all of a service to or receives substantially all of a service from an affiliate which are not also provided to unaffiliated persons or entities, the services shall be recorded at cost which shall be determined in a manner that complies with the standards and procedures for the apportionment of joint and common costs between the regulated and nonregulated operations of the carrier entity.

(e) Income taxes shall be allocated among the regulated activities of the carrier, its nonregulated divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by the carrier and other members of the affiliated group, the income tax expense to be recorded by the carrier shall be the same as would result if determined for the carrier separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the carrier shall be recorded by the carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.

(f) The principles set forth in this section shall apply equally to corporations, proprietorships, partnerships and other forms of business organizations.

5. Section 32.102 is revised to read as follows:

§ 32.102 Nonregulated investments.

Nonregulated investments shall include the investment in nonregulated activities that are conducted through the same legal entity as the telephone company operations, but do not involve the joint or common use of assets or resources in the provision of both regulated and nonregulated products and services. See §§ 32.14 and 32.23.

6. Section 32.1220 paragraph (g) is revised to read as follows:

§ 32.1220 Material and supplies.

* * * * *

(g) This account shall not include material and supplies which are related to a nonregulated activity unless that activity involves joint or common use of assets and resources in the provision of regulated and nonregulated products and services.

7. Section 32.1406 is revised to read as follows:

§ 32.1406 Nonregulated investments.

(a) This account shall include the carrier's investment in nonregulated activities accounted for in a separate set of books as provided in § 32.27(b).

(b) This account shall be subdivided as follows:

1406.1 Permanent investment.
1406.2 Receivable/payable.
1406.3 Current net income or loss.

8. Section 32.2311 paragraph (h) is revised to read as follows:

§ 32.2311 Station apparatus.

* * * * *

(h) Embedded CPE is that equipment or inventory which was tariffed or otherwise subject to the jurisdictional separations process as of January 1, 1983. This account shall be used only by companies that have been permitted to offer tariffed CPE beyond December 31, 1987. CPE inventory includes the equipment in field stock and refurbished equipment held by the carrier on January 1, 1983.

9. Section 32.2321 paragraph (b) is revised to read as follows:

§ 32.2321 Customer premises wiring.

* * * * *

(b) Embedded Customer Premises Wiring is that investment in customer premises wiring equipment or inventory which was capitalized prior to October 1, 1984.

10. Section 32.2341 paragraph (g) is revised to read as follows:

§ 32.2341 Large private branch exchanges.

* * * * *

(g) Embedded CPE is that equipment or inventory which is tariffed or otherwise subject to the jurisdictional separations process as of January 1, 1983. This account shall be used only by companies that have been permitted to offer tariffed CPE beyond December 31, 1987. CPE inventory includes the equipment in field stock and refurbished equipment held by the carrier on January 1, 1983. (Inventory of Large Private Branch Exchanges equipment is included in Account 1220, Material and Supplies.)

11. Section 32.6999 paragraph (b) is amended to add Account 32.7991 as follows:

§ 32.6999 General.

* * * * *

(b) Other Income Accounts Listing.

Account title	Class A account	Class B account
* * * * *		
Jurisdictional Differences and nonregulated income items:		
* * * * *		
Other nonregulated revenues	7991	7991

12. Section 32.7990 is revised to read as follows:

§ 32.7990 Nonregulated net income.

(a) This account shall be used by those companies who offer nonregulated activities that do not involve the joint or common use of assets or resources used in the provision of both regulated and nonregulated products and services, and which have not established a separate subsidiary for that purpose.

(b) All revenue and expenses (including taxes) incurred in these nonregulated activities shall be recorded on separate books of account for such operations. Only the net of the total revenues and total expenses shall be recorded in this account, with a contra debit or credit to account 1406.3.

13. Section 32.7991 is added to Subpart F to read as follows:

§ 32.7991 Other nonregulated revenues.

(a) This account shall include revenues derived from a nonregulated activity involving the common or joint use of assets and resources in the provision of regulated and nonregulated products and services, which are not provided for elsewhere in this system of accounts.

(b) Separate subaccounts shall be maintained for each nonregulated revenue item recorded in this account.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-4396 Filed 3-3-87; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 514, 515, 533, 537 and 552

[APD 2800.12 CHGE 41]

General Services Administration Acquisition Regulation; Consulting Services and Communications Centers

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended by amending Part 514 to delete material that pertains to the GSA Communications Centers because the centers have closed; by amending Part 515 to provide for the use of Standard and GSA Forms for recording offers in negotiated procurements and to delete material pertaining to the GSA Communications Centers; by amending Part 533 to reflect the current organizational structure of the Office of the General Counsel, to delete reference to the GSA Communications Centers and to make other miscellaneous changes; by amending Part 537 to make minor editorial changes to conform to requirements in GSA Order, Procurement of Consulting Services, ADM 2800.12C; by amending Part 552 to delete material that repeats prescriptive language in Parts 514 and 515, and to delete the text of Sections 552.214-72 and 552.215-72 and reserve the sections. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566-1224.

SUPPLEMENTARY INFORMATION: This rule will not have a significant impact on contractors or offerors. Therefore, it was not published in the **Federal Register** for public comments. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule changes the procedures dealing with telegraphic submissions, modifications, or withdrawals of bids or proposals because of the closing of GSA Communications Centers and updates language on the procurement of consulting services. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

Lists of Subjects in 48 CFR Parts 514, 515, 533, 537 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 514, 515, 533, 537 and 552 continues to read as follows:

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

PART 514—SEALED BIDDING

2. Section 514.201-6 is amended by removing the text of paragraph (b) and reserving it to read as follows:

514.201-6 Solicitation provisions.

* * * * *

(b) [Reserved]

* * * * *

3. Section 514.201-71 is amended by revising paragraph (b) to read as follows:

514.201-71 Fire or Casualty hazards, or safety or health requirements.

* * * * *

(b) When a specification is not available or the specification to be used does not include a clause such as that described in (a) of this section 514.201-71, and it is believed that such a clause should be included in the current procurement, technical advice shall be obtained from the appropriate program or technical office. If the contracting officer then determines that the matter should be covered, an appropriate clause shall be included in the solicitation. The clause shall cite the nationally recognized standards requiring compliance. If several such standards are available, the clause shall cite all standards that are acceptable.

PART 515—CONTRACTING BY NEGOTIATION

4. Section 515.407 is amended by removing the text of paragraph (b) and reserving it to read as follows:

514.407 Solicitation provisions.

* * * * *

(b) [Reserved]

* * * * *

5. Section 515.411–70 is revised to read as follows:

515.411–70 Recording of offers.

Offers may be abstracted using the Standard or GSA Forms prescribed for recording of bids (See FAR 14.403 and 514.403).

PART 533—PROTEST, DISPUTES, AND APPEALS

6. Section 533.102 is amended by revising paragraph (b) to read as follows:

533.102 General.

* * * * *

(b) Solicitations shall instruct interested parties to deliver a copy of any protest filed with the General Accounting Office (GAO) or the GSA Board of Contract Appeals (GSBCA) to the contracting officer and the appropriate Associate General Counsel, as follows:

Federal Supply Service and Information Resources Management Service—Associate General Counsel (LP) General Services Administration Washington, DC 20405

Public Buildings Service and Federal Property Resources Service—Associate General Counsel (LR) General Services Administration Washington, DC 20405

Staff offices—Associate General Counsel (LG) General Services Administration Washington, DC 20405

* * * * *

7. Section 533.105 is amended by revising paragraphs (a) (1) (ii), (a) (3) and (4), (b) and (b) (3) to read as follows:

533.105 Protests to GSBCA.

(a) * * *

(1) * * *

(ii) Use appropriate means to ensure delivery to all the firms by the workday after the date of filing with the GSBCA.

* * * * *

(3) Assigned counsel (e.g., LG, LR, or LP). If the protester failed to provide the appropriate Associate General Counsel a copy of the protest as required by the solicitation, a copy of the protest complaint, including all attachments, must be forwarded to the appropriate Associate General Counsel by appropriate means to ensure next day delivery.

(4) The Board, through assigned counsel, within 5 workdays after the date of filing with the GSBCA, that the notices described in (a)(1) and (2) have been given. Written confirmation of notice and a listing of all persons and agencies receiving notice shall be provided.

(b) *Protest file.* To ensure timely submission, the contracting officer should begin assembly of the protest file by the second workday after receiving the protest. The protest file must be forwarded to assigned counsel by overnight delivery not later than the 8th workday after the protest is filed with the GSBCA. Assigned counsel will distribute the copies to the GSBCA, the protester, and retain one copy for itself. If additional copies are needed, assigned counsel will advise the contracting officer. The following rules govern the assembly of protest files:

* * * * *

(3) *Confidential, privileged, or proprietary information.* the protest file may require the inclusion of documents and information from other vendors which are confidential, proprietary, or privileged. When such information is required to be included in the protest file, it is to be placed only in the copies going to the Board and to assigned counsel. Copies going to other interested parties will only identify the information in the index. However, the index must not reveal the number and identity of the offerors whose proposals are included in the copies of the protest file going to assigned counsel and the GSBCA, and should include identifying statement, e.g. "proposals being considered for award."

* * * * *

PART 537—SERVICE CONTRACTING

8. Section 537.201 is revised to read as follows:

537.201 Definitions.

The term "consulting service" as defined in FAR 37.201 does not include services that are directly required for performance of operations necessary to accomplish substantive agency missions. Examples of services not included are: Architect-Engineer services and other associated services directly related to a particular structure; roofing consulting services; services of auctioneers, realty-brokers, surveyors, and appraisers; automated data processing support services; research and development; technology assessments; or services in support of intervention or litigation

9. Section 537.205 is revised to read as follows:

537.205 Management controls.

Heads of contracting activities, as defined in 502.101, are responsible for approving requests for consulting service contracts of $100,000 or less for their assigned areas of responsibility, except for contracts to be obligated during the fourth quarter of the fiscal year. The Associate Administrator for Administration is responsible for approving requests for consulting service contracts over $100,000 and for approving requests, regardless of dollar value, for contracts to be obligated during the fourth quarter of the fiscal year. All requests for consulting services must be processed in accordance with the requirements of GSA Order, Procurement of Consulting Services (ADM 2800.12C).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. The table of contents for Part 552 is amended by revising sections 552.214–72 and 552.215–72 to read as follows:

Subpart 552.2—Text of Provisions and Clauses

Sec.

552.214–72 [Reserved]

* * * * *

552.215–72 [Reserved]

* * * * *

11. Section 552.214–71 is amended by revising the introductory paragraph to read as follows:

552.214–71 Telecopier submissions, modifications, or withdrawals of bids.

As prescribed in 514.201–6(a), insert the following provisions:

* * * * * *

12. Section 552.214–72 is amended by removing the text and reserving the section to read as follows:

552.214–72 [Reserved]

13. Section 552.214–73 is amended by revising the introductory paragraph to read as follows:

552.214–73 "All or None" offers.

As prescribed in 514.201(c), insert the following provision:

* * * * *

14. Section 552.214–74 is amended by revising the introductory paragraph to read as follows:

552.214–74 Solicitation copies.

As prescribed in 514.203–1(e), insert the following notices:

* * * * *

15. Section 552.214–75 is amended by revising the introductory paragraph to read as follows:

552.214-75 Progressive awards and monthly quantity allocations.

As prescribed in 514.201-7(a), insert the following provision:

* * * * *

16. Section 552.215-71 is amended by revising the introductory paragraph to read as follows:

552.215-71 Telecopier submissions, modifications, or withdrawals of proposals.

As prescribed in 515-407(a), insert the following provision:

* * * * *

17. Section 552.215-72 is amended by removing the text and reserving the section to read as follows:

552.215-72 [Reserved]

18. Section 552.215-73 is amended by revising the introductory paragraph to read as follows:

552.215-73 Preparation of offers—Construction.

As prescribed in 515.407(c), insert the following provision:

* * * * *

19. Section 552.215-74 is amended by revising the introductory paragraph to read as follows:

552.215-74 Contract Award—Negotiated—Construction.

As prescribed in 515.407(d), insert the following provision:

* * * * *

Dated: February 18, 1987.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 87-4485 Filed 3-3-87; 8:45 am]

BILLING CODE 6820-61-M

48 CFR Part 528

[APD 2800.12 CHGE 40]

General Services Administration Acquisition Regulation; Bonds and Insurance

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise section 528.102-1 to update the citation for the statutory authority for the waiver by the Small Business Administration of bonding requirements pursuant to the Small Business Act and to revise section 528.301 to require submission of a certificate of insurance instead of a copy of the insurance policy and to make miscellaneous other changes to update and clarify material in the section. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4765.

SUPPLEMENTARY INFORMATION:

Background

This rule was published in the **Federal Register** for public comment on June 11, 1986 (51 FR 21195). No comments were received from the public. Comments from various GSA offices have been considered and incorporated in the final rule when appropriate.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1985, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule will reduce the burden on small business by permitting contractors to submit certificates of insurance as evidence of compliance with the insurance clause instead of submitting a copy of the insurance policy. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of subjects in 48 CFR Part 528

Government procurement.

1. The authority citation for 48 CFR Part 528 continues to read as follows:

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

PART 528—BONDS AND INSURANCE

2. Section 528.102-1 is amended by revising paragraph (a) to read as follows:

§ 528.102-1 General.

(a) The performance and payment bond requirements in FAR 28.102-1 are applicable to contracts awarded under section 8(a) of the Small Business Act unless the bonding requirement has been waived by SBA under section 8(a)(2) of the Small Business Act as amended. (Public Law 99-567, October 26, 1986).

* * * * *

3. Section 528.301 is revised to read as follows:

§ 528.301 General.

(a) Insurance requirements must be adequate, just, and reasonable, and should be predicated on potential loss or damage (not necessarily on the value of the contract). When it is determined that insurance coverage should be required, the solicitation and resultant contract must contain the appropriate provisions prescribed in FAR 28.309, 28.310, or 28.311. The determination as to the type of insurance, amount, and any related insurance requirements must be made by the contracting officer with the advice of assigned legal counsel. All premiums or costs incurred to comply with an insurance requirement must be paid by the contractor.

(b) Submission of a current certificate of insurance indicating the amount and coverage to the contracting officer will serve as certification that the required insurance has been obtained.

Dated: February 18, 1987

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 87-4484 Filed 3-3-87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-86-01, Notice 3]

Light Truck Average Fuel Economy Standards Model Year 1989

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice establishes new light truck average fuel economy standards for model year 1989. The standards are required to be established at the maximum feasible level under section 502(b) of the Motor Vehicle Information and Cost Savings Act. Based on its analysis, the agency is establishing a combined average fuel economy standard of 20.5 mpg for model year 1989 light trucks. Optional separate standards of 21.5 mpg for two-wheel drive light trucks and 19.0 mpg for four-wheel drive light trucks are also established.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective April 3, 1987. The standards are applicable to the 1989 model year. Petitions for reconsideration must be submitted within 30 days of publication.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1986, NHTSA published in the **Federal Register** (51 FR 3221) a notice of proposed rulemaking (NPRM) on the establishment of light truck average fuel economy standards for model years (MY) 1988 and 1989. The issuance of the standards for those years is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2002(b). That provision requires the Secretary of Transportation to set light truck standards at the "maximum feasible average fuel economy level" for each model year after MY 1978. In determining the "maximum feasible" level, the Secretary is directed to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of Nation to conserve energy. See 15 U.S.C. 2002(e).

The agency's January 1986 NPRM proposed ranges of possible standards for all types of light trucks, with the MY 1988 combined standard to be set within the range of 20.5 mpg to 22.0 mpg, and the MY 1989 combined standard to be set within the range of 20.5 mpg to 22.5 mpg. As a compliance alternative to the combined standard, the agency also proposed separate standards for two- and four-wheel drive vehicles. The agency stated that in view of factual uncertainties, the setting of standards outside the proposed ranges was possible depending on the comments that might be submitted.

NHTSA received comments on the NPRM from General Motors, Ford, Chrysler, American Motors, Volkswagen, the National Automobile Dealers Association (NADA), the Center for Auto Safety (CFAS), numerous employees of light truck manufacturers, dealers, and private individuals.

On April 23, 1986, NHTSA published a final rule in the **Federal Register** (51 FR 15335) establishing light truck fuel economy standards for MY 1988. Based on all available information, including that provided by commenters, NHTSA set the MY 1988 combined light truck fuel economy standard at 20.5 mpg. Optional separate standards of 21.0 mpg for two-wheel drive (2WD) light trucks and 19.5 mpg for four-wheel drive (4WD) light trucks were also established. The agency indicated that a decision would be reached at a later date with respect to the proposed MY 1989 standards.

Summary of Decision for MY 1989

NHTSA has now reached its decision for the MY 1989 light truck average fuel economy standards. Based on its analysis, the agency is establishing a combined average fuel economy standard of 20.5 mpg. Optional separate standards of 21.5 mpg for two-wheel drive (2WD) light trucks and 19.0 mpg for four-wheel drive (4WD) light trucks are also established. The combined standard is at the same level as the MY 1988 standard. The optional 2WD standard is 0.5 mpg higher than the MY 1988 standard, while the optional 4WD standard is 0.5 mpg lower than the MY 1988 standard.

Manufacturer Capabilities for MY 1989

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated the manufacturers' fuel economy capabilities for MY 1989. In making this evaluation, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy.

A. Manufacturer Projections

General Motors

As discussed in the NPRM, General Motors (GM) projected in March 1985 that it could achieve a CAFE level of 23.1 mpg in MY 1989. The agency adjusted that figure downward to 23.0 mpg to correct errors in GM's submission.

The NPRM noted that GM had emphasized the following in its March 1985 submission:

> All estimates and future product plans contained in this submission are but a "snapshot in time". As we have stated on a number of occasions . . . , changes in the economic outlook, in fuel availability, in fuel prices or in consumer preference significantly affect GM's CAFE. The unpredictability of the market, the unknown effect of future light duty truck emission regulations and the unproven results of future combinations of technology cause CAFE projections to be . . . tentative . . .

In GM's February 1986 comment on the NPRM, the company lowered its CAFE projection for MY 1989 to a level no higher than 20.9 mpg. By comparison, GM projected at the same time that its MY 1988 CAFE would be no higher than 20.7 mpg.

GM identified nine identifiable causes which had reduced its MY 1989 CAFE by a total of 2.2 mpg. The company also indicated that its CAFE had declined by an additional 0.3 mpg due to certain "miscellaneous" reasons. The decline was partially offset by a certain change in model offerings, which improved GM's CAFE by 0.3 mpg.

Some of the decline in GM's CAFE relates to decisions by that company to cancel or defer certain product changes which it once planned. GM's reasons for not making the changes relate to such concerns as cost, results of market research, and the unavailability of certain motor vehicle equipment it planned to use on some trucks. Other reasons for the decline include achieving less than the expected benefit from certain technological changes, the purchase by consumers of more options than once expected, certain changes to meet consumer demand for higher performance, a change in model offerings, and increased sales of certain larger engines and heavier trucks. GM indicated that 0.2 mpg of the decline is attributable to an error in the March 1985 submission.

(The details of the changes are subject to a claim of confidentiality as confidential business information whose release could cause competitive harm. This is also true with respect to this notice's discussion of the projections of other manufacturers.)

GM's comment on the NPRM indicated that uncertainties such as the future price of fuel, small truck sales by foreign competitors and potential less-than-anticipated gains through the use of technology could result in its MY 1989 CAFE level being below its current projection of 20.9 mpg.

GM presented three possible scenarios to illustrate how factors such as these could influence its MY 1989 CAFE. The first scenario assumed constant rather than rising fuel prices and an economic outlook which reflects the former price pattern instead of the latter. While GM's basic MY 1989 CAFE projection assumed that fuel prices (in constant 1984 dollars) would gradually rise from $1.09 in MY 1987 to $1.16 in MY 1989, that company's alternative scenario assumed that fuel prices would remain at $1.09 for all three model years. According to GM, there would be a reduced incentive under this scenario for consumers to buy smaller vehicles with more fuel efficient powertrains, and the company would experience a model and powertrain mix change estimated to cause a 0.3 mpg to 0.4 mpg

decline in its MY 1989 CAFE projection. GM's second scenario develops that company's sensitivity to an unanticipated increase in import light truck sales above its current forecasts. According to that company, this could result in a 0.3 mpg decline in its MY 1989 CAFE projection. GM's third scenario focuses on the introduction of emission controls which will cause heavy duty engines in trucks over 8500 pounds gross vehicle weight rating (GVWR) to be equipped with catalytic converters and use unleaded gasoline just as the trucks with lower GVWR's have been. This regulatory change creates the potential for a shift in consumer purchases from vehicles which are just over 8500 pounds GVWR and thus not subject to the fuel economy standards to vehicles which are between 7000 pounds and 8500 pounds GVWR and within the scope of those standards. According to GM, this potential increase in the sales of the high GVWR light trucks could reduce its CAFE projection below 20.9 mpg by approximately 0.1 mpg.

Ford

As discussed in the NPRM, Ford projected in February 1985 that it could achieve a CAFE level of up to 22.6 mpg in MY 1989. This number was adjusted in the NPRM to 22.3 mpg, however, in light of later technical information provided by Ford. The primary reason for the reduction was that actual test data regarding some programs had indicated smaller fuel economy improvements than projected. While the 22.3 mpg level was similar to that projected by Ford for MY 1988, it was 1.3 mpg higher than that company's projection for MY 1987. The NPRM noted that 0.4 mpg of the increase was attributable to mix shifts toward more fuel-efficient vehicles, which the agency considered unlikely given the recent and then expected continued declines in gasoline prices. Thus, if these mix shifts were deleted, the upper end projection for MY 1989 would be 21.9 mpg.

The NPRM noted that Ford had identified several risks to its MY 1989 projection. These included both technological risks, i.e., risks that technological programs might not achieve expected fuel economy gains, and mix shift risks, i.e., risks that the sales mix of Ford's light truck fleet might shift toward less fuel-efficient vehicles. Ford identified additional technological risks totalling 0.9 mpg and mix shift risks totalling 0.6 mpg, for a total risk of 1.5 mpg. However, the agency had already incorporated 0.7 mpg in technological and sales mix risks in the 21.9 mpg figure, reducing the remaining risk to 0.8 mpg. Thus, if the events creating these risks occurred simultaneously, the lower end figure for MY 1989 would have been 21.1 mpg as of the time of the NPRM.

In Ford's February 1986 comment on the NPRM, the company lowered its CAFE projection for MY 1989 to a level between 20.4 mpg to 21.3 mpg. In explaining its lower projections, Ford stated that ". . . recent development testing of new hardware and technology has yielded lower levels of fuel economy benefit than had been predicted earlier in the program."

The drop in Ford's MY 1989 CAFE from the 21.9 mpg value used in the NPRM to the company's current maximum projection of 21.3 mpg is attributable to technological reasons. The most significant factor in the decline is a drop in projected fuel economy for Ford's 4.9 liter fuel injection program. A number of small factors, primarily engine calibration issues, explain the remaining decline. Some of the engine calibration changes are being made to ensure compliance with emissions standards.

Ford's 21.3 mpg projection is subject to both further technological risks and mix shift risks. The company identified technological risks of 0.5 mpg, which are related to certain programs possibly not achieving projected fuel economy levels and a delay in introducing a technological improvement. Ford also presented a mix risk scenario in which sales were higher for standard trucks and lower for compact trucks, resulting in a potential 0.4 mpg CAFE loss. Ford's 20.4 mpg to 21.3 mpg range is explained by these risks. The company also indicated that its CAFE could decline an additional 0.2 mpg as a further mix shift risk if gasoline prices remain below $1.00 per gallon on a sustained basis.

Chrysler

As discussed by the NPRM, Chrysler projected in August 1985 that it could achieve a CAFE level of 23.3 mpg in MY 1989. This projection was 2.1 mpg higher than that company's then latest MY 1987 projection and 1.0 mpg higher than its MY 1988 projection. The NPRM stated that the bulk of the improvement would be attributable to technological improvements, especially transmission improvements. The NPRM noted that Chrysler also expected slight mix shifts toward smaller, more fuel-efficient trucks.

In March 1986, Chrysler provided new projections of 20.4 mpg to 21.3 mpg for MY 1987, 21.5 mpg to 22.3 mpg for MY 1988, and 21.8 mpg to 23.3 mpg for MY 1989. The company stated the following:

> There is considerable uncertainty associated with predicting any specific single level of annual CAFE for the 1987–89 time frame because we are in the process of revising our long range plan. For this reason, our new estimates for model years 1987–89 are presented as ranges to indicate the effects of various marketing alternatives available to Chrysler. The high ends of our ranges represent Chrysler's fuel economy capabilities, given our current product plan. These numbers are similar to those previously submitted to [NHTSA], although 1987 estimates are now much firmer due to actual test data being available. The low ends of the ranges represent the results of a new analysis in which it was assumed we would sell our products in a completely free market with no attempt on our part to force the sales mix to a desired fuel economy target.
>
> Both product plans contain the same fuel economy improving technologies and our new Dakota N-Body truck previously described to you. Projected CAFE differences are solely a result of mix shifts. . . . Should international economic conditions continue to change, even the low end of these estimates may ultimately require market forcing and/or product limiting actions by Chrysler.

The 23.3 mpg estimate at the high end of Chrysler's projection for MY 1989 is thus the same mix of vehicles and technology as discussed in the NPRM. The 21.8 mpg estimate at the low end of that company's range for MY 1989 is based on mix shifts toward larger, less fuel-efficient trucks.

American Motors

In February 1985, American Motors (AMC) projected a MY 1989 4WD CAFE level of 21.0 mpg to 24.2 mpg, and a MY 1989 2WD CAFE level of 21.5 mpg to 24.2 mpg. These projections, for which no supporting data were provided, were the latest available to the agency at the time the NPRM was issued. The NPRM noted, however, that AMC had recently advised NHTSA that it was revising its projections.

In AMC's February 1986 comment on the NPRM, the company projected that its 4WD CAFE level would be 19.4 mpg for MY 1989, and its 2WD CAFE level 21.3 mpg. These projections would result in that company having a combined CAFE estimate for MY 1989 of 19.9 mpg, which is lower than that of the other domestic manufacturers.

NHTSA's analysis of the reasons for the decline in AMC's projections indicated that the most significant reason for the decline was a decision by that company to introduce a new 4.0 liter six-cylinder engine, beginning in the 1987 model year, to replace the 2.8 liter six-cylinder engine it had been purchasing from GM. The new engine has 50 percent more horsepower and 47

percent more torque than the GM engine.

In September 1986, NHTSA contacted the Environmental Protection Agency to determine whether that agency had MY 1987 certification data for 4.0 liter AMC light trucks. EPA had limited test data on the new engine which indicated that the engine was achieving higher fuel economy levels than AMC had projected in its February 1986 submission. NHTSA then contacted AMC to determine the impact of those higher fuel economy levels on that company's MY 1989 CAFE projections. AMC indicated that, with the revised fuel economy projections for the 4.0 liter engine, its MY 1989 2WD CAFE rises from 21.3 to 22.6 mpg, and its MY 1989 4WD CAFE rises from 19.4 mpg to 20.8 mpg. These revised projections result in a combined projection of 21.3 mpg.

Volkswagen

Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus. In February 1985, VW projected a CAFE level of 21 mpg through MY 1990. In VW's March 1986 comment on the NPRM, the company provided a MY 1989 CAFE projection of 19.1 mpg. VW stated that, in response to consumer demand, it has had to make performance improvements in the Vanagon vehicles. The company also stated that it has introduced a new 4WD version of the Vanagon, to increase the utility of the vehicle to the consumer.

Other manufacturers

Foreign manufacturers other than VW compete only in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM, Ford, and Chrysler, which offer full ranges of light truck models.

B. Possible Additional Actions to Improve MY 1988 CAFE

There are additional actions which, given sufficient time and resources, manufacturers may be able to take to improve their CAFE above the levels which are currently projected for MY 1989. These actions may be divided into three categories: further technological changes to their product plans (beyond what they are already planning), increased marketing efforts, and product restrictions.

1. Further Technological Changes

Ford commented that it is unaware of any new technology which could be executed within available leadtime to improve its CAFE significantly. Chrysler commented that "(i)t is important to recognize that the leadtime required to implement improvements in engines, transmissions, aerodynamics and rolling resistance, is usually three to four years." That company argued that "as of today, it is too late in the engineering cycle to design, develop, and implement any further major technological CAFE improvements on 1988–89 model year light trucks."

In light of limited leadtime, the agency agrees that it is too late at this time to initiate further major technological improvements. Once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 22 to 29 months. Other potential major changes, such as those cited by Chrysler, often take longer. Leadtimes for new vehicles are typically at least three years.

There may be sufficient leadtime for manufacturers to make more minor technological changes, such as changes in axle ratios, refinement of engine calibrations, and changes in horsepower. In analyzing specific manufacturer capabilities below, the agency has considered whether manufacturers can make these types of changes.

2. Increased Marketing Efforts

As discussed in the NPRM, the agency believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are generally purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of many users, the manufacturers' abilities to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks are limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. The ability of domestic manufacturers to make such sales increases is also affected by the strong competition in that market from Japanese manufacturers. While Japanese manufacturers currently have an overall combined market share of about 20 percent of light trucks, their share for the smaller, more fuel-efficient pick-up trucks is about 50 percent.

The agency also notes that the improved fuel efficiency of all sizes of modern light trucks makes it more difficult to sell the small light trucks on the basis of significant operating cost savings. The reason for this is that there are diminishing returns in terms of fuel economy from purchasing smaller light trucks as the fuel efficiency of larger light trucks increases. The average fuel economy of large pickup trucks rose from 13.1 mpg in 1975 to 18.4 mpg in 1985, and the average fuel economy of large vans rose from 13.1 mpg to 17.5 mpg during this time period. The average fuel economy of small pickup trucks rose from 22.1 mpg to 26.2 mpg, and the average fuel economy of small vans rose from 20.7 mpg to 23.9 mpg. (SAE Paper No. B50550, "Light Duty Automotive Fuel Economy . . . Trends Thru 1985.") The fuel economy of large pickup trucks and vans has thus improved more than the fuel economy of small pickup trucks and vans, both in absolute and percentage terms.

Also, as gasoline prices have declined, there are diminishing returns from purchasing more fuel-efficient vehicles. For example, an improvement in fuel efficiency from 20 mpg to 25 mpg at a gasoline price of $1.50 per gallon would save a truck owner about $150.00 per year, assuming 10,000 miles driven annually. However, at a gasoline price of $0.85 per gallon, which more closely reflects today's market, the annual savings drop to about $85.00. The financial savings for smaller changes in fuel economy will, of course, be even lower. Hence, an economically rational consumer will not be as concerned with improving fuel efficiency as gasoline prices decline, making it more difficult for a manufacturer to market its most fuel-efficient vehicles.

A problem with pulling ahead sales is that the manufacturers' CAFE levels for subsequent years are reduced. For example, if a manufacturer increases its MY 1989 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1990, its MY 1990 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually increase its CAFE simply by pulling ahead sales.

GM commented that "(i)t would be difficult, if not impossible, to predict any gains in CAFE through marketing incentives based on present and future projections of consumer purchasing preferences, particularly in view of the uncertain future of world oil price." Ford commented that "because of the number of competitive entries in the compact

segment, potential countering actions by each competitor, and the price/cost advantage of imported models, . . . marketing actions cannot be relied upon to produce the desired effect."

Chrysler commented that "(t)ruck buyers are much more sensitive to functional needs in making their purchase decisions and in many cases they must consider their product selection as a longer term decision than a passenger car customer." That company stated that "(f)uel efficiency must often be downgraded in priority for many truck buyers because vehicle function is often paramount to the purchaser's livelihood." The National Automobile Dealers Association commented that because light trucks are most often purchased for capability and practicability reasons, a decision to buy a larger, more powerful vehicle cannot be changed by marketing incentives. That organization emphasized that there are no available alternatives at any price for a consumer that needs a heavier light truck.

Given all of these factors, the agency does not believe that the domestic manufacturers can significantly improve their CAFE levels by increasing marketing efforts.

3. Product Restrictions

As discussed in the NPRM, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting particular larger light truck models or larger displacement engines. However, such product restrictions could have significant adverse economic impacts on the industry and the economy as a whole. In the final rule reducing the light truck fuel economy standard for MY 1985, the agency concluded that sales reductions to a manufacturer of 100,000 to 180,000 units, with resulting employment losses of 12,000 to 23,000, "go beyond the realm of 'economic practicability' as contemplated in the Act. . . ." 49 FR 41252, October 22, 1984. These impacts were believed by the agency to be a reasonable projection of the impacts to Ford of restricting the availability of larger trucks and engines in order to achieve a 1.5 mpg average fuel economy benefit.

In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent they could not obtain the light trucks they need for business use. Also such product restrictions could run counter to the congressional intent that the CAFE program not unduly limit consumer choice. See H.R. Rep. No. 93-340, 94th Cong., 1st Sess. 87 (1975).

GM commented that CAFE standards that are set at too stringent a level could require full-line manufacturers to consider product restrictions as a last resort. GM stated that this would occur only after incentives had been applied and other reasonable steps taken, including the application of carryforward credits. That company stated that product restrictions would be harmful to the vehicle manufacturer, its employees and suppliers, to the consumer and to the nation's economy. Ford commented that establishing light truck fuel economy standards above manufacturers' capability could result in substantial sales decline, adverse employment effects, and a threat of substantial economic hardship. That company stated that should the MY 1989 standard be set above its capability, it may be forced to restrict the availability of certain V-8 engines in full-size light trucks, vans, Club Wagons and large utilities, and possibly delete some of its full-size products entirely. The company stated that market research data show that the vehicles that would most likely be restricted are used for a combination of commercial as well as personal uses.

Given all of these considerations, NHTSA concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve CAFE.

C. Manufacturer-Specific CAFE Capabilities

As discussed later in this notice, NHTSA is directed to take "industrywide considerations" into account in setting fuel economy standards. In carrying out this direction, the agency focuses on the capabilities of the least capable manufacturers with substantial shares of light truck sales. In analyzing manufacturer-specific CAFE capabilities for MY 1989, the agency has focused on GM and Ford. Those manufacturers are the two "least capable manufacturers" with substantial shares of combined light truck sales and 2WD sales. Also, GM is the least capable manufacturer with a substantial share of 4WD sales.

General Motors

As discussed above, while GM projected in March 1985 that it could achieve a combined CAFE level of 23.1 mpg for MY 1989, it now projects a CAFE level no higher than 20.9 mpg. The agency's analysis indicated that some of the reasons for the decline in GM's projected MY 1988 CAFE level were within that company's control. Other reasons for the decline in GM's projected MY 1989 CAFE level were outside the company's control, including changing sales mixes of vehicles and engines due to consumer demand and achieving lower-than-anticipated gains from the introduction of new technologies.

In the final rule for MY 1988, on a similar record, NHTSA concluded that some product plan changes within GM's control that reduced its fuel economy capability could not be reversed within available leadtime. The agency's analysis also concluded that GM could still incorporate certain other of the product actions it identified in its March 1985 submission, thereby improving its CAFE. NHTSA stated the following:

> The agency believes that GM has time to reverse its plans for increasing horsepower and that doing so would not have a significant effect on sales. While GM claimed that this action was necessary to compete in the marketplace, its supporting documentation did not provide a sufficient rationale for the agency to change its conclusion that reversing this action would not result in competitive or other economic harm. Achieving lower horsepower levels would have the effect of increasing GM's CAFE by an additional 0.2 mpg. In addition, GM indicated in its NPRM comments that two other planned actions (the details of which are subject to a claim of confidentiality) will reduce its CAFE by 0.2 mpg. However, the agency believes that those actions can be undertaken without adversely affecting CAFE. 51 FR 15339.

NHTSA thus concluded that GM's MY 1988 CAFE could be as high as 21.1 mpg, although this number was subject to mix shift risks.

While the actions discussed above would raise GM's MY 1988 CAFE by a total of 0.4 mpg, they would raise GM's MY 1989 CAFE by only 0.2 mpg. This is due to different mixes of the affected vehicles for the two model years.

For this final rule, NHTSA has concluded that these actions should not be considered as part of GM's MY 1989 CAFE capability. With respect to GM's decision to increase certain horsepower, the agency has concluded that this is an appropriate market-related action for the purpose of competing with certain vehicles produced by Ford, Chrysler, AMC, Nissan and Toyota. Beginning with MY 1986, Nissan introduced a 3.0 liter V-6 engine of 140 horsepower in its compact pickups, Ford increased the displacement of its V-6 engine to 2.9 liters and raised the horsepower to 140, and Toyota added turbocharging to its 4-cylinder engine to raise the horsepower to 135. This was followed in MY 1987 by the introduction of a slightly larger, mid-size pickup by Chrysler using a new 3.9 liter V-6 engine of 124 horsepower and the replacement by AMC of the lower horsepower version of the GM 2.8 liter

engine with its own 4.0 liter engine, with 173 horsepower. Thus, by MY 1987, most small pickup manufacturers had increased the horsepower of the 6-cylinder or tubocharged engines that they are offering in compact and mid-size pickups. In addition to obtaining new data related to 1987 models, the agency also examined sales data, not available at the time of the MY 1988 final rule, which showed that 1986 sales of these higher horsepower vehicles were 15 percent higher than anticipated. Therefore, NHTSA concludes that market forces necessitate GM's increase in horsepower, and the agency will not consider the effects of reversing that decision as part of GM's capability.

Moreover, NHTSA now has new data relevant to the two actions which it believed GM could take without an adverse impact on that company's CAFE. The two actions, which were also incorporated in certain of GM's MY 1986 trucks, were changes in axle ratios and increased purchases by consumers of certain optional equipment which could affect aerodynamic drag. The available evidence before NHTSA at the time of the MY 1988 final rule suggested that these changes were not having an impact on GM's CAFE. However, the agency's analysis of GM's 1986 mid-model year report, which provides later and more complete data, does indicate an adverse impact on CAFE. Also, in a letter dated March 27, 1986, GM provided additional data concerning increased purchases of the optional equipment. NHTSA now concludes that these actions by GM are market-related and do have an adverse impact on that company's CAFE.

Based on its analysis, NHTSA concludes that there is insufficient leadtime for GM to introduce additional new programs or technologies to increase its MY 1989 CAFE above its projection of 20.9 mpg. Moreover, the agency believes it is unlikely that GM can achieve that projected CAFE level.

The sales mix included in GM's 20.9 mpg projection is comparable, on balance, to the mix of models and engines that company experienced for MY 1986. However, production mixes for the entire 1986 model year do not fully reflect the dramatic fuel price reductions which took place during the early part of calendar year 1986. Also, the fuel prices on which GM based its MY 1989 projections are higher than those currently believed by NHTSA to be likely. Based on its analysis, the agency agrees with GM's comment, that it faces a mix shift risk of up to 0 4 mpg due to lower gasoline prices and concomitant shifts toward larger trucks and engines for MY 1989.

NHTSA also agrees with GM's comment that the introduction of emission controls for heavy duty engines may cause some increase in sales of trucks with GVWR just under 8500 pounds, thereby adversely affecting GM's CAFE. The agency is not including a risk associated with increased import light trucks in GM's capability. While manufacturers face a continuing challenge to meet possible increased light truck competition from abroad, the agency does not believe this issue, in the particular case of MY 1989 light truck sales, is likely to adversely affect domestic CAFE values. Imported light trucks are subject to a 25 percent tariff, which substantially offsets the cost advantages of foreign producers. Also, the rising value of the yen against the dollar makes it more difficult for the Japanese manufacturers to increase their market shares at the expense of the domestic manufacturers. Moreover, the agency does not believe that mix shift risks and potential risks related to increased imports are additive, since lower fuel prices should enhance the domestic manufacturers' competitive positions. NHTSA believes that the issue should instead be recognized as a limitation on manufacturers' abilities to increase their market share of compact trucks beyond their present projections.

Taking account of these risks, NHTSA concludes that GM's combined capability is 20.5 mpg. The agency has also evaluated GM's fuel economy capability for its 2WD and 4WD fleets for MY 1989. GM's current projections for those fleets are 21.6 mpg and 19.2 mpg, respectively. The agency believes it is unlikely that GM can achieve these projected CAFE levels, for the reasons discussed above. Thus, based on its analysis, NHTSA concludes that GM's MY 1989 capability for its 2WD fleet is 21.5 mpg, and its capability for its 4WD fleet is 19.0 mpg.

Ford

As discussed above, while at the time of the NPRM the agency believed that Ford might be able to achieve a MY 1989 CAFE level of as high as 21.9 mpg, the company now projects a CAFE level of 20.4 mpg to 21.3 mpg. The agency's analysis indicates that virtually all of the decline in Ford's CAFE was due to reasons beyond that company's control. The bulk of the decline in Ford's projected MY 1989 CAFE level is attributable to lower-than-anticipated fuel economy levels for the 4.9 liter fuel injection program. Given the aggressive fuel economy goals of the program when it was approved, the agency does not consider it surprising that the goal has not been, and is not likely to be, fully attained. More stringent EPA emissions requirements also added to the difficulty of meeting the original fuel economy goal.

The agency does not consider it likely that Ford can achieve the 21.3 mpg upper end of its range of MY 1989 CAFE values. The sales mix underlying that projection is biased slightly more toward more fuel-efficient models and engines than Ford has experienced for MY 1986. With a likelihood that fuel prices will be lower in MY 1989 than those assumed by Ford in developing its projections and that continued lower fuel prices will encourage consumers to shift toward less fuel-efficient models and engines, the agency believes that Ford's actual MY 1989 sales mix will experience some further shift toward larger trucks and engines. Thus, the agency agrees with Ford's assessment that it faces mix shift risks of 0.4 to 0.6 mpg. As discussed above, Ford also faces technological risks of 0.5 mpg. Taking all of these risks into account, Ford's maximum achievable CAFE could be as low as 20.2 mpg. The agency believes it likely that some but not all of these risks will occur and concludes that Ford's MY 1989 capability is 21.0 mpg. As discussed below, this level reflects Ford's best estimate of its maximum feasible average fuel economy capability, and is the level it recommended for the combined standard.

The agency has also evaluated Ford's 2WD and 4WD fuel economy capabilities. Since the company's projected 4WD CAFE of 20.4 mpg is higher than those projected by GM and Chrysler, the agency did not focus on Ford in establishing the separate 4WD standard. Ford's 2WD projection of 21.7 mpg is similar to that of GM and below that of Chrysler and AMC. With the consideration of the risks to Ford's projected 2WD CAFE, the agency concludes that company's 2WD CAFE capability is 21.5 mpg.

As with GM, NHTSA concludes that there is insufficient leadtime for Ford to introduce additional new programs or technologies to increase its MY 1989 CAFE.

Other Federal Standards

A. Safety Standards

As discussed by the NPRM, several recent and proposed changes in Federal safety requirements may affect CAFE. These include several amendments to NHTSA's lighting standard, which permit reductions in aerodynamic drag

and slight weight savings; an amendment to the agency's occupant crash protection standard to promote the comfort and convenience of safety belts, and a proposal to extend the applicability of the agency's standard concerning steering control rearward displacement to additional light trucks.

The NPRM stated that while the agency has estimated that passenger car fuel economy could be increased by 0.4 to 0.9 percent by using aerodynamic headlamps, it is likely that the potential fuel economy improvement for light trucks by adoption of this feature is less. The reason for this is that the basic shape of light trucks is often dictated by load carrying capability or other functional attributes, thereby making it more difficult to reduce aerodynamic drag. Ford commented that it agrees with the agency's conclusion in the PRIA that the potential for CAFE improvement from vehicle aerodynamics is minimal due to the higher frontal area and drag coefficients inherent in light trucks compared with passenger cars. GM commented that aerodynamic headlamps will not have an impact on light truck CAFE in the 1988–89 timeframe. That company also noted that truck designs which included improved aerodynamics through the use of lower profile headlamps and more rounded sheet metal were not well received by the public in recent design clinics.

The NPRM cited the PRIA's conclusion that the effect of the comfort and convenience requirements on light truck CAFE will be negligible, since both the number of affected vehicles and weight impact are small. GM, Ford and Chrysler agreed that these requirements will not significantly affect CAFE.

With respect to the proposal to extend the applicability of the agency's standard on steering control rearward displacement, the NPRM cited the PRIA's similar conclusion that CAFE would not be significantly affected since the number of affected vehicles is believed to be small and the required modifications minimal. GM disagreed with this conclusion, stating that the standard would primarily affect the older model lines in its fleet and that significant mass increases may result from required vehicle changes. That company stated that the magnitude of the mass increases associated with the vehicle changes has not been determined, but may be relatively large and could negatively affect CAFE. Ford commented that the Econoline is its only vehicle anticipated to have significant potential for weight increase due to this proposal. It stated that since baseline testing has not been completed, specific corrective actions have not been identified and the weight effect of these changes remains an open issue. NHTSA currently anticipates that any final rule concerning this proposal would have an effective date of September 1, 1989, or later and therefore should not impact manufacturers' MY 1989 CAFE levels, significantly, if at all.

B. Environmental Standards

The NPRM cited several final and proposed changes in environmental standards which may affect CAFE.

The Environmental Protection Agency (EPA) published a proposal on July 1, 1985 (50 FR 27188) to provide test adjustment credits to light truck manufacturers for changes made in test procedures. Assuming that EPA's final rule is along the lines of the proposal, the rulemaking is not likely to have any significant effect on the manufacturers' projections discussed above.

The EPA requirement for control of diesel particulate matter became more stringent in MY 1987. NHTSA's NPRM noted that in the preamble to the final rule establishing MY 1987 light truck fuel economy standards, the agency concluded that any impact of the diesel particulate requirement on fuel economy would be very small, i.e., much less than 0.1 mpg. GM commented that the standard will have a negative impact on its CAFE but that the impact will be small since diesel sales have declined. According to that company, the maximum impact on its CAFE in the MY 1988–89 timeframe is estimated to be 0.05 mpg. AMC commented that more stringent standards are reducing diesel engines, not solely because of technological difficulties, but because with the low sales volume it would be impossible to recover the engineering costs associated with development of control systems. That company argued that the impact on CAFE of a more stringent emissions standard is the total removal of a fuel-efficient engine from the market, not just an incremental loss in fuel economy due to meeting more stringent standards.

After analyzing the comments, the agency continues to believe that there will be little CAFE effect from the more stringent particulate standard since manufacturers do not plan on offering significant volumes of diesel engines that would require changes. The agency agrees with AMC that when volumes for an engine family drop below certain levels, it may become economically unattractive to spend the money necessary to certify compliance with the emissions standards. However, this is a business decision and not a direct result of the more stringent requirements to control emissions.

The EPA requirement for control of oxides of nitrogen (NO_x) becomes more stringent in MY 1988. As noted in NHTSA's NPRM, EPA estimates that with the use of three-way catalyst technology, there will be no net loss in fuel efficiency and possibly even small gains. Moreover, since the EPA regulation provides for averaging compliance with the more stringent particulate standard and the oxides of nitrogen standard, manufacturers have greater flexibility to help ensure that there are little or no attendant fuel economy penalties.

GM commented that the recalibration required to meet the 1988 NO_x standard decreases its light truck CAFE 0.3 mpg to 0.35 mpg from the level attainable if the standard were not changed. The company stated that this reduction assumes across-the-board use of closed loop throttle body injection and three way catalysts for gasoline vehicles, and has been factored into its CAFE projections. Ford stated that it does not believe that EPA's overall assessment that there will be no net loss in fuel efficiency associated with the NO_x standards is applicable to its vehicles. Ford argued that paired fuel economy data from its MY 1985 Federal and California vehicles show a fuel economy penalty of 1.3 percent to 5.3 percent (0.4 to 1.2 mpg) between the versions having the same control technologies. (California vehicles were required to meet a MY 1985 NO_x standard that was more stringent than either the current or MY 1988 Federal standard.) In a subsequent submission dated March 26, 1986, Ford clarified its position, stating that the claimed penalty was actually a reduction in the potential benefit of new technology which would have accrued if it had not been employed to offset the change in emissions standards.

NHTSA believes that GM's and Ford's arguments about a fuel economy penalty associated with the more stringent NO_x standards are consistent with EPA's position presented in the NPRM. That position is that with the use of three-way catalyst technology, the new NO_x standard will not cause any net loss in fuel efficiency, compared to the fuel efficiency levels under the current NO_x standard. There might even be small gains as a result of the new standard. The losses to which GM and Ford refer are actually "gains foregone" in the context of EPA's analysis, i.e., the loss is the difference in fuel economy capability of a closed loop three-way catalyst system calibrated to meet the current and new NO_x standards. Thus,

by adopting three-way catalyst technology, the manufacturers avoid any losses in fuel economy associated with the new NO_x standards but do not achieve the gains that would be associated with such technology in the absence of the new standards.

AMC commented that other emission-related considerations are the increase in the useful life interval, limited maintenance intervals, and warranty liability. That company argued that because of these restrictions, manufacturers must reduce compliance/warranty risks by utilizing current technology with proven durability in the field. AMC stated that this has a direct effect on decisions to adopt newer fuel-efficient technology, especially for the lower volume manufacturers, until after the technology has proven its durability in the field for 11 years/120,000 miles. AMC did not provide any data concerning how these types of considerations affect its CAFE. As a general matter, NHTSA believes it would be inappropriate to assume that manufacturerneed to wait 11 years before deciding to adopt new technology for purposes of emissions and/or fuel economy. Manufacturers can instead use a combination of short-term testing that acts as a surrogate for real time testing and engineering judgment to make appropriate decisions concerning the adoption of new technology.

On September 8, 1986, EPA published an advance notice of proposed rulemaking (ANPRM) concerning more stringent HC exhaust emissions standards for light-duty trucks. EPA indicated that compliance with such standards could be required as early as MY 1989. The original comment closing date for the ANPRM was October 8, 1986, but the comment period was later extended to November 21, 1986. At this point, it is unclear what, if any, impact the proposed rule would have on fuel economy. If EPA should issue a final rule that affects MY 1989 fuel economy, NHTSA will consider at that time whether any action is appropriate.

Ford commented that EPA is expected to propose requiring on-board refueling vapor control systems and an increase in the nominal Reid vapor pressure of certification gasoline (fuel volatility level), which could be effective as early as MY 1989. NHTSA will consider the fuel economy implications of these changes if and when EPA takes action.

The California Air Resources Board (CARB) at its April 24–25, 1986 public hearings adopted more stringent NO_x standards for compact trucks. Beginning in MY 1989, 50 percent of light trucks weighing from 0 to 4000 pounds inertia weight must meet a 0.4 gpm NO_x standard. For models 1990 through 1993, 85 percent of compact light trucks must certify to the 0.4 mpg NO_x standard. Ford, in a letter to NHTSA dated December 12, 1986, has claimed a 1990–91 CAFE risk of 0.05 mpg due to this phased-in NO_x requirement. The effect on MY 1989 would be smaller, given the phase-in.

NHTSA is not aware of any plans on the part of EPA to promulgate noise regulations applicable to MY 1989 light trucks and therefore does not anticipate any attendant fuel economy penalties.

Need to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. For example, oil markets have been deregulated and the Strategic Petroleum Reserve has been established.

In 1977, the United States imported 46.4 percent of its oil needs and the value of imported crude oil and refined petroleum products was $67 billion (stated in 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1985, the import share had declined to 28.7 percent at a cost of $46.7 billion (1984 dollars). During the first 10 months of 1986, the net import share rose somewhat, to 33.3 percent. (The dollar value of 1986 imports was not available at the time this notice was prepared.)

Moreover, imports from OPEC sources have declined, from a high of 6.2 million barrels per day and 70.3 percent of all imports in 1977 to 1.8 million barrels per day and 36.2 percent of imports in 1985. During the first 10 months of 1986, OPEC imports increased to 2.7 million barrels per day, representing 45.7 percent of total imports, but remained well below 1977 levels. As imports have shifted to non-OPEC sources, such as Mexico, Canada and the United Kingdom and as this country builds up its strategic stockpile, the United States' petroleum market has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's. The level of OPEC imports, however, does not by itself indicate the degree of U.S. vulnerability to an oil supply disruption caused by political instabilities in some OPEC countries. The market for crude oil is worldwide, and a supply disruption anywhere could lead to an increase in world price.

Overall, the nation is much more energy independent than it was a decade ago, when Congress established the fuel economy standards program. From 1975 to 1984, energy efficiency in the economy improved by 21 percent (*1984 Annual Energy Review*,Energy Information Administration (EIA), U.S. Department of Energy, p. 47). Domestic oil production was five percent higher in 1986 than it was in 1975, the value of the nation's imported oil bill declined 35 percent between 1980 and 1985, and the amount of imported oil from OPEC is 56 percent lower than the peak of 1977. As a percentage share of GNP, the net oil import bill fell from 2.8 percent in 1980 to 1.2 percent in 1985. In addition, the price of oil is now fully decontrolled, permitting consumers to make choices in response to market signals and allowing the market to adjust quickly to changing conditions. The Strategic Petroleum Reserve now contains over 500 million barrels that can be used to ameliorate the effect of supply interruptions. Thus, by any measure, the nation is in a stronger, and more efficient, energy position than it was a decade ago.

According to Energy Information Administration (EIA) and Data Resources, Inc. (DRI), projections, however, domestic production is expected to decline from a stable level of 10.6 MMB/D to between 7.5 MMB/D (DRI) and 8.3 MMB/D (EIA) by 1995. Net imports are expected to rise from 4.2 MMB/D to between 7.7 MMB/D (EIA) and 9.9 MMB/D (DRI) by 1995. NHTSA thus recognizes that available projections indicate a general consensus that imports may approach or exceed 50 percent of U.S. petroleum use by 1995. Future projections about petroleum imports are, of course, subject to great uncertainty. Indeed, oil imports are very difficult to project beyond a year or two. For example, the EIA's 1977 Annual Report to Congress projected that net oil imports by the U.S. would, in the "reference case," reach 11 million barrels per day by 1985. Net imports in 1985 actually turned out to be 4.2 million barrels per day, less than half the level predicted in 1977.

GM's comment on the NPRM stated that the effect of "the deregulation of the oil industry and the existence of the Strategic Petroleum Reserve as well as continued conservation and the development of alternative energy sources, such as methanol, has been to place the U.S. in a much more secure energy position. That commenter urged that it is "important that NHTSA take these developments into account in explaining the 'need of the nation to conserve energy.'"

Chrysler commented that it believes that the need to conserve petroleum-based energy should remain a national priority, despite the transient period of falling fuel prices we are now

experiencing. That company stated that there is every reason to expect that oil will again be in short supply, even within the lifetime of vehicles produced in the 1988–89 models years.

The Center for Auto Safety commented that the nation is facing a future of greater reliance on imported petroleum to fuel a vehicle fleet which includes an increasing share of light trucks. That organization argued that the Iraq-Iran war and other Middle East instabilities continue to threaten our national security, and cited a study by the National Academy of Sciences noting that the oil in the Strategic Petroleum Reserve will equal a decreasing number of days supply in future years.

The prospect of increasing oil imports does raise concerns about national security and the total cost of imported oil. Quite apart from the issue of whether oil imports are likely to increase in the next decade, petroleum is a vital natural resource which is nonrenewable. The level of imports taken by itself, however, does not measure the vulnerability of the U.S. in these respects. The nation's ability to handle a major oil supply disruption depends, among other factors, on the size and timely use of the Strategic Petroleum Reserve, on the extent to which energy markets are free of price and allocation controls, on fuel switching and substitution possibilities throughout the economy, and on the stocks held by other oil importing nations.

My 1988 light trucks meeting the 20.5 mpg standard established by this rule will be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation. In addition, NHTSA believes that if imports do once again reach the 50 percent level, the nation will remain in a much stronger energy position than was the case in the mid-1970's. The nation's sources of oil imports are more diverse and less vulnerable to disruption, the nation's energy efficiency is much higher, there is greater ability to substitute alternative sources of energy, and the absence of price controls permits the market to respond more easily to changes in supply and demand.

Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) Be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of available technology, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy. In this rulemaking, as in earlier rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e) and has not merely adopted a level based on what was technologically capable of being done.

B. Industrywide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., lst Sess. 154–5 (1975)), states:

> Such determination [of maximum feasible average fuel economy level] should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . .

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler (45 FR 20871, 20876; March 31, 1980). However, as the agency noted in deciding not to set the MY 1983–1985 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. (45 FR 81593, 81599; December 11, 1980).

C. Setting the MY 1989 Standards

Based on the analysis described above and on manufacturer projections, the agency concludes that manufacturers can achieve the combined fuel economy levels in the following table:

Manufacturer	Approximate market share (percent)	Combined CAFE (miles per gallon)
Chrysler	13	21.8 to 23.3.
AMC	5	[1] 21.3.
Ford	25	21.0.
GM	33	20.5.
Volkswagen	0.5	19.1.

[1] AMC's projection is unadjusted for risks.

As indicated above, foreign manufacturers other than Volkswagen only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM, Ford and Chrysler, which offer full ranges of light truck models.

NHTSA has concluded that among the manufacturers with a substantial share of combined light truck sales, GM is the least capable manufacturer, with a MY 1989 combined fuel economy capability of 20.5 mpg.

The setting of maximum feasible fuel economy standards, based on consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. In setting the MY 1989 standards, the

agency believes that the current very low gasoline prices affect both the benefits of differing levels of average fuel economy standards and the difficulties of individual automobile manufacturers facing higher standards, i.e., both of the considerations NHTSA must balance in setting maximum feasible standards taking industrywide considerations into account. (See the language of the Conference Report quoted above.)

NHTSA has concluded that 20.5 mpg is the maximum feasible combined standard for the 1989 model year. This level balances the potential petroleum savings associated with higher standards against the difficulties of individual manufacturers facing potentially higher standards.

The main benefit from setting higher fuel economy standards is the potential additional petroleum savings which would result. Since significantly lower gasoline prices result in reduced consumer demand for higher fuel economy, individual manufacturers may have less incentive, and ability, to improve their average fuel economy. This fact explains GM's difficulty in marketing technological improvements which increase fuel economy and Chrysler's current reconsideration of its product mix for future model years. There may, of course, be counterbalancing motivations for achieving higher fuel economy, such as a need or desire to earn credits for exceeding fuel economy standards.

The 20.5 mpg standard will be challenging for GM, without causing significant economic distortion, and act as an incentive for that company to achieve its maximum fuel economy capability. Since GM produces a third of all light trucks subject to fuel economy standards, a standard set at its level can make a substantial contribution to petroleum conservation.

NHTSA does not believe that a standard set at a level above GM's capability would be consistent with the requirement that standards be set taking industrywide considerations into account, given that company's market share. Even if the MY 1989 standard could be set at a level above GM's capability, however, the agency believes that it clearly could not be set above both Ford's and GM's capabilities, since those companies' combined market share approaches 60 percent. As noted previously, the agency's estimate of Ford's maximum capability for MY 1989 is 21.0 mpg. Thus, any higher standard than 20.5 mpg could not exceed that value.

The precise effects on petroleum conservation of a standard set at Ford's projected capability are uncertain, although the effects can be bounded. The maximum theoretical additional energy savings associated with a standard set at that higher level can be determined by comparing hypothetical situations where GM and Ford would have combined average fuel economy levels of 21.0 mpg versus 20.5 mpg. Since most other manufacturers in the industry project MY 1989 CAFE above that of Ford's capability, a standard set at 21.0 mpg would not be expected to affect the petroleum consumption of trucks manufactured by that part of the industry. The difference in total gasoline consumption between these two hypothetical situations, over the *lifetime* of the MY 1989 fleet, would be 429 million gallons. The maximum yearly impact on U.S. gasoline consumption would be 49.5 million gallons, or roughly five hundredths of one percent of total motor vehicle gasoline consumption.

The agency believes, however, that any actual gasoline savings associated with a higher standard would be much less. While Ford would have an added incentive to achieve its maximum fuel economy capability, it is not clear in light of possible carryforward/carryback credits whether this would actually occur. GM could not likely improve its CAFE other than by restricting sales of its larger light trucks and engines. To the extent that would-be purchasers of such vehicles and engines transferred their purchases to Ford and Chrysler without those companies otherwise changing their product plans, there could be little or no effect on petroleum consumption.

While the agency recognizes that a higher standard could have some effect on gasoline consumption, it concludes that the effect would be much less than the theoretical maximum noted above and could be negligible.

A higher standard than 20.5 mpg could result in serious economic difficulties for GM. NHTSA believes that the first potential fuel-efficiency enhancing actions that GM or any other manufacturer would consider in response to a higher standard would primarily consist of marketing actions. For the reasons discussed earlier in this notice, however, the agency does not believe that marketing actions can be relied upon to significantly improve fuel economy. Assuming that such marketing actions were unsuccessful in whole or in part, GM would likely have to engage in product restrictions, including limiting the sales of larger engines and/or vehicles to improve its fuel economy. Such product restrictions could result in adverse economic consequences for GM, its employees, and the economy as a whole and unduly limit consumer choice, especially with regard to the load carrying needs of light truck purchasers.

The agency believes that the current situation of very low gasoline prices can create significant difficulties for individual manufacturers facing higher CAFE standards. As gasoline prices fall, consumer demand shifts toward larger vehicles and more powerful engines. While the magnitude of such shifts is limited to some extent by the fact that trucks are purchased largely with respect to work-performing capabilities, lower gasoline prices can nonetheless result in mix shifts which lower manufacturers' CAFE. The large magnitude of the recent drop in gasoline prices makes it particularly difficult for manufacturers such as GM to attempt to use marketing efforts to overcome such shifts in consumer demand.

NHTSA is particularly concerned about the impact of overly stringent CAFE standards on American jobs. In assessing this issue, NHTSA estimated the sales and job effects associated with the product restrictions that would be required to raise GM's CAFE by 0.5 mpg. As discussed in the agency's Final Regulatory Impact Analysis, such product restrictions could result in a sales loss to GM of 156,000 light trucks, which could translate into 9,180 lost jobs at GM and an additional 9,180 to 18,350 lost jobs in supplier companies.

Given GM's one third share of the light truck market, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of the standards. The agency believes that for GM, the 20.5 mpg standard balances the potentially serious adverse economic consequences associated with market and technological risks against that company's opportunities as the least capable manufacturer with a substantial share of sales. The agency concludes, in view of the statutory requirement to consider several factors, that the relatively small and uncertain energy savings associated with setting a standard above GM's capability would not justify the economic harm to that company, American workers, and the economy as a whole.

The agency recognizes that a 20.5 mpg standard is above the capabilities of Volkswagen. In the absence of some type of alternative light truck standard which it could meet (an issue which is addressed further below), Volkswagen would therefore be limited to two options: Paying the statutory penalties associated with failure to comply with fuel economy standards (to the extent

credits are not available) or drastic product actions. While the agency appreciates these difficulties, it also concludes that establishment of a standard less than 20.5 mpg would reduce or eliminate the incentives for GM to achieve its maximum capability and essentially render meaningless any impact the light truck CAFE program has on petroleum conservation. Given that Volkswagen represents less than one-half of one percent of the light truck market and in light of the above factors, NHTSA believes that it would be inappropriate to set industrywide standards based on its capability. In light of the statutory criteria, NHTSA concludes that the petroleum savings associated with the 20.5 mpg standard outweigh the difficulties to this company.

Manufacturer commenters suggested a number of different levels for the combined standard. Chrysler stated that given the present circumstances and uncertainties, it would not object if the agency sees fit to carry over the present 1987 light truck CAFE standard of 20.5 mpg to MY 1988–89. AMC stated that it should be considered the "primary manufacturer for the purpose of setting standards" and recommended a combined standard of 20.0 mpg. GM argued that due to such uncertainties as potential further mix shifts and increased imports, beyond what it is currently projecting, a 20.5 mpg standard might be too stringent. That company stated that if its current forecasts prove to be unduly optimistic, it would then have to either petition for a lower standard or resort to product restrictions with attendant layoffs and negative impact on the economy in order to remain in compliance. Ford's comment on the NPRM recommended a MY 1989 standard of 21.0 mpg. Ford noted that although the level of its recommended standard is higher than the low end of its estimated capability when all potential risks are taken into account, it believes that the 21.0 mpg level represents a reasonable balancing of the risks and opportunities facing the company and, therefore, reflects its best estimate of Ford's maximum feasible average fuel economy capability.

NHTSA notes that AMC recommended a 20.0 mpg standard before revising upward its MY 1989 projection from 19.9 mpg to 21.3 mpg. While the 21.3 mpg figure does not include any adjustment to account for risks, the agency concludes that AMC can achieve a CAFE higher than the 20.5 mpg level of the MY 1989 standard.

The agency disagrees with GM's suggestion that a standard of 20.5 mpg might be too stringent in light of potential further mix shifts and increased imports. As discussed above, GM currently projects a MY 1989 CAFE of 20.9 mpg, based on a mix of models and engines that is comparable to what it experienced for MY 1986. The agency believes that a standard of 20.5 mpg adequately provides for the risks facing that company. With respect to Ford's suggestion for a standard of 21.0 mpg, the agency notes that it sets standards based on industrywide considerations.

The Center for Auto Safety (CFAS) urged that the MY 1989 standard be set at 24.0 mpg. That commenter's request appears to have been based on the manufacturers' projections cited in the NPRM, on its assertion that the manufacturers' projections are "considerably below true manufacturing potential," and on its contention that changing market conditions will help light truck fuel economy rather than cause it to deteriorate, as the percentage sales of compact and more fuel-efficient light trucks is expected to increase. CFAS also argued that GM and Ford have had at least five years leadtime to introduce new models and technologies for the 1989 standard.

NHTSA disagrees with CFAS's arguments supporting a 24.0 mpg standard. The agency's analysis of changes in the manufacturers' projections is fully discussed above. CFAS did not support its allegation concerning manufacturers' projections being below true manufacturing potential, other than to reference a comment it made in the agency's passenger automobile fuel economy rulemaking. The agency has analyzed the data underlying the manufacturers' light truck CAFE projections and has no reason to give this allegation any credence. While it is true that the percentage sales of compact light trucks is expected to increase, the agency does not believe that this shift is likely to cause any significant increase in the CAFE of GM and Ford, since estimated sales of their products are heavily weighted toward the larger vehicles. Ford indicated in its comment that significantly increasing its share of the compact truck market beyond projections would be difficult, since the Japanese manufacturers have emphasized that market. The agency agrees with that comment and believes that the same is true for GM. NHTSA also disagrees with CFAS's argument that GM and Ford have had at least five years leadtime for the 1989 standard. Unlike the situation with passenger automobile fuel economy standards, where a 27.5 mpg standard is in place indefinitely unless it is amended by the agency, no light truck fuel economy standard is in place until it is established by the agency.

As in past years, the agency has decided to continue setting 2WD and 4WD standards as an alternative to the combined standard. Separate 2WD/4WD standards allow manufacturers greater flexibility in planning to meet CAFE standards and do not discriminate against firms with truck fleets heavily weighted toward the generally less fuel efficient 4WD models.

NHTSA has concluded that GM is the least capable manufacturer with a substantial share of 4WD light truck sales, and has focused on its capability in establishing the separate 4WD standard. As discussed earlier in the notice, the agency concluded that 19.0 mpg is that company's maximum 4WD fuel economy capability. The final 4WD standard is being established at 19.0 mpg.

AMC has traditionally been the manufacturer primarily concerned about separate standards due to the high percentage of 4WD light trucks in its fleet. AMC requested in its comment that the 4WD standard be set at 19.0 mpg. Moreover, that company subsequently raised its 4WD projection from 19.4 mpg to 20.8 mpg. Therefore, AMC will have no difficulty meeting the selected standard.

The agency notes that Chrysler has a lower 4WD fuel economy capability than GM, Ford and AMC. Chrysler projects that its 4WD CAFE could be as low as 17.5 mpg. However, in MY 1986, Chrysler's share of the 4WD market was less than three percent. Thus, that company did not have a substantial share of 4WD light truck sales. Moreover, since Chrysler can meet the combined standard, it is unnecessary for it to be able to meet the separate standards.

NHTSA has concluded that GM and Ford are the least capable manufacturers with substantial shares of 2WD light truck sales, and has focused on those manufacturers' capabilities in establishing the separate 2WD standard. As discussed earlier in the notice, the agency concluded that those companies' maximum 2WD fuel economy capabilities are 21.5 mpg. The final 2WD standard is being set at 21.5 mpg.

AMC requested in its comment that the 2WD standard be set at 20.3 mpg. The company subsequently raised its MY 1989 2WD CAFE projection from 21.3 mpg to 22.6 mpg. NHTSA has concluded, based on its analysis of that company's projection, underlying

product plan, and expected market conditions, that AMC can meet the 2WD separate standard of 21.5 mpg.

Volkswagen suggested as an alternative to establishing a combined standard within its capability that the agency consider alternate special consideration for limited product line truck manufacturers. In establishing the MY 1980–81 light truck CAFE standards, the agency did establish a separate standard in light of International Harvester's (IH) limited product line. See 43 FR 11995, March 23, 1978. The agency noted that IH had unique problems given its limited sales volume, restricted product line, the fact that its engines were derivatives of medium duty truck (above 10,000 pounds GVWR) engines, and the fact that it did not have experience with state-of-the-art emission control technology which the other manufacturers had obtained in the passenger automobile market. The agency emphasized, however, that the separate class was being established for only two model years' duration, concluding that IH should be able to achieve levels of fuel efficiency in line with other manufacturers within that time period either through purchasing engines from outside sources or by making improvements to current engines. The agency does not believe that Volkswagen's situation is similar to that of IH. While IH's difficulties were related to being newly subject to the fuel economy program, Volkswagen's CAFE difficulties are not. Moreover, establishing a separate standard for Volkswagen would be outside the scope of notice of the NPRM.

Impact Analyses

1. Executive Order 12291

The agency considered the economic implications of the fuel economy standards established by this rule and determined that the rule is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency believes that many of the changed conditions since 1975, including decontrol of oil, establishment of the Strategic Petroleum Reserve, and diversification of the sources of oil imports, ensure that the nation will remain in a strong energy position, even if imports should rise to earlier levels. The agency believes also that the standards established by this notice can be met without significant economic distortion. The agency's detailed analysis of the economic effects is set forth in its regulatory impact analysis. The contents of that analysis are generally described in the above sections of this preamble.

2. Environmental Impacts

The agency has analyzed the potential environmental impacts of these light truck fuel economy standards in accordance with the requirements of the National Environmental Policy Act of 1969 and concluded that the rule it is adopting will not significantly affect the human environment. An Environmental Assessment (EA) was prepared and placed in the public docket in conjunction with the NPRM and made available to the public for comment. The EA analyzed the potential environmental effects for the range of standards proposed by the NPRM. The EA stated that the agency expected to make a finding that the rulemaking would not have a significant impact on the human environment. No comments were received on the EA. NHTSA also prepared a supplement to the EA, for purposes of this final rule, which is being placed in the docket.

As indicated in the EA, any fuel savings that might have resulted from the establishment of standards at the high end of the proposed range would have been minimal. With respect to any possible effects on air pollution, the agency notes that a letter to NHTSA from the Environmental Protection Agency (EPA), in another fuel economy rulemaking, discussed a number of considerations concerning why little change in air quality can be expected from different levels of fuel economy standards. (Docket No. FE–85–01, Notice 2, Item 121.) Among other things, the letter indicated that exhaust emissions will not change because EPA mobile source standards for oxides of nitrogen, carbon monoxide, and hydrocarbons are expressed in grams/mile. While the EPA mobile source standard for lead is expressed in grams per gallons of gasoline, compliance with that standard would not be affected by a change in fuel consumption because MY 1989 light trucks must use unleaded fuel. NHTSA concludes that little change in air quality is expected as a result of the adoption of these regulations.

Based on all available information, including the analysis presented in the EA and the supplement to that document, the agency has determined that this rulemaking action will not have a significant effect upon the environment. The agency is therefore making a finding of no significant impact.

3. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking action will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No manufacturers of light trucks are believed to be small businesses. Thus, small businesses, organizations and governmental units are affected by this rule only to the extent that they purchase light trucks. Those entities which purchase a MY 1989 truck might achieve a gain in fuel economy as compared to a situation in which there was no standard. The cost impact of this rulemaking action is not high enough to reduce the ability of these groups to purchase new vehicles.

Department of Energy Review

In accordance with section 502(j) of the Act, the agency has submitted this rule to the Department of Energy for review. The Department made no unaccommodated comments.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

1. The authority citation for Part 533 continues to read as follows:

Authority: 49 U.S.C. 1657; 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Table II in § 533.5(a) is revised to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE II

Model year	Combined standard		2-wheel drive light trucks		4-wheel drive light trucks	
	Captive imports	Others	Captive imports	Others	Captive imports	Others
1982	17.5	17.5	18.0	18.0	16.0	16.0
1983	19.0	19.0	19.5	19.5	17.5	17.5
1984	20.0	20.0	20.3	20.3	18.5	18.5
1985	19.5	19.5	19.7	19.7	18.9	18.9
1986	20.0	20.0	20.5	20.5	19.5	19.5
1987	20.5	20.5	21.0	21.0	19.5	19.5

TABLE II—Continued

Model year	Combined standard		2-wheel drive light trucks		4-wheel drive light trucks	
	Captive imports	Others	Captive imports	Others	Captive imports	Others
1988	20.5	20.5	21.0	21.0	19.5	19.5
1989	20.5	20.5	21.5	21.5	19.0	19.0

* * * * *

3. Section 533.5(d) is revised to read as follows:

* * * * *

(d) For model years 1982–89, each manufacturer may:

(1) Combine its 2- and 4-wheel drive light trucks (segregating captive import and other light trucks) and comply with the combined average fuel economy standard specified in paragraph (a) of this section; or

(2) Comply separately with the 2-wheel drive standards and the 4-wheel drive standards (segregating captive import and other light trucks) specified in paragraph (a) of this section.

Issued on February 27, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87–4460 Filed 2–27–87; 11:01 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 52, No. 42
Wednesday, March 4, 1987

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the official U.S. regulations and standards for carcass beef and the related standards for grades of slaughter cattle. The changes proposed for the grades of carcass beef and slaughter cattle would rename the U.S. Good grade as U.S. Select. The proposed changes would provide the industry with an opportunity, through the use of a more positive grade name, for improved marketing of beef with less marbling that Prime or Choice. The proposed changes would also provide consumers who desire beef having the attributes of Select with an officially graded product as an alternative to the Prime and Choice grades. The changes that are proposed should improve the effectiveness of the standards in meeting the needs of users of the system.

DATE: Comments must be received by May 4, 1987.

ADDRESS: Written comments to: Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, 2649 South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, 202–447–4486.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The proposed revision of the beef carcass (7 CFR Part 54) and slaughter cattle (7 CFR Part 53) standards was reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and is hereby classified as a non-major rule pursuant to sections 1(b) (1), (2), and (3) of that order because (1) it would not have an annual effect on the economy of $100 million or more, (2) it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it would not have a significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA because the changes would only change the nomenclature of the Good grade name. Further, the beef grades are applied equally to all size entities covered by these regulations, and the use of grades is voluntary.

Comments

All persons who desire to submit written data, views, or comments on this proposal are invited to submit such material, in duplicate, to the Standardization and Review Branch, Livestock and Seed Division, AMS, 2649 South Building, U.S. Department of Agriculture, Washington, DC 20250 on or before May 4, 1987. Comments must be signed and include the address of the sender and should bear a reference to the date and page number of this issue of the **Federal Register.** Since the comments will be considered in the resolution of this proposal, they should include definitive information which explains and supports the sender's views. All written submissions will be made available for public inspection at the office of the Standardization and Review Branch, Livestock and Seed Division, AMS, 2649 South Building, during regular office hours.

Background

One of the primary purposes of grades is to divide the population of cattle or beef into uniform groups (or similar quality, yield, value, etc.) in order to facilitate marketing. Grades provides a simple, effective means of describing product that is easily understood by both buyers and sellers. By identifying different segments of the commodity, grade enable buyers to obtain that particular portion of the entire range that meets their individual needs. At the same time, grades are also important in transmitting information to cattlemen so that better informed production decisions can be made. For example, if a particular grade of beef is in demand, this market preference is communicated to cattle producers, so they can adjust production toward that particular grade.

The official grade of a beef carcass consists of the quality grade and the yield grade. The beef quality grades are predicated on the factors associated with the expected palatability of beef. Differences in the yield of retail cuts are identified by the yield grades. The determination of the quality grade is based primarily on the maturity of the carcass and the amount of marbling or intramuscular fat (fat within the muscle). Higher degrees of marbling are associated with more palatable beef. Research (Smith *et al.*, 1984, An evaluation of the USDA Beef Carcass Quality Grade Standards, a report to USDA from Texas A&M University; and, Branson *et al.*, 1984, National consumer beef study—phase I, Research Report MRC 84–1, Texas A&M University) indicates that Prime grade beef is superior in palatability to Choice, Choice is superior to Good, and Good is superior to Standard.

Beef grading is a voluntary service provided on a user-fee basis. Applicants for service may select the beef they desire to officially grade. Traditionally, almost all of the beef supply which qualifies for the Prime and Choice grade is officially graded. However, very little of the beef that does not qualify for these grades is officially graded. This beef is generally referred to as "no-roll" beef, in reference to the fact that it did not receive a grade roller brand. Although "no-roll" beef is often referred

to within the industry as being equivalent to the Good grade, it is estimated that approximately 80 percent of this beef would qualify for the Good grade if it were graded. The remaining 20 percent is often quite diverse in quality and/or yield characteristics.

The last major revision of the beef quality grade standards was promulgated in 1975. A portion of that revision narrowed the requirements for the Good grade. This change was instituted to make the "new Good grade very uniform or homogeneous in order to increase its usefulness to retailers and others in the trade. However, the industry has not elected to use the Good grade to any great extent, but rather has continued marketing it as "no-roll" beef. One of the primary reasons cited for this lack of use of the Good grade has been that consumers would not accept beef labeled "Good."

The National Consumer Retail Beef Study conducted in 1985 by Texas A&M University has provided key information concerning consumer preferences. This study indicated that consumers can be grouped into several segments with different primary concerns. Some consumers are interested primarily in quality, some in leanness, some in price, and some are interested in certain quality or leanness, but only at a given price. This study did indicate that apparently there are market segments which appear to be quite satisfied with beef from the Good grade.

Public Voice for Food and Health Policy, a non-profit consumer, research, education, and advocacy organization, petitioned the Department of Agriculture (USDA) in June 1986 to amend the beef grade standards. Stating that the "Good" beef grade is leaner than "Prime" or "Choice" and "may not be less desirable, as the current name suggests, to persons who put a premium on nutrition," the petition asked USDA to change the name of the "Good" beef grade. According to the petition, the "Good" name suggests it is inferior to "Choice," less desirable, and fails to convey the positiveness of its leaner attributes. Therefore, the Public Voice petition suggested that consumers who would like to purchase leaner beef are being hurt by the disincentive of the "Good" name.

The petition further stated that consumers cannot visually detect differences between the Choice and Good grades. Because many people do not realize that Federal quality grades refer only to taste and not nutritional value, the petition declared that grades strongly imply that beef with a "Choice" label is preferable to the leaner grade of beef, whether that beef is ungraded or labeled "Good." In addition, the petition asserted that store "lean" brands cannot substitute for a Federal grade ensuring leanness because they do not come with the imprimatur of impartial, accurate Federal grades. The Public Voice petition also indicated that since supermarket grades have no relationship to official Federal classifications, such grades are not dependably consistent among different supermarket chains.

The petition concluded that the discrimination against leaner beef inherent in the nomenclature of the Federal grading system should be eliminated. Therefore, Public Voice proposed that the strong confidence consumers have in the Federal beef grades should be maximized for the benefit of the public's health with a name change to indicate that the "Good" grade is no less desirable than "Prime" or "Choice." This organization suggests the name "Select," which according to the petition conveys appeal and desirability and is an appropriately positive name for a grade that can be promoted for its leaner quality. In addition, Public Voice encourages USDA to begin a consumer education campaign when the new "Select" grade is implemented to explain to the public the benefits of the leaner grade.

A group of twelve health/consumer organizations indicated support for the Public Voice petition. They echoed the Public Voice statement that the strong confidence consumers have in the Federal beef grades should be maximized for the benefit of the public's health.

From a strict palatability standpoint, the hierarchy of the grade name nomenclature of Prime, Choice, and Good appears to accurately portray the decreasing acceptability of the grades. However, according to results from the National Consumer Retail Beef Study, some market segments may base the acceptability of Good beef on characteristics other than palatability, particularly on leanness attributes.

The industry's reluctance to use the Good grade appears to be generally attributed to consumers' perceptions of the inferiority associated with the Good grade name. While there is no scientific evidence to support this contention, neither is there evidence to counter it. Based on the industry's past reluctance to use the Good grade, if the grade name is not changed, we would not anticipate any significant increase in the amount of Good beef that would be graded. The continued lack of use would prevent this type of beef from being marketed under a Federal grade to the fullest extent possible. Those supporting the concept of a name change have indicated their belief that a more favorable grade name would improve the marketing of this beef.

The Select name was used by USDA as an option of the 1981 proposed revision (47 FR 41934–41939) of the quality grade standards. While this option was not officially proposed, the attributes of the "new" grade it would have identified are much the same as the requirements for the current Good grade. Select was used to identify this "new" grade because it was believed that it presented a more positive image than Good but that it did not erroneously portray this beef as being more desirable in palatability than Prime or Choice. The name Select (in lieu of Good) was also used in the 1985 National Consumer Retail Beef Study to identify Good grade beef. Although it was not the objective in either of these instances to evaluate the appropriateness of the Select grade name, there was not any negative connotation indicated by its use.

The use of the Select name should provide an opportunity to portray this beef more favorably without suggesting erroneous attributes. If the Good grade name were changed to Select and as a result the industry increased the official grading of this beef, numerous benefits would accrue to both the beef producer and consumer. The additional graded beef would give a clearer signal to producers about which kind of beef is in demand. In addition, with USDA-graded Select beef, consumers would have a basis for objective evaluation and comparison shopping. At present, with independent store-brand labels, it is often difficult for consumers to determine value or make comparisons.

Good (Select) grade beef does have slightly less intramuscular fat (marbling) than Choice beef. However, there is potential for misuse or confusion when a quality grade is used to refer to leanness or nutritional differences. The lower fat content of Good does provide some nutritional advantages in terms of lower calories and a lower percentage of calories from fat. However, these differences between Choice and Good are usually minimal, especially on a cooked, trimmed basis. On the other hand, it should be recognized that while the differences are generally valid on a cut-by-cut comparison between the two grades, some Choice cuts have less fat and calories than certain Good cuts. In addition, different cuts from the same carcass of a given grade have variations in fatness (e.g., the chuck has more marbling than the round).

Proposed Standards

Consideration of all the available data and information and an evaluation of the alternatives available indicates that renaming the Good grade to Select would present the industry with an opportunity to use a "new" official grade to identify an alternative to the Choice grade for market segments desiring such beef. This beef has been found to be generally acceptable in palatability, and many consumers in the National Consumer Retail Beef Study gave this beef a high rating because of its perceived leanness. Since there would appear to be marketing opportunities for this type of beef and it would appear to be in the public interest to identify a larger segment of the fed-beef supply for its positive attributes of leanness, and also because consumers would benefit from the opportunity of using an official USDA grade to identify a particular kind of beef with specific qualities different from the Prime or Choice grade, it is proposed that the "Good" quality grade be renamed "Select."

The standards for grades of slaughter cattle, which are based on the beef carcass grade standards, would be revised to reflect the changes proposed for the beef carcass grade standards. Revisions are proposed to the slaughter cattle standards (7 CFR 53.203, 53.204, 53.205, and 53.206) so that the grade name terminology used would be consistent with that used for the carcass standards, where appropriate. Grades of slaughter cattle are intended to be directly related to the grades of the carcasses they produce.

For the reasons outlined, it is proposed that certain sections of the regulations and standards appearing at 7 CFR Part 53 as they relate to livestock and certain sections of the regulations and standards appearing at 7 CFR Part 54 as they relate to meats, prepared meats, and meat products be revised as set forth below.

List of Subjects

7 CFR Part 53

Livestock, Cattle, Grading and certification, Standards.

7 CFR Part 54

Beef carcasses, Meat and meat products, Grading and certification, Standards.

PARTS 53 AND 54—[AMEMDED]

1. The authority citation for Parts 53 and 54 is revised to read as follows:

Authority: Agricultural Marketing Act of 1946, sec. 203, 205, as amended, 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

§§ 53.203, 53.204, 53.205, 53.206, 54.104, 54.106, 54.107 [Amended]

2. In 7 CFR Parts 53 and 54, remove the word "Good" and replace it with the word "Select" in the following places:

(a) Section 53.203(a) sentences 5 and 7;

(b) Section 53.203(b)(3), sentence 1;

(c) Section 53.204(c) heading;

(d) Section 53.204(c)(1), sentence 1;

(e) Section 53.204(c)(2), sentences 1, 2, and 7;

(f) Section 53.205(c), heading;

(g) Section 53.205(c)(1), sentence 1;

(h) Section 53.205(c)(2), sentences 1, 2, and 4;

(i) Section 53.206(a)(4), sentence 2;

(j) Section 53.206(b)(4), sentence 3;

(k) Section 53.206(c)(4), sentence 3;

(l) Section 53.206(d)(4), sentence 3;

(m) Section 53.104(b), sentences 3 and 5;

(n) Section 53.104(n), sentence 1;

(o) Section 53.104(o), sentence 3 (twice) and Figure 1;

(p) Section 53.104(q), sentence 7;

(q) Section 53.106(c), heading; 7;

(r) Section 53.106(c)(1), sentences 1 and 2;

(s) Section 54.106(c)(3), sentence 1; and

(t) Section 54.107(c), heading and sentence 1.

§ 54.11 [Amended]

3. In § 54.11(a)(1)(1)(vii) insert "Select" following "Choice" in sentence 1.

§ 54.17 [Amended]

4. In § 54.17(b) insert "Select" following "Choice" in sentence 1.

Done at Washington, DC on February 27, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-4515 Filed 3-3-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue through September 1987 a suspension of portions of the Eastern Colorado Federal milk order. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also proposed to be suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continuation of the suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due on or before March 11, 1987.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Room 2968, South Building; U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for the months of March through September 1987:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

All persons who want to send written data views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service 2968, South Building; U.S. Department of

Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March 1987 in the suspension period.

The comments that are sent will be made available for publich inspection in the Dairy Division office during normal business hours (7 CFR 1.27(b)).

Statement of Considerations

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested by suspension. The suspension would continue to relax for the months of March through September 1987 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and remove the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. The suspension currently in effect applies to milk deliveries through February 1987. The provisions proposed to be suspended have been suspended since September 1985.

The order provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distributing plants during the months of March, April, May, June, July and December, and up to 20 percent in other months. Suspension of the requested language would allow up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Mid-Am states that the volume of producer milk pooled on the Eastern Colorado order began to increase following the conclusion of the Milk Diversion Program in 1985, and continued to increase during 1986. According to the cooperative, Eastern Colorado producer milk increased 12.7 percent over the previous year during 1985, and 5.8 percent from 1985 to 1986. Producer milk used in Class I increased only 1.8 percent from 1984 to 1985, and did not change from 1985 levels in 1986. Mid-Am states that milk production continues to be above year-ago levels in the Eastern Colorado milkshed due to a milk winter in that area, and is expected to continue to remain above 1986 production through the spring and summer months. The cooperative states that as a result of continued increased milk production, there are ample supplies of local milk available to meet the fluid requirements of Denver-area distributing plants. The cooperative estimates that approximately 15 loads of producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers for continued pool status. The cooperative states that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The Authority citation for 7 CFR Part 1137 continues to read as follows:

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

Signed at Washington, DC, on February 26, 1987.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 87–4514 Filed 3–3–87; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1987–4]

Contributions to and Expenditures by Delegates to National Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed revisions to its regulations at 11 CFR 110.14 governing the application of the provisions of the Federal Election Campaign Act, of 1971, as amended, 2 U.S.C. 431 *et seq.* (the "Act" or "FECA") to the presidential delegate selection process. A primary focus of the proposed revisions would be to clarify the distinction in the treatment of individual delegates and delegate committees under these rules. The Commission also seeks comments on several issues that have arisen during its administration of § 110.14. A public hearing has been scheduled and proposed amendments discussed in this notice. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before April 3, 1987. The Commission will hold a hearing on April 22, 1987, at 10:00 a.m. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376–5690 or Toll-free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is reviewing its regulations governing the delegate selection process at 11 CFR 110.14 to determine how best to balance the interests involved in regulating the activities of delegates, delegate committees, presidential candidate committees and other political committees and groups active in the delegate selection process. As a part of this review, the Commission seeks comments on proposed revisions to § 110.14 and on several issues that have arisen concerning the delegate selection rules. To facilitate comment on these areas, the following Notice is divided into two parts. Part I contains a discussion of several issues that the Commission has encountered during its administration of § 110.14. Specifically, public comment is sought in two areas. The first area concerns questions, which arose during the 1984 election cycle, involving the possible affiliation between a delegate committee and a presidential candidate's principal campaign committee. Secondly, comment is sought on how the Commission should regulate activities conducted in relation to a delegate selection process by multicandidate committees established by individuals who later become presidential candidates and activities by draft committees.

Part II of this Notice requests comments on the proposed revisions to the regulations governing delegates and delegate committees at 11 CFR 110.14 that follow. Few substantive amendments have been proposed to the current provisions of § 110.14. The major revisions would reorganize the provisions to make their application to individual delegates and delegate committees more clear. In addition, this notice discusses several possible conforming amendments that could be made to other sections of the Commission's regulations that are

affected by the rules set forth in § 110.14. No final decision has been made by the Commission on the proposed revision of § 110.14.

I. Regulation of Activities in the Delegate Selection Process

The Commission's regulation of the delegate selection process stems from its long-standing view that funds received to further the selection of a delegate are "contributions" and "expenditures" made to influence a federal election. The Act defines the term "election" to include both a national nominating convention and a primary election held to select delegates to such a convention. 2 U.S.C. 431(1) (B) and (C). Funds received or disbursed to further the selection of a delegate are received or expended for the purpose of influencing a national nominating convention or for the purpose of influencing a primary election held to select delegates to such a convention. Thus, the Commission has required that only funds permissible under the Act may be received or expended for the purpose of influencing the selection of a delegate.

Yet, the Commission has also been aware that delegates themselves, are not included within the Act's definition of "candidate." 2 U.S.C. 431(2). The Commission's regulation do not, therefore, subject individual delegates to the full range of registration and reporting requirements federal candidates are obligated to meet under the Act. Contributions made to individuals to further their selection as delegates are also not subject to the contribution limits applicable to federal candidates, although they do count towards the $25,000 annual limitation on contributions by individuals. The delegate selection rules do, however, distinguish between individual delegates and individuals who act as a group to further the selection of one or more delegates. Such a group, termed a "delegate committee", becomes a political committee and incurs registration and reporting obligations upon reaching the $1,000 threshold for political committee status under 2 U.S.C. 431(4). Delegate committees that qualify as political committees also have the same contribution limitations as other political committees.

Throughout the history of its regulation of the delegate selection process, the Commission has acknowledged the inevitable relationship between delegate selection activities and presidential campaigns. Thus, the Commission has sought to provide some flexibility to delegates in furthering their campaigns, including permitting a certain amount of interaction with the presidential candidates they support. The Commission's regulations, for example, contain provisions on special expenditures for communications that advocate the selection of a delegate and include information on or reference to a Presidential candidate. 11 CFR 110.14(d)(2). While such interaction is permitted, delegate selection activities may not be used as a means of avoiding the requirements imposed on presidential candidates who receive public financing.[1] The Commission's delegate selection rules balance the flexibility permitted delegates to further their selection with preventing such circumvention of the restrictions on publicly financed presidential candidates by attributing certain contributions and expenditures made in the delegate selection process to the candidate's expenditure limits. *See* 11 CFR 110.14(c); 110.14(d)(2)(ii)(A)(*1*).

Recently, the Commission has been faced with difficult questions regarding its current delegate selection regulations and the objectives sought in those rules. Public comment is sought on the following issues to assist the Commission in examining its regulations governing the delegate selection process and determining how best to regulate activities conducted in this area.

A. Affiliation Between Delegate Committees and Candidate Committees

The Commission requests comments on questions that arose during its consideration of compliance matters in the 1984 presidential election cycle concerning the possible affiliation of a delegate committee and a presidential candidate's authorized committee. *See* Matters Under Review 1667 and 1704 (1984). Those matters raised several issues regarding the application of the so-called "anti-proliferation" provisions of the Act in the context of the delegate selection process. Specifically, for the purposes of the contribution limitations, FECA treats contributions by more than one political committee established, financed, maintained, or controlled by any corporation, labor organization, or any other person or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, as contributions made by a single political committee. 2 U.S.C. 441a(a)(5). Pursuant to the aforementioned "anti-proliferation" provisions, such committees are considered affiliated committees and, as such, share a single limit for contributions they receive as well as those they make to candidates and political committees.

Section 110.3 of the Commission's regulations implements these provisions and establishes rules for determining whether particular committees are affiliated. Under these rules, certain committees, including two or more committees set up by the same group of persons, are viewed as *per se* affiliated. 11 CFR 110.3(a)(1)(ii)(E). In determining whether affiliation exists between committees not considered *per se* affiliated, the Commission may examine a variety of factors in the relationship between two committees and their sponsors. The Commission's regulations contain a set of indicia that may be used to determine if political committees are affiliated because of common establishment, financing, maintenance or control. *See* 11 CFR 110.3(a)(1)(iii). These indicia include the ability to control or influence the actions of an entity or the decisions of its officers or members. Another factor that may be considered is whether there have been substantial transfers of funds between committees.

In the delegate selection process, some contact between the candidate's authorized committee and prospective delegates is expected and often necessary. A candidate's committee may provide delegates with advice regarding the statutory and regulatory requirements of which the delegates must be aware, for example. However, when there is interaction between a delegate committee and a presidential candidate's campaign committee, the question arises of whether these contacts go beyond normal interchange to become evidence of affiliation between the committees. If a delegate committee were found to be affiliated with a presidential candidate's authorized committee, both committees would be subject to a single contribution limit and expenditures by the delegate committee would be attributable to the candidate's expenditure limits under the public financing statutes. Arguably, the Commission could permit individual delegates to have limited interaction with a presidential candidate without that contact affecting the candidate's contribution or expenditure limits, but

[1] Presidential candidates may receive public financing for the primary election on a matching basis and full funding for the general election pursuant to the Presidential Primary Matching Payment Account Act. 26 U.S.C 9031 *et seq.*, and the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.* Receipt of these funds is conditioned upon several requirements. For example, publicly financed candidates are subject to limits on the amount that they may spend for their campaigns. 2 U.S.C. 441a(b); 11 CFR 110.8(a). In addition, there are strict requirements that must be met before a contribution will be matched. 26 U.S.C. 9034; 11 CFR 9034.2(a).

impose a total prohibition on interaction between a delegate committee and a presidential campaign as the only means to avoid an affiliated relationship. Such a rule would be particularly significant to an individual delegate's decision to act alone or join with other delegates to form a delegate committee.

The possibility of affiliation between a delegate committee and an authorized committee was considered by the Commission at various points in its regulation of the delegate selection process. For instance, the Commission's 1976 policy statements on the application of the Act to the delegate selection process noted the close relationship between delegates and candidates. *See* Policy Statement on the Delegate Selection Process *reprinted in the* FEC *Record* Vol. 2, No. 3 (1976); Policy Statement on Payment of Delegates' Travel and Subsistence During National Nominating Conventions, 41 FR 24513 (June 16, 1976). Indeed, the rules set forth in those statements were based in part upon the assumption that authorized delegates would work closely with and be directed by the presidential candidate's campaign. Moreover, during its consideration of draft rules in 1980, the Commission discussed the effect of presidential candidates putting potential contributors in touch with delegates to help finance their campaign for selection and whether that fact could result in a Commission determination that the delegates' expenditures were in-kind contributions. Transcript of January 31, 1980 meeting at 18–21.

In view of the special relationship between delegates and the presidential candidates they support, a question arises as to how interaction between a delegate committee and a presidential candidate's authorized committee should be treated under the affiliation rules. Comment is sought on whether there are circumstances under which a delegate committee and a presidential campaign committee would be considered *per se* affiliated or presumed to be affiliated. Similarly, comments are requested on the types of interaction between a delegate committee and a presidential campaign committee that would indicate common establishment, financing, maintenance, or control sufficient to result in affiliation between the committees. It is possible for instance, that a presidential candidate's authorization of delegates who support his or her candidacy, either voluntarily or as required by state law, may result in affiliation between the presidential campaign committee and a delegate committee formed to further the selection of these individual delegates. Several states require that a delegate run on the ballot as committed to a particular candidate or require that a delegate receive authorization from the candidate he or she supports before seeking selection as a delegate. In such states, the issue arises of whether this contact is sufficient to view a delegate committee supporting the authorized or committed delegates as affiliated with the presidential candidate's authorized committee for purposes of FECA.

On the other hand, the Commission could allow some involvement between a delegate committee and a presidential campaign committee without these contacts rendering them affiliated committees. For example, the Commission could consider whether a presidential committee was involved in the formation or financing of a delegate committee, such as by recruiting delegates, by making direct contributions to the committee or arranging for contributions to be made to the committee, in determining whether the affiliation rules should be applied. In view of this, the Commission seeks comments on what aspects of the relationship between a delegate committee and a presidential campaign committee should be considered in making an affiliation determination and on when interaction between these committees is sufficient to result in affiliation. In addition, comments are requested on when interaction between a delegate committee and a presidential candidate's authorized committee would not result in affiliation. Comments are also sought on whether a revision of the Commission's regulations is necessary to clarify the application of the affiliation rules to the relationship between a presidential candidate's authorized committee and a delegate committee.

In addition, the Commission seeks comments on the related issue of when delegate committees should be viewed as affiliated with each other. The possibility exists that delegate committees may have such a close relationship that they should be considered affiliated committees. The question, thus, arises of what standards should be applied to determine whether two or more delegate committees are affiliated. Comments are sought on whether the Commission's regulations should be amended to address this issue.

B. Regulation of Multicandidate Committees and Draft Committees Active in the Delegate Selection Process

Several novel questions concerning the Commission's jurisdiction and the scope of the delegate selection rules have arisen regarding the process for selecting delegates to the national nominating conventions to be held in 1988. Political committees and unregistered organizations have already begun activities in anticipation of the selection of delegates in 1988. The Commission seeks comments on the implications raised by these activities, particularly with regard to activities conducted by multicandidate committees established by individuals who later become presidential candidates and activities conducted by draft committees.

For example, in Advisory Opinion ("AO") 1986–6, the Commission was presented with questions regarding the extent to which a multicandidate committee may engage in activities designed to encourage individuals to run at the local level as precinct delegates. The request considered in that opinion was submitted by a multicandidate committee established by a federal officeholder who stated that he was neither a candidate for President nor considering a potential candidacy at the time of the request. The committee questioned whether several activities it planned to undertake involving the officeholder would be permissible under the Act. One activity the committee wanted to conduct involved assisting persons seeking selection as precinct delegates in a party primary election scheduled for August 1986. As part of their duties, these precinct delegates would participate in the process of selecting state delegates who would in turn select delegates to the party's national nominating convention in 1988. The committee stated that although its founder would be actively involved in these activities, it did not intend to influence his election to or promote his candidacy for President as part of these activities. In its opinion, the Commission concluded that the described activities would not in themselves "constitute contributions or expenditures for the purpose of influencing the [federal officeholder's] or any candidate's nomination or election to federal office nor require allocation to any candidacy for federal office nor trigger any such candidacy." The opinion noted, however, that any activity that went beyond that described in the request, such as soliciting support for the individual as a candidate or potential candidate, could result in a different conclusion.

The Commission's regulations currently do not address several issues raised by AO 1986–6. For example, one issue that emerged during the

Commission's deliberations on AO 1986–6 concerned determining when particular events are part of a delegate selection process. The Commission determined that the election of precinct delegates involved in AO 1986–6 was not covered by the provisions of § 110.14. The current regulations expressly apply to all levels of a process for selecting delegates to a national nominating covention. 11 CFR 110.14(a). Although the history of the regulations indicates the Commission's intention to cover the delegate selection process from the beginning, it is not clear whether inclusion of a particular activity within that process is to be determined by state law, party rules or by the Commission on a case-by-case basis. The Commission requests comments, therefore, on whether the regulations should be amended to define with more precision when specific activities are part of a delegate selection process governed by § 110.14 and on what standards should be used to determine when specific activities are part of the process.

Furthermore, although a majority of the Commission found that the events as described were too far removed from the presidential delegate selection process to be covered by Commission regulations, consideration of this advisory opinion request generated questions on the potential effect of the regulations on activities conducted in relation to a delegate selection process by a multicandidate committee sponsored by a federal officeholder or potential candidate. One issue raised concerned the effect on a presidential candidate if a multicandidate committee earlier made expenditures that could be seen as aiding that individual's later candidacy. For example, it must be considered whether expenditures by the committee would later be chargeable to the candidate's expenditure limits. The Commission's regulations currently do not address this precise issue. However, the broad rationale of these rules which charge contributions and expenditures by political committees that support a presidential candidate to the candidate's expenditure limits, could be viewed as applicable to this situation. *See, e.g.*, 11 CFR 110.14(c); 110.14(d)(2)(ii)(A)(*1*). A corollary issue raised by this approach concerns what would be involved in proving that a multicandidate committee's expenditures were sufficiently connected to an individual who later becomes a candidate.

Further questions arise along these lines concerning the effect that activities conducted by a multicandidate committee in the delegate selection process would have on an individual who is considering a potential presidential campaign. The Commission's regulations carve out a limited exception for testing the waters activities designed to evaluate the feasibility of a campaign for Federal Office. *See*, 11 CFR 100.7(b)(1), 100.8(b)(1) and 101.3. An individual is not required to register and report as a candidate as a result of his or her testing the waters activities, but funds used for such activities are subject to the Act's contribution limitations and prohibitions. Under the specific facts of AO 1985–40, the Commission permitted a multicandidate committee to undertake certain activities to assist the testing the waters efforts of an individual who was closely identified with the committee. However, the question arises as to whether activities by such a committee in the delegate selection process may properly be viewed as appropriate testing the waters activities or constitute activities relevant to conducting a campaign.

Issues of the nature presented by a multicandidate committee's involvement in the process for selecting delegates could also be raised with regard to a draft committe that recruited and assisted delegates. A draft committee is organized to gain grass roots support for the purpose of influencing an individual to become a candidate for federal office. At least one draft committee has indicated in the press that it intends to become actively involved in promoting the selection of delegates who support the draft committee's proposed candidate. Such activities in the delegate selection process may be viewed as outside the narrow range of activities draft committees have been permitted to engage in by the courts without being considered related to a candidate. *See FEC v. Machinists Non-Partisan Political League*, 210 U.S. App. D.C. 267, 655 F.2d 380 (D.C. Cir.) *cert. denied* 454 U.S. 897 (1981) and *FEC v. Florida for Kennedy Committee*, 681 F.2d 1281 (11th Cir. 1982). If a draft committee recruited and assisted delegates committed to an individual who later became a publicly financed presidential candidate, a question arises as to whether there are any circumstances under which a draft committee's contributions and expenditures in the delegate selection process are chargeable to that candidate's expenditure limits. Also, the effect of a disavowal by an individual who is supported by a draft committee that has been active in the process for selecting delegates would have to be considered. Serious questions would arise if a presidential candidate who had earlier disavowed a draft committee's actions were allowed to benefit from its efforts to recruit delegates on his or her behalf.

The Commission welcome comments on the aforegoing issues raised with regard to the scope of the Commission's regulations and the participation in the delegate selection process by multicandidate committees and draft committees associated with individuals who may later become presidential candidates. Comments are also sought on whether the Commission's regulations at 11 CFR 110.14 should be revised to address these questions.

II. Proposed Revisions to 11 CFR 110.14

Section 110.14 of the Commission's regulations establishes guidelines for delegates and delegate committees on the manner in which the Act impacts on their activities. It permits a wide range of activities in the process for selecting delegates to a national nominating convention. Under § 110.14, funds received and expended for delegate selection activities are contributions and expenditures made to influence federal elections. Only funds permissible under the Act may be used for such activities. However, because delegates are not candidates under FECA, individual delegates are not subject to the same limitations on contributions to candidates or the same reporting requirements as candidates. Delegate committees that qualify as political committees under 2 U.S.C. 431(4), on the other hand, have the same reporting requirements and are subject to the same contribution limitations as other political committees with certain exceptions. The Commission's regulations contain special provisions on expenditures by delegates and delegate committees and certain expenditures made by either may trigger the limits on contributions to a federal candidate or affect a presidential candidate's expenditure limitation.

The major focus of the proposed revisions would be to reorganize the provisions of § 110.14 to clarify the distinction between the treatment of individual delegates and delegate committees under these rules. Thus, the changes proposed in the draft rules fall into two categories. The proposed amendments would first further clarify the rules governing contributions to and expenditures by individual delegates and delegate committees generally. Secondly, the draft regulations would reorganize the provisions permitting delegates and delegate committees to make payments for "dual purpose"

communications into separate paragraphs. In addition to comments on the text of the proposed revisions, the Commission seeks comments on several possible amendments that could be made in the regulations.

A. Contributions and Expenditures in the Delegate Selection Process

The proposed revisions would not substantively amend the present provisions of § 110.14 governing contributions and expenditures in the delegate selection process.

However, a new provision would be added in paragraph (c) to clarify that funds received or disbursements made for the purpose of furthering the selection of a delegate to a national nominating convention are contributions or expenditures made for the purpose of influencing a federal election. This paragraph would also contain two exceptions to the general rule based upon current § 110.14(g). First, following § 110.14(g)(2), draft paragraph (c)(1)(i) would provide that fees paid by a delegate to a State or subordinate State party committee as a condition for ballot access as a delegate are not contributions or expenditures for the purpose of influencing federal elections. Payments made to a State party committee by individuals who seek to qualify for selection as delegates are analogous to payments made by candidates for Federal office as a condition of ballot access that are specifically excluded from the definition of "contribution" and "expenditure". 2 U.S.C. 431(8)(B)(xiii); and 431(9)(B)(x); 11 CFR 100.7(b)(18); and 100.8(b)(19). *See also* AO 1980–5. The second category of payments that would be exempted are administrative expenses incurred by a State or subordinate State party committee in connection with the sponsoring of conventions or caucuses during which delegates to a national nominating convention are selected. This draft provision would follow current § 110.14(g)(1). *See* AO 1975–12.

Proposed paragraph (c)(2) would follow current § 110.13(f) to require that all funds received and disbursements made for the purpose of furthering a delegate's selection to a national nominating convention, including payments required as a condition of ballot access and administrative expenses incurred by a State or subordinate State committee, be made from funds permissible under the Act.

The current regulations governing the application of the Act's reporting requirements and contributions limits to contributions to and expenditures by delegates and delegate committees are set forth in paragraphs (c), (d) and (e). Under current § 110.14(c), contributions made to a delegate for the purpose of furthering his or her selection are subject to neither the contribution limits nor the reporting requirements of the Act. The present rules similarly provide that expenditures by a delegate to advocate his or her own selection are not subject to limitation or reporting requirements. 11 CFR 110.14(d)(1). The current regulations also permit delegates to make expenditures for communications advocating their selection that include information on or reference to a presidential candidate. 11 CFR 110.14(d)(2). Paragraphs (c) and (d) also contain parenthetical references to the registration and reporting requirements for delegate committees set forth in § 110.14(e).

While the proposed rules do not offer any substantive changes to § 110.14, the draft rules would clarify the different requirements for individual delegates and delegate committees under this section by eliminating the parenthetical references to delegate committees and reorganizing the provisions governing contributions to and expenditures by delegates and delegate committees into separate paragraphs. Thus, proposed paragraph (d) would contain the provisions now found in current § 110.14(c) to govern contributions made to an individual delegate. Similarly, draft paragraphs (e) and (f) would follow present § 110.14(d) to contain the rules governing expenditures by a delegate. Contributions made to and by delegate committees would be covered in draft paragraph (g). Proposed paragraphs (h) and (i) would govern expenditures made by a delegate committee to advocate the selection of one or more delegates. Each of these sections would parallel the provisions governing individual delegates and detail the reporting requirements applicable to delegate committees.

The Commission requests comments on the text of draft § 110.14(c) and the proposed reorganization of the rules governing contributions and expenditures in the delegate selection process. Comment is also sought on whether further revisions are necessary to distinguish the treatment of activities by individual delegates from those conducted by delegate committees under § 110.14.

B. "Dual Purpose" Expenditures

Minor amendments would be made to reorganize the rules governing "dual purpose" expenditures under the draft regulations. The Commission's regulations permitting "dual purpose" expenditures are based upon the so-called "coattails" provisions of 2 U.S.C. 431(8)(b)(xi) which exempt certain payments made by candidates for any public office from the definition of "contribution". The "coattails" exemption permits such candidates or their authorized committees to pay for the costs of campaign materials that include information on or reference to another candidate, used in connection with volunteer activities not involving the use of general public political advertising, without those payments being considered a contribution to the candidate referred to in the materials. Such payments must be made from funds that are permissible under the Act.

Pursuant to current § 110.14(d)(2), delegates and delegate committees may make expenditures for campaign materials that advocate the selection of a delegate and include information on or reference to a presidential candidate. Such expenditures for delegate campaign materials used in connection with volunteer activities are not considered contributions to a presidential candidate or expenditures that count against the candidate's expenditure limitation. 11 CFR 110.14(d)(2)(i). Only delegate committees, and not individual delegates, are required to report such expenditures. Current § 110.14(d)(2)(ii) provides that expenditures for such communications using general public political advertising are neither subject to the contribution limits nor required to be reported unless they are in-kind contributions to the candidate or independent expenditures.

Under the proposed revisions, draft paragraph (f) would govern "dual purpose" expenditures by individual delegates, while proposed paragraph (i) would cover those by delegate committees. Draft paragraphs (f) and (i) would follow the current regulations to cover "dual purpose" expenditures in three respects. First, proposed paragraphs (f)(1) and (i)(1) would govern "dual purpose" expenditures involving volunteer activities. The provisions relating to "dual purpose" expenditures where general public political advertising is used would set forth in draft paragraphs (f)(2) and (i)(2). The third set of proposed rules in proposed paragraphs (f)(3) and (i)(3), governing republication of a candidate's campaign materials, are based upon the provisions of current § 110.14(d)(2)(ii)(A)(2). Following the present rules, and expenditure for the republication of a candidate's materials would be an in-kind contribution to the candidate. Such expenditures would not be chargeable to a presidential candidates's expenditure

limits, however, unless the republication is done in cooperation, consultation, or coordination with the candidate. *See* 11 CFR 109.1(d)(1).

A minor revision has been proposed in the draft rules governing "dual purpose" expenditures to refer to the inclusion of information on or reference to candidates "for any public office" in campaign materials used in a volunteer activity or when general public political advertising is used. This proposed revision recognizes the fact that a delegate or delegate committee may mention other candidates in addition to a candidate for the office of President in campaign materials. Such candidates may include those for State or local, as well as Federal, offices.

The proposed revisions are intended to address concerns as to whether delegate committees may take advantage of the provisions of the current regulations that permit individual delegates to make "dual purpose" payments for communications advocating their selection and including information on a presidential candidate. During the 1984 election cycle, a controversy arose over whether the special treatment for such campaign materials is available only to individual delegates and not to delegate committees. Indeed, contentions were made that the Commission's regulations at § 110.14 distinguish between individual delegates and delegate committees and that delegate committees should be viewed like any other political committee that makes expenditures advocating the election of a particular candidate for Federal office. Several parties have contended that expenditures made by delegate committees for such communications, regardless of whether general public political advertising is used, are either in-kind contributions to the candidate or independent expenditures.

The Commission has indicated that the provisions governing "dual purpose" expenditurs govern delegate committees as well as individual delegates with the only difference being that delegate committees are required to report such expenditures. This view is reflected in the cross-reference to the reporting requirements for delegate committees throughout the general provisions of the current regulations governing contributions and expenditures in the delegate selection process. Furthermore, in AO 1980–5, the Commission indicated that the rules permitting "dual purpose" expenditures applied equally to individual delegates and delegates who join together to form a political committee.

The proposed rules would permit delegate committees to make "dual purpose" expenditures by specifically including separate paragraphs in the draft regulations stating that delegate committees may make expenditures for communications that advocate the selection of one or more delegates and include information on a candidate. Public comments are sought on the proposed rules and on alternative approaches available to the Commission.

In addition to comments on the text of the proposed rules, the Commission seeks comments on whether it should revise its rules on "dual purpose" expenditures using public political advertising. These provisions have not been amended in this draft of § 110.14. Thus, as under the current rules, such payments are not subject to the contribution limits or required to be reported unless they are in-kind contributions to a candidate or independent expenditures. "Dual purpose" expenditures using general public political advertising would be in-kind contributions if they are made in coordination or consultation with a candidate or his or her authorized committee. *See* 2 U.S.C. 441a(a)(7). The portion of the expenditure allocable to a Federal candidate would be subject to the limitations on contributions and must be reported by the candidate's authorized committee. In the case of a presidential candidate, except for republication of a candidate's materials without coordination with the candidate, such in-kind contributions are chargeable to a presidential candidate's expenditure limitation.

On the other hand, "dual purpose" expenditures using the media would continue to be viewed as independent expenditures if they expressly advocate the election or defeat of a clearly identified Federal candidate and are made without the coordination or cooperation of the candidate. Such "dual purpose" expenditures would be subject to the requirements for independent expenditures in 11 CFR Part 109. The portion of such an expenditure allocable to the presidential candidate must be reported as an independent expenditure.

When § 110.14 was originally adopted, the Commission was concerned that delegates could make expenditures for communications referring to a presidential candidate without the candidate's knowledge and that these expenditures would be charged to the candidate's contribution or expenditure limits. Thus, the standard for determining whether expenditures for communications referring to a candidate constitute in-kind contributions to the candidate turns on whether there has been consultation or coordination with the candidate. Similarly, the Commission was concerned that a reference to a candidate in a communication may not constitute express advocacy so that the expenditure would fall within the definition of an independent expenditure. *See* 11 CFR Part 109. Thus, the current rules necessitate a case-by-case determination of whether a particular expenditure is an in-kind contribution or an independent expenditure, or is considered neither.

The current regulations are consistent with advisory opinions involving communications that referred to a Federal candidate in which the Commission found no in-kind contribution or independent expenditure to have been made. The Commission has noted that while a candidate's appearance on behalf of another candidate through media or public appearances may benefit his or her own campaign, the person paying the costs of such an appearance will not be considered to have made an in-kind contribution to the appearing candidate unless there is an indication that the payments were made to influence his or her election. *See* AO 1982–56. *See also* AOs 1982–15, 1981–37, 1978–4, 1977–42 and 1977–31. In the context of the delegate selection process, the Commission has determined that a party committee that paid for an advertisement in which a Federal candidate endorsed a person running for delegate to a national nominating convention had not made an in-kind contribution to the candidate. The Commission's decision was based on the fact that the purpose of the advertisement was to advocate the selection of the individual as a delegate and that the text of the advertisement emphasized the election of the individual being endorsed, not the candidate. AO 1980–28 and 1980–30. *See also* AO 1984–28.

Questions have arisen, however, as to whether the lack of coordination with a candidate is a valid basis for not subjecting payments for communications using public political advertising to the Act's contribution limits. Concerns have also been expressed that expenditures using public political advertising have as their primary goal advocating the candidacy of the presidential candidate the delegate supports rather than promoting the selection of a delegate. Therefore, the question is raised whether the entire amount of the expenditure should be

attributed to the candidate instead of being allocated between the delegate and the candidate as permitted under the current rules. The Commission requests comments on its rules governing "dual purpose" communications using public political advertising set forth in draft paragraphs (f)(2) and (i)(2). Comments are sought on whether, alternatively, such expenditures should automatically be considered either a contribution in-kind to the candidate referred to or an independent expenditure or whether there are instances in which such expenditures would not fall within these categories. The Commission also seeks comments on whether, if the current rules are retained, the standard for in-kind contributions should be expanded to include more criteria that could be used in determining when expenditures are in-kind contributions and, if so, what criteria should be included. In addition, comments are sought on whether allocation of "dual purpose" expenditures using public political advertising should continue to be permitted.

C. Conforming Amendments

The final area on which the Commission seeks comment concerns possible conforming amendments to several sections of the Commission's regulations that could be made if § 110.14 is revised. First, the definition of "delegate committee" at 11 CFR 100.5(e)(5) could be revised to follow the proposed amendment of current § 110.14(b)(2). Also, a new section could be added to the regulations to cross-reference the definition of the term "delegate" at § 110.14(b)(1). In addition, §§ 110.1 and 110.2 of the Commission's regulations which set forth the limitations on contributions to candidates and political committees, could be amended to clarify that these limits do not apply to contributions to an individual delegate, but are applicable to funds given to a delegate committee.

The Commission welcomes comments on the foregoing proposed amendments and the issues raised in this Notice.

Statutory Authority: 2 U.S.C. 431, 432(c)(2), 434, 438(a)(8), 441a.

List of Subjects in 11 CFR Part 110

Campaign Funds, Elections, Political candidates, Political committees and parties.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the primary purpose of the proposed amendments is to clarify the Commission's rules governing the process for selecting delegates to a national nominating convention. This does not impose a significant economic burden because any entities affected are already required to comply with the Act's requirements in this area.

It is proposed to amend 11 CFR Chapter I as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. By revising the authority citation for Part 110 to read as follows and removing the authority citations following all the sections in Part 110:

Authority: 2 U.S.C. 431(8), 431(a), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b; 441d, 441e, 441f, 441g, 441h, and 441i.

2. By revising 11 CFR 110.14 to read as follows:

§ 110.14 Contributions to and expenditures by delegates and delegate committees.

(a) *Scope.* This section sets forth the prohibitions, limitations and reporting requirements under the Act applicable to all levels of a delegate selection process.

(b) *Definitions.*—(1) *Delegate.* Delegate means an individual who becomes or seeks to become a delegate, as defined by State law or party rule, to a national nominating convention or to a State, district, or local convention, caucus or primary that is held to select delegates to a national nominating convention.

(2) *Delegate Committee.* A delegate committee is a group of persons that receives contributions or makes expenditures for the sole purpose of influencing the selection of one or more delegates to a national nominating convention. The term "delegate committee" includes a group of delegates, a group of individuals seeking selection as delegates and a group of individuals supporting delegates. A delegate committee that qualifies as a political committee under 11 CFR 100.5 must register with the Commission pursuant to 11 CFR Part 102 and report its receipts and disbursements in accordance with 11 CFR Part 104.

(c) *Funds received and expended; Prohibited funds.* (1) Funds received or disbursements made for the purpose of furthering the selection of a delegate to a national nominating convention are contributions or expenditures for the purpose of influencing a federal election, see 11 CFR 100.2 (c)(3) and (e), except that—

(i) Payments made by an individual to a State committee or subordinate State committee as a condition for ballot access as a delegate are not contributions or expenditures. Such payments are neither required to be reported under 11 CFR Part 104 nor subject to limitation under 11 CFR 110.1; and

(ii) Payments made by a State committee or subordinate State party committee for administrative expenses incurred in connection with sponsoring conventions or caucuses during which delegates to a national nominating convention are selected are not contributions or expenditures. Such payments are neither required to be reported under 11 CFR Part 104 nor subject to limitation under 11 CFR 110.1 and 110.2.

(2) All funds received or disbursements made for the purpose of furthering the selection of a delegate to a national nominating convention, including payments made under paragraphs (c)(1)(i) and (c)(1)(ii) of this section, shall be made from funs permissible under the Act. *See* 11 CFR Parts 110, 114 and 115.

(d) *Contributions to a delegate.* (1) The limitations on contributions to candidates and political committees under 11 CFR 110.1 and 110.2 do not apply to contributions made to a delegate for the purpose of furthering his or her selection.

(2) Contributions to a delegate for the purpose of furthering his or her selection count against the limitation on contributions made by an individual in a calendar year under 11 CFR 110.5.

(3) Contributions to a delegate made by the authorized committee of a presidential candidate count against the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(4) A delegate is not required to report contributions received for the purpose of furthering his or her selection.

(e) *Expenditures by delegate to advocate only his or her selection.* (1) A delegate may make expenditures to advocate only his or her selection. Such expenditures may include, but are not limited to: payments for travel and subsistence during the delegate selection process, including the national nominating convention, and payments for any communications advocating only the delegate's selection.

(2) Such expenditures are neither contributions to a candidate, subject to limitation under 11 CFR 110.1, nor chargeable to the expenditure limits of

any presidential candidate under 11 CFR 110.8(a).

(3) A delegate is not required to report expenditures made to advocate only his or her selection.

(f) *Expenditures by a delegate referring to a candidate for public office*—(1) *Volunteer activities.* (i) A delegate may make expenditures to defray the costs of certain campaign materials (such as pins, bumper stickers, handbills, brochures, posters adn yard signs) that advocate his or her selection and also include information or reference to a candidate for the office of President or any other public office provided that:

(A) The materials are used in connection with volunteer activities; and

(B) The expenditures are not for costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(ii) Such expenditures are neither contributions to the candidate referred to nor subject to limitation under 11 CFR 110.1.

(iii) Such expenditures are not chargeable to the expenditure limitation of a presidental candidate under 11 CFR 110.8(a).

(iv) A delegate is not required to report expenditures made pursuant to this paragraph.

(2) *Use of public political advertising.* A delegate may make expenditures to defray costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising to advocate his or her selection and also include information on or reference to a candidate for the office of President or any other public office.

(i) Such expenditures are in-kind contributions to a Federal candidate if they are made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, his or her authorized political committee(s), or their agents. *See* 11 CFR 100.7(a)(iii)(A); 2 U.S.C. 441a(a)(7)(B).

(A) The portion of the expenditure allocable to a Federal candidate is subject to the contribution limitations of 11 CFR 110.1.

(B) A Federal candidate's authorized committee must report the portion of the expenditure allocable to the candidate as a contribution pursuant to 11 CFR Part 104.

(C) The portion of the expenditure allocable to a presidential candidate is chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(ii) Such expenditures are independent expenditures under 11 CFR Part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR Part 109.

(B) The delegate shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.2.

(3) *Republication of candidate materials.* Expenditures made to finance the dissemination, distribution or republication, in whole or in part, of any broadcast or materials prepared by a Federal candidate are in-kind contributions to the candidate.

(i) Such expenditures are subject to the contribution limits of 11 CFR 110.1.

(ii) The Federal candidate must report the expenditure as a contribution pursuant to 11 CFR Part 104.

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were made with the cooperation, or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(4) For purposes of this paragraph, "direct mail" means any mailing(s) by commercial vendors or any mailing(s) made from lists that were not developed by the delegate.

(g) *Contributions made to any by a delegate committee.* (1) The limitations on contributions to political committees under 11 CFR 110.1 and 110.2 apply to contributions made to and by a delegate committee.

(2) Contributions to a delegate committee count against the limitation on contributions made by an individual in a calendar year under 11 CFR 110.5.

(3) A delegate committee shall report contributions it makes and receives pursuant to 11 CFR Part 104.

(h) *Expenditures by a delegate committee to advocate only the selection of one or more delegates.* (1) A delegate committee may make expenditures to advocate only the selection of one of more delegates. Such expenditures may include but are not limited to: payments for travel and subsistence during the delegate selection process, including the national nominating convention, and payments for any communications advocating only the selection of one or more delegates.

(2) Such expenditures are neither contributions to a candidate, subject to limitation under 11 CFR 110.1 nor chargeable to the expenditure limits of any presidential candidate under 11 CFR 110.8(a).

(3) A delegate committee shall report expenditures made pursuant to this paragraph.

(i) *Expenditures by a delegate committee referring to a candidate for public office*—(1) *Volunteer activities.*

(i) A delegate committee may make expenditures to defray the costs of certain campaign materials (such as pins, bumper stickers, handbills, brochures, posters and yard signs) that advocate the selection of a delegate and also include information or reference to a candidate for the office of President or any other public office provided that:

(A) The materials are used in connection with volunteer activities; and

(B) The expenditures are not for costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(ii) Such expenditures are neither contributions to a Federal candidate, subject to the limitations under 11 CFR 110.1 nor chargeable to the expenditure limitation of a presidential candidate under 11 CFR 110.8(a).

(iii) A delegate committee shall report expenditures made pursuant to this paragraph.

(2) *Use of public political advertising.* A delegate committee may make expenditures to defray costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types or general public communication or political advertising to advocate the selection of one or more delegates and also include information on or reference to a candidate for the office of President or any other public office. The delegate committee shall allocate such expenditures between the delegate(s) and candidate(s) referred to in the communications and report the portion allocable to each.

(i) Such expenditures are in-kind contributions to a Federal candidate if they are made in cooperation, consultation or concert with or at the request or suggestion of the candidate, his or her authorized political committee(s), or their agents.

(A) The portion of the expenditure allocable to a Federal candidate is subject to the contribution limitations of

11 CFR 110.1. The delegate committee shall report the portion allocable to the Federal candidate as a contribution in-kind.

(B) The Federal candidate's authorized committee shall report the portion of the expenditure allocable to the candidates as a contribution pursuant to 11 CFR Part 104.

(C) The portion of the expenditure allocable to a presidential candidate is chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(ii) Such expenditures are independent expenditures under 11 CFR Part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR Part 109.

(B) The delegate committee shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.2.

(3) *Republication of candidate materials.* Expenditures made to finance the dissemination, distribution or republication, in whole or in part, of any broadcast or materials prepared by a Federal candidate are in-kind contributions to the candidate.

(i) Such expenditures are subject to the contribution limitations of 11 CFR 110.1. The delegate committee shall report the expenditure as a contribution in-kind.

(ii) The Federal candidate's authorized committee shall report the expenditure as a contribution pursuant to 11 CFR Part 104.

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(4) For purposes of this paragraph, "direct mail" means any mailing(s) by commercial vendors or any mailing(s) made from lists that were not developed by the delegate committee or any participating delegate.

Dated: February 26, 1987.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 87-4464 Filed 3-3-87; 8:45 am]

BILLING CODE 6715-01-W

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Conduct of Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to revise its Code of Conduct for Commission members and employees. These revisions will conform the Code of Conduct to section 9(d) of the Commodity Exchange Act, as recently amended by the Futures Trading Act of 1986, regarding transactions that are forbidden or authorized to be engaged in by Commission members and employees. The Commission's action relates solely to agency organization, procedure, and practice.

DATES: Comments must be submitted on or before April 20, 1987.

ADDRESSES: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Joel R. Maillie, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION: The Commission's Code of Conduct, 17 CFR 140.735-1 *et seq.* (1985), generally establishes ethical standards for Commission members and employees.[1] Revisions to the Code of Conduct are now being proposed in view of amendments to section 9(d) of the Commodity Exchange Act made by the Futures Trading Act of 1986, Pub. L. 99-641 (signed November 10, 1986). The Commission has consulted with and obtained the approval of the Office of Government Ethics of the Office of Personnel Management regarding these revisions.

The Futures Trading Act of 1986 relaxes certain of the restrictions of section 9(d) of the Commodity Exchange Act, 7 U.S.C. 13(d). Among other things, section 9(d) previously prohibited direct or indirect participation by Commission members and employees in investment transactions in actual commodities, with a few specific exceptions for certain commodities. Section 9(d) of the Act also had prohibited Commission members and employees from engaging in any commodity futures, options or leverage transactions. As amended by the 1986 Act, section 9(d) now reads as follows:

> (d) It shall be a felony punishable by a fine of not more than $100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guarantee", or "decline guaranty", or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission. The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this section.

Thus, the 1986 amendments permit Commission personnel to engage in investment transactions in all actual commodities, unless, for example, nonpublic information is used in the transaction, and the Commission is also now expressly authorized to exempt transactions from the prohibitions in section 9(d).

The Commission's Code of Conduct, specifically § 140.735-4(b) (1) and (2), currently incorporates the prohibitions found in section 9(d) as in effect prior to the 1986 amendments. Section 140.735-4(b)(1) currently prohibits Commission members and employees from engaging in any transaction (i) involving a contract of sale of any commodity for future delivery; (ii) involving any commodity that is of the character of, or

[1] The Commission's Code of Conduct was adopted in 1976, 41 FR 27510 *et seq.* (July 2, 1976). It has been amended by 42 FR 15902 (March 24, 1977), 45 FR 70441 (October 24, 1980), 47 FR 26810 (June 22, 1982), and 48 FR 3362 (January 25, 1983).

is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or (iii) for the delivery of any commodity pursuant to a leverage transaction subject to regulation by the Commission. The 1986 amendments to section 9(d) continue these prohibition but, as noted above, authorize the Commission to fashion exemptions. The Commission proposes to revise § 140.735–4(b)(1) by adding language exempting two types of options and futures transactions that the Commission believes should not be subject to the prohibitions of section 9(d). These exemptions are modeled on examples provided by Congress in committee reports accompanying the amendments to section 9(d). *See* H. Rep. 99–624, 99th Cong. 2d Sess. 11–12 (1986); S. Rep. 99–291, 99th Cong. 2d Sess. 10 (1986). Specifically, the exemptions to the general prohibition against participation in commodity futures or option transactions would cover (1) transactions in connection with a ranching, farming, oil and gas, mineral rights or other natural resource operation in which a Commission member or employee has a financial interest, if the Commissioner or employee has no knowledge of or involvement in the particular trading decision and has previously reported to the General Counsel that such types of transactions may take place and certain other details; and (2) transactions engaged in by an investment company (e.g., a mutual fund) or similar pooled investment entity (other than an entity operated by a person who is a commodity pool operator with respect to that entity),[2] in which a Commission member or employee has less than a 1% ownership interest and no other relationship. As the Senate Committee on Agriculture, Nutrition and Forestry observed:

> . . . current law restricts Commissioners and Commission employees from engaging in futures or options transactions. Arguably, these provisions apply to futures hedging activities undertaken in a farming operation in which a Commission employee has a financial interest, even when the employee has no knowledge of or control over the specific trading decisions. In addition, these provisions could arguably prevent a Commission employee from owning an interest in a mutual fund that hedges its stock portfolio using stock index futures contracts. These possible interpretations of existing law may make it increasingly difficult for the Commission to recruit and retain qualified personnel. The Committee bill will ease these restrictions by permitting the Commission to fashion exemptive rules from the general prohibitions contained in existing law. These exceptions will be made only when the Commission has determined that the exemptions pose no conflict of interest or appearance of conflict of interest and are otherwise consistent with the congressional intent expressed in the enactment of section 9(d).
>
> The Committee understands that the Commission would use this authority sparingly. Also, the bill does not change existing provisions of the Act prohibiting Commissioners and employees from divulging confidential information to third parties.

S. Rep. No. 99–291, 99th Cong. 2d Sess. 10 (1986).

Consistent with former section 9(d) of the Act, § 140.735–4(b)(2) of the Code of Conduct currently prohibits Commission members and employees from participating, directly or indirectly, in investment transactions in actual commodities, with a few specific exceptions, such as transactions involving certain farming and ranching operations and U.S. government securities. As set forth above, amended section 9(d) now prohibits investment transactions in any actual commodity only under certain conditions. To implement amended section 9(d), the Commission proposes to revise § 140.735–4(b)(2) so that any investment transaction in actual commodities will now be permitted so long as the transaction does not involve the use of non-public information or a Commission regulated instrument, such as a commodity futures or option contract.[3] In addition, the Commission has determined that conflict of interest concerns could arise where an investment transaction in an actual commodity is effectuated by an instrument that is the functional equivalent of an instrument regulated by the Commission. As the House Agriculture Committee reported:

> For example, various stock indexes are the subject of both futures contracts and options on futures contracts. Investment in these indexes would still be prohibited if effected through commodity futures and options contracts, since these are instruments regulated by the Commission. Some of these indexes, however, also underlie options traded on national securities exchanges and it is questionable whether it would be appropriate to permit Commission employees to acquire an interest in these stock indexes by use of instruments that resemble Commission-related options.

See H. Rep. 99–624, 99th Cong. 2d Sess. 12 (1986).

Regulatory Flexibility Act; Paperwork Reduction Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these proposed revisions to the Code of Conduct would impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules proposed herein, if promulgated, would not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act, 44 U.S.C. 3504(h)(1) requires agencies no later than the publication of a notice of proposed rulemaking in the **Federal Register** to forward to the Director of the Office of Management and Budget a copy of any proposed rule which contains a collection of information requirement. Because the rules proposed herein do not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 140

Commodity futures, Conflict of interests, Ethics, Organizations and functions.

PART 140—[AMENDED]

Accordingly, the Commission, pursuant to the authority contained in sections 2(a)(11), 8a(5), and 9(d) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5), and Pub. L. 99–641, E.O. 11222, 3 CFR, 1964–65 Comp., as amended, and 5 CFR 735.104, proposes to amend its Code of Conduct, Subpart C of Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as specified below:

1. The authority citation for Part 140, Subpart C, continues to read as follows:

Authority: Sec. 8a(5), 49 Stat. 1501, as amended (7 U.S.C. 12a(5)); E.O. 11222, 3 CFR, 1964–1965 Comp.; 5 CFR 735.104.

2. In § 140.735–4 paragraphs (b) (1) and (2) are proposed to be revised to read as follows:

§ 140.735–4 [Amended]

* * * * *

(b) * * *

[2] *See, e.g.*, 17 CFR 4.5(a), which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of particular investment entities defined in 17 CFR 4.5(b), such as certain types of pension funds.

[3] Commission-regulated instruments may permissibly be used, however, if the investment transaction was in connection with a futures or option transaction that itself was permissible under the proposed revisions to § 140.735–4(b)(1) discussed above.

(1) Participate, directly or indirectly, in any transaction,

(i) Involving a contract of sale of any commodity for future delivery;

(ii) Involving any commodity that is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or

(iii) For the delivery of any commodity that is or is to be executed pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract or similar contracts when subject to regulation by the Commission under section 19 of the Act; except that the prohibitions in paragraphs (b)(1) (i) and (ii), of this section shall not apply to:

(A) A transaction in connection with a farming, ranching, oil and gas, mineral rights or other natural resource operation in which the Commission member or employee has a financial interest, if the Commission member or employee is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or option transaction and has previously notified the General Counsel in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage and the identity of the person or persons who will make trading decisions for the operation; or

(B) A transaction entered into by any investment company (e.g., a mutual fund) or similar pooled investment entity other than one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1% of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;[2]

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;[3]

* * * * *

Issued in Washington, DC on February 25, 1987, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 87-4357 Filed 3-3-87; 8:45 am]

BILLING CODE 6351-01-M

[2] Attention is directed to section 9(d) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of futures or option transactions permitted under, paragraph (1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commissioner or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

[3] Attention is directed to section 9(d) of the Commodity Exchange Act that provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock-index also underlies a futures contract regulated by the Commission. Attention is also directed to § 140.735-16 of this part for information regarding interpretative and advisory service by the General Counsel of the Commission.

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5315

Department of the Air Force Federal Acquisition Regulation Supplement; Price Negotiation

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: On October 22, 1986, the Air Force published (at 51 FR 37451) a proposal to supplement FAR Subpart 15.8, Price Negotiation. It is proposed to further supplement FAR Subpart 15.8 to set forth Air Force policy on the segregation of recurring and non-recurring costs for support equipment items.

DATE: Comments must be submitted on writing on or before April 3, 1987. Please cite AF Case No. 55-86 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to HQ USAF/RDCP, Room 4C251, Pentagon, Washington, DC 20330-5040.

FOR FURTHER INFORMATION CONTACT: Maj. Rob Gocke, HQ USAF/RDCP, telephone (202) 697-6522.

SUPPLEMENTARY INFORMATION:

A. Background

Unit price distortions can be caused by the allocation of non-recurring costs to hardware items. In addition, price history files have been distorted by including non-recurring design and development costs, along with the costs associated with identifying requirements, with recurring manufacturing costs. In the absence of cost segregation, it becomes extremely difficult to conduct a reasonable comparison of follow-on support equipment prices with historical data contained in price history files. The key to conducting a reliable price analysis is the comparison with previous unit price, and, therefore, to the extent that the price history file contains non-recurring charges, price comparison will be unreliable and of limited use.

A test was conducted during 1985 by Air Force Systems Command and Air Force Logistics Command to determine the feasibility of segregating recurring and non-recurring costs. Based upon the results of the test, it was decided that segregation should be required for support equipment. Further, the change was intended to minimize the administrative burden on contracting personnel.

B. Regulatory Flexibility Act

Incorporation of the proposed rule in the Air Force Federal Acquisition Regulation Supplement may result in an economic impact on small entities. However, information currently available is insufficient to permit a determination as to the extent of such economic impact, and comments that will permit determination are hereby solicited.

C. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 5315

Government procurement.

Therefore, it is proposed to amend Title 48 of the Code of Federal

Regulations by adding § 5315.892 to the proposed Part 5315 to read as follows:

PART 5315—CONTRACTING BY NEGOTIATION

1. The authority citation for Part 5315 continues to read as follows:

Authority: 15 U.S.C. 301 and FAR 1.301.

2. Section 5315.8 is proposed to be amended by adding § 5315.892 as follows:

5315.892 Segregation of recurring and non-recurring costs for support equipment.

(a) Contract price history files for support equipment can be distorted by the allocation of non-recurring costs to recurring support equipment costs. Such distortions make comparisons between item unreliable and of limited use. Support equipment includes all equipment required to perform the support functions, except that which is an integral part of the mission equipment. It does not include any of the equipment required to perform mission function. Support equipment should be interpreted as tools, test equipment, Automated Test Equipment (when ATE is a support function), organizational, field , and depot support equipment and related computer programs and software.

(b) Non-recurring costs, defined as production costs which are generally incurred on a one time basis, for support equipment must be displayed separately from recurring costs, defined as costs that vary with the quantity being produced such as labor and material. Each piece of support equipment will be shown as a separately priced item and the displayed price shall represent recurring costs. Non-recurring costs may be displayed as a combined single contract line item or subcontract line item related to each item of support equipment.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–4522 Filed 3–3–87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178 and 180

[Docket Nos. HM–183, 183A; Notice No. 85–4]

Meetings To Discuss Comments Received on Proposed Revisions to Requirements for Cargo Tanks

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

ACTION: Proposed rule; notice of meetings.

SUMMARY: RSPA and the Federal Highway Administration (FHWA) wish to advise the interested public that a series of meetings will be held to discuss comments received from certain trade associations on a proposed rule pertaining to the manufacture, repair, requalification and operation of DOT specification cargo tanks. The proposed rule was published as Docket Nos. HM–183, 183A; Notice No. 84–4 (50 FR 37766, September 17, 1985; 50 FR 49866, December 5, 1985). The purpose of these meetings is to assist RSPA and FHWA in receiving clarification and additional supporting information on data and alternative proposals submitted by the commenters.

DATES: The dates for these meetings are as follows:

A. March 20, 1987, from 9:00 a.m. to 4:30 p.m.

B. March 31, and April 1, 1987, from 9:00 a.m. to 4:30 p.m.

C. April 2, 1987, from 9:00 a.m. to 4:30 p.m.

ADDRESSES: All meetings will be held in Room 8236, Nassif Building, 400 Seventh Street, SW. Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hattie L. Mitchell (202) 366–4488; office hours are 7:30 a.m. to 4:00 p.m. Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The items anticipated to be discussed in the meeting include but are not limited to the following:

A. Comments From Compressed Gas Association and National LP-Gas Association.

March 20, 1987, from 9:00 a.m. to 4:30 p.m.

Items to be discussed:
1. Design pressure.
2. Third party inspection and certification.
3. Manhole and internal valves on tanks with capacity of 3,500 gallons or less.
4. Tank structural integrity.
5. Fittings and closures.

B. Comments From Truck Trailer Manufacturers Association.

March 31, and April 1, 1987, from 9:00 a.m. to 4:30 p.m.

Items to be discussed:
1. Design pressure.
2. Third party inspection and certification.
3. Accident damage protection.
4. Tank structural integrity.
5. Application of the ASME Code to MC 306 and low pressure (below 50 psi) MC 307 cargo tanks.
6. Vents, fittings, closures and relief devices.
7. Wet lines.

C. Comments From National Tank Truck Carriers Association and American Petroleum Institute.

April 2, 1987, from 9:00 a.m. to 4:30 p.m.

Items to be discussed:
1. Design pressure.
2. Third party inspection and certification.
3. Vents, fittings, closures and relief devices.
4. Retrofit of manhole assemblies.
5. Wet lines.

A recording of the meetings will be made available in the Dockets Branch. The Dockets Branch is located in Room 8426 of the Nassif Building (office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except public holidays).

Issued in Washington, DC on February 24, 1987 under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87–4556 Filed 3–3–87; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 52, No. 42
Wednesday, March 4, 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

Forms Under Review by Office of Management and Budget

February 27, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Forest Service
State and Private Forestry Accomplishment Reporting 3100–8, 3200–6, 3400–5, 3500–5, 3600–2
Annually
State or local governments; 289 responses; 610 hours; not applicable under 3504(h)
Melvin D. Bellinger, (202)—382–9043

Reinstatement

• Forest Service
Certified Bidders Statement of the Relationship to Other Bidders or Operators (Certification of Nonaffiliation)
On occasion
Businesses or other for-profit; Small businesses or organizations; 1,200 responses; 120 hours; not applicable under 3504(h)
Bill Ryburn, (202) 475–3757

Revision

• Food and Nutrition Service
Status of Claims Against Households
FNS 209
Recordkeeping; On occasion; Quarterly
Individuals or households; State or local governments; 212 responses; 742 hours; not applicable under 3504(h)
Peggy Hickman, (703) 756–3429
• Food and Nutrition Service
Food Stamp Redemption Certificate
FNS–278B and FNS–278–4
On occasion
Businesses or other for-profit; Non-profit institutions; 46,362,653 responses; 4,918,906 hours; not applicable under 3504(h)
M. Patricia Warner, (703) 756–3385
• Food and Nutrition Service
Food Stamp Application to Accept and Redeem Food Stamps
FNS 252, FNS–252–2, and 350
On occasion
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 207,620 responses; 18,868 hours; not applicable under 3504(h)
M. Patricia Warner, (703) 756–3383.

Jane A. Benoit,
Department Clearance Officer.
[FR Doc. 87–4539 Filed 3–3–87; 8:45 am]
BILLING CODE 3410–01–M

Human Nutrition Board of Scientific Counselors; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of the Secretary announces the following meeting:

Name: Human Nutrition Board of Scientific Counselors.

Date: March 18–19, 1987.

Time and Place: March 18, 1987, 9:00 a.m.–5:00 p.m., Room 104 Administration Building; March 19, 1987, 8:30 a.m.–3:00 p.m.; Room 244–W Administration Building, United States Department of Agriculture, Independence Avenue, between 12th and 14th Streets, SW., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review as appropriate and advise the Department as to the scope and quality of the human nutrition research and education carried out in the Department of Agriculture. The board also will prepare a report of its review, including evaluation and recommendations, to be submitted to the Secretary of Agriculture.

Contact Person: Anne Winslow, Confidential Assistant, Office of the Assistant Secretary for Science and Education, U.S. Department of Agriculture, Room 217–W, Administration Building, Washington, DC 20250, telephone (202) 447–5035.

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

Orville G. Bentley,
Assistant Secretary, Science and Education.
[FR Doc. 87–4540 Filed 3–13–87; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Transfer of Administration Jurisdiction; Patoka Lake; IN

AGENCY: Forest Service, USDA.

ACTION: Notice of joint interchange of lands.

SUMMARY: On September 3, 1986, and June 25, 1986, the Secretary of the Army and the Secretary of Agriculture respectively signed a joint interchange

order agreeing to the transfer of administrative jurisdiction of 367.67 acres from the Department of Agriculture to the Department of the Army and 364.60 acres from the Department of the Army to the Department of Agriculture within the boundary of the Hoosier National Forest, Indiana. A copy of the Joint Order, as signed, appears at the end of this notice.

EFFECTIVE DATE: The order is effective March 4, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Staff, Room 1010–RP–E, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013–6090, Telephone: (202) 253–3493.

February 24, 1987.

George M. Leonard,

Associate Chief.

Department of Agriculture, Department of the Army,

Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands; Patoka Lake, Indiana

By virtue of the authority vested in the Secretary of the Army and the Secretary of Agriculture by the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b) it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A, attached hereto and made a part hereof, which lands are within the exterior boundaries of the Hoosier National Forest, Indiana, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture, subject to outstanding rights or interests of record and to such flooding as may occur from the construction, maintenance, and operation of the Patoka Lake Project and subject to a restriction prohibiting improvements below elevation 553 feet mean sea level except as approved in writing by the District Engineer.

(2) The National Forest lands described in Exhibit B, attached hereto and made a part hereof, which are a part of the Hoosier National Forest, Indiana, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army.

(3) Pursuant to section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to laws applicable to the Department of the Army lands comprising the Patoka Lake Project. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereafter subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of the date of publication in the **Federal Register.**

Richard E. Lyng,

Secretary of Agriculture.

Dated: June 25, 1986.

John O. Marsh, Jr.,

Secretary of the Army.

Dated: September 3, 1986.

Exhibit A

Lands Transferred From the Secretary of the Army to the Secretary of Agriculture

Lands under the jurisdiction of the Department of the Army for or in connection with the Patoka Lake Project in Orange County, Indiana as follows:

Segment 11—Portions of Tracts 1113, 1114
Segment 12—All of Tract 1225, Portions of Tracts 1212, 1215
Segment 13—All Tract 1321C, Portions of Tracts 1304, 1316, 1318, 1320

The lands listed above consist of 364.60 acres, more or less. Legal descriptions of the transferred parcels and Real Estate Segment Maps depicting their location are on file in the Office of the District Engineer, U.S. Army Engineer District, Louisville, Kentucky, and the Office of the Forest Supervisor, Hoosier National Forest, Bedford, Indiana.

Exhibit B

Lands Transferred from the Secretary of Agriculture to the Secretary of the Army

Land under the jurisdiction of the Secretary of Agriculture, being portions of the Hoosier National Forest lying west of the Second Principal Meridian in Orange County, Indiana as follows:

In Township 1 South, Range 1 West:
97.20 acres in the NW ¼ of Section 15 and the E½ of Section 16;
43.54 acres in the NE ¼ of Section 17;
18.85 acres in the NE ¼ of Section 18;
98.52 acres in the S ½ of Section 19.
In Township 1 South, Range 2 West:
80.40 acres in the SW ¼ of Section 19;
29.16 acres in the E ½ of the SW ¼ of Section 24.

The lands listed above consist of 367.67 acres, more or less. Legal descriptions of the transferred parcels and Real Estate Segment Maps depicting their location are on file in the Office of the District Engineer, U.S. Army Engineer District, Louisville, Kentucky, and the office of the Forest Supervisor, Hoosier National Forest, Bedford, Indiana.

[FR Doc. 87–4482 Filed 3–3–87; 8:45 am]
BILLING CODE 3410–11–M

Transfer of Lands; McCreary County, KY

AGENCY: Forest Service, USDA.

ACTION: Notice of land transfer.

SUMMARY: On December 16, 1986, the Deputy Assistant Secretary for Natural Resources and Environment transferred approximately 17,234.74 acres, located in McCreary County, Kentucky, from administrative jurisdiction of the Forest Service, Department of Agriculture to the Corps of Engineers, Department of Army. The affected lands have been administered as part of the Daniel Boone National Forest and now will be administered as part of the Big South Fork National River and Recreation Area. A copy of the Notice of Transfer, as signed, appears at the end of this notice.

EFFECTIVE DATE: Effective March 4, 1987, the lands described in the Notice of Transfer are to be administered as part of the Big South Fork National River and Recreation Area pursuant to Pub. L. 93–251.

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Staff, Room 1010–RP–E, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013–6090, Telephone: (202) 235–2493.

February 24, 1987.

George M. Leonard,

Associate Chief

Department of Agriculture

Forest Service Jurisdiction of Certain Land Within the Daniel Boone National Forest; Transfer to the Department of Army

In accordance with section 108, Pub. L. 93–251, notice is hereby given that the administrative jurisdiction of the following designated lands is transferred from the Forest Service, Department of Agriculture to the Corps of Engineers, Department of Army.

The affected lands, located in McCreary County, Kentucky, have been administered as part of the Daniel Boone National Forest and are more particularly described as follows: Being all of U.S. Forest Service tracts numbered 1261f-I, 1261L, 1261K, 1874 III, 1874 XI, 1874 XIV, 1874 XVI, 1874 XVIII, 1874 XIX, 1874 XX, 1874 XXI, 1874 XXII, 1874 XXIII, 1874c, 1874c-I, 1874d, 1874d-1, 1874e, 1874f, 1874g, 1874g-I, 1874h, 1874w, 1898, 2572, 2642, 2812, 2832, 2908b, 2911, 2926, 2926a, 2938, 2979, LC 00–4110, LC 00–4112, LC PP–4203, LC PP–4206, LC PP–4209; and parts of U.S. Forest Service tracts numbered 1256Aa, 1256b, 1256h, 1258c, 1258w, 1261a, 1261f, 1871, 1874, 1874 VIII, 2576, 2577, 2891, 2922, 2988, 3046, LC 00–4107, LC 00–4109, LC PP–4201, and LC PP–4204, containing an aggregate of 17,234.74 acres, more or less; and being all of those tracts and parcels of National Forest lands lying within the boundaries of the Big South Fork National River and Recreation Area. Descriptions of these lands and maps depicting their locations are on file in the office of the Forest Supervisor for the Daniel Boone National Forest in Winchester, Kentucky; in the office of the Commander, Nashville District, U.S. Army Corps of Engineers in Nashville, Tennessee; and in the office of the Park Superintendent for the Big South Fork National River and Recreation Area in Oneida, Tennessee.

Effective as of the date of this publication in the Federal Register these lands are to be administered as part of the Big South Fork

National River and Recreation Area pursuant to Pub. L. 93–251.

Dated: December 16, 1986.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 87–4483 Filed 3–3–87; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Headwaters of Indian Creek Watershed, WV; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Headwaters of Indian Creek Watershed, Monroe County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, Telephone: 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include the adoption of soil conservation practices on pastureland and cropland in the watershed problem area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, West Virginia.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subuect to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Rollin N. Swank,

State Conservationist.

February 24, 1987.

[FR Doc. 87–4450 Filed 3–3–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India; Initiation of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of countervailing duty administrative review.

SUMMARY: The Department of Commerce is initiating an administrative review of the countervailing duty order on certain iron-metal castings from India. The review covers the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: March 4, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

Initiation of Review

In accordance with section 751(a) of the Tariff Act of 1930, we are initiating an administrative review of the countervailing duty order on certain iron-metal castings from India. The review covers the period January 1, 1985 through December 31, 1985.

This initiation and notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)).

Dated: February 26, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 87–4466 Filed 3–3–87; 8:45 am]

BILLING CODE 3510–DS–M

COMMISSION ON EDUCATION OF THE DEAF

Commission on Education of the Deaf; Commission and Committee Meetings

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of meetings.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of forthcoming meetings of the Commission on Education of the Deaf and its committees. The purpose of the Commission meeting is to approve work and budget plans as well as to identify needs in education of persons who are deaf, which should be addressed by the Commission. The purpose of the Committee meetings is to prepare reports on their committee seminars of March 18 and 19th. These meetings will be open to the public.

DATE: March 20, 1987, 9:00 a.m. until 5:00 p.m.

ADDRESS: Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, Maryland 20814. The Committee on Precollege Programs will meet in the Embassy I. The Committee on Postsecondary/Adult Programs will meet in the Embassy II.

The Executive Committee will meet in the Embassy I. The Commission will meet in the Ambassador I Ballroom.

FOR FURTHER INFORMATION CONTACT: Lisa Gorove. Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, DC 20407, (202) 453–4353 (TDD) or (202) 453–4684 (voice). These are not toll-free nunbers.

SUPPLEMENTARY INFORMATION: The Commission on Education of the Deaf's two standing committees, Precollege Programs Committee, and Postsecondary/Adult Programs Committee, will meet simultaneously on Friday, March 20, 1987 from 9:00 a.m. to 11:00 a.m. The purpose of these committee meetings is to prepare reports on their committee seminars of March 18 and 19th, of which there is a notice published elsewhere in this issue. The reports will focus on identifying needs the Commission should address in education of persons who are deaf.

The Commission's Executive Committee will meet the same morning from approximately 11:00 a.m. until 12:00 p.m. The purpose of this meeting is to review an agenda package for the Commission meeting to be held in the afternoon from 1:00 p.m. to 5:00 p.m.

The proposed agenda for the Commission meeting includes the following:

I. *Approval of minutes

II. *Reports.
*Chairperson's Report
*Staff Director's Report
*Status Reports on the planned forum in Minneapolis (May 26–28th) and Santa Fe (June 28-July 2)
III. Old business.
*Commission's work and budget plans (Discussion and voting)
*Work plan
*Budget plan
IV. New business.
*Notice of Inquiry for publication in the **Federal Register**
*Amendments to Statement of Organization and Procedures to change the number and dates of Commission meetings
*Budget policies
V. Committee Reports.
VI. Adjournment.

These meetings will be open to the public. Interpreters will be provided. If you need audio-loop systems or other special accommodations, please contact Lisa Gorove at (202) 453–4353 (TDD) or (202) 453–4684, no later than March 10, 1987, 5:00 p.m. E.S.T. These are not toll-free numbers.

Records will be kept of the proceedings and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, D.C.

Pat Johanson,

Staff Director.

February 27, 1987.

[FR Doc. 87–4558 Filed 3–3–87; 8:45 am]

BILLING CODE 6820-SD-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts meeting scheduled for March 12, 1987 is canceled. Our next scheduled meeting is Thursday, April 16, 1987 at 10:00 AM in the Commission's offices at 708 Jackson Place, N.W., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC February 25, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 87–4519 Filed 3–3–87; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Establishment of Guaranteed Access Levels and Amendment of the Visa Arrangement to Include a Certification Requirement for Cotton, Wool, Man-Made Fiber, Silk Blend (Other than Cotton) and Vegetable Fiber Textiles and Textile Products from the Dominican Republic

February 25, 1987.

The Committee for the Implementation of Textiles Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the rquirements set forth in 51 FR 21208 (June 11, 1986), has issued the directives published below to the Commissioner of Customs to be effective on March 9, 1987. For further information, contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

As announced in the **Federal Register** on December 30, 1986 (51 FR 47043), the Governments of the United States and the Dominican Republic have exchanged diplomatic notes on a new bilateral agreement concerning trade in cotton, wool, and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the period which began on December 1, 1986 and extends through May 31, 1988.

The Governments of the United States and the Dominican Republic also have exchanged letters amending the visa arrangement established between the Governments of the United States and the Dominican Republic as announced in the **Federal Register** on July 2, 1981 (51 FR 34619), to establish certification requirements for goods entered under the Special Access Program, as an administrative arrangement under the terms of the Special Access Agreement. Pursuant to the terms of that arrangement, the certification requirement applies to products qualifying for the Special Access Program for entry under TSUSA 807.0010 in a product category with a guaranteed access level, exported from the Dominican Republic on or after March 9, 1987. Products that have been exported from the Dominican Republic between December 1, 1986 and March 8, 1987 shall not be denied entry for lack of a certification. However, entries under TSUSA 807.0010 in a product category with a guaranteed access level, must be accompanied by a properly completed CBI Export Declaration (Form ITA–370P).

In addition to the designated consultation level previously announced, the Special Access Agreement establishes guaranteed access levels for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States within Categories 340 (cotton non-knit shirts), and 644 (man-made fiber suits), exported from the Dominican Republic during the first agreement period which began on December 1, 1986 and extends through May 31, 1987.

Pursuant to 51 FR 21208 (June 11, 1986), which established the requirements for participation in the Special Access Program and guaranteed access levels, products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA 807.0010, shipments must be accompanied by a certification issued by the appropriate Dominican Republic authorities and a completed CBI Export Declaration (Department of Commerce form ITA–370P, stock number 003–009–00490–0, available from the Government Printing Office, Washington, DC 20402). Each shipment of textile products of the Dominican Republic not accompanied by a properly issued certification and a CBI Export Declaration must be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Orders for the Special Access Program CBI Export Declaration (Form ITA–370P) may be placed with the

Superintendent of Documents, Government Printing Office, Washington, DC 20402–9235 (202/783–3238). Request stock number 003–009–00490–0. The form is being sold for $31 per package of 100.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing provisions shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as TSUSA 807.0010 but found not to qualify for the Special Access Program shall be denied entry into the United States.

Each shipment of textile products of the Dominican Republic not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of the Dominican Republic for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in the Dominican Republic, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, meet the stated visa requirements or, if to be entered under the Special Access Program and exported from the Dominican Republic on or after March 9, 1987, meet the stated certification requirements.

Ronald I. Levin

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 25, 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 August 14, 1981 by the Chairman, Committee for the Implementation of Textile Agreements, establishing an export visa requirement for cotton, wool, and man-made fiber textile and apparel products produced or manufactured in the Dominican Republic. You are directed, effective on March 9, 1987, and until further notice, to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend (other than cotton) and vegetable fiber textiles and textile products, assembled in the Dominican Republic from fabric formed and cut in the United States and exported on or after March 9, 1987, to be entered into the United States under TSUSA 807.0010, which are not certified in accordance with the procedures outlined below. Textile products that were assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic during the December 1, 1986–March 8, 1987 period shall not be denied entry for lack of a certification. Textile products not subject to the Special Access Program must be accompanied by a properly issued visa.

Products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA 807.0010, shipments must be accompanied by a certification issued by the appropriate Dominican Republic authorities and a completed CBI Export Declaration. Each shipment of textile products of the Dominican Republic not accompanied by a properly issued certification and a CBI Export Declaration shall be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original commerical invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing provisions shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as TSUSA 807.0010 but found not to qualify for the Special Access Program shall be denied entry into the United States.

The following guaranteed access levels have been established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States and exported during the period December 1, 1986 through May 31, 1987:

Category	Guaranteed Access Level
340	322,500 doz.
644	100,000 doz.

Each shipment of textile products of the Dominican Republic not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of the Dominican Republic for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States, regardless of value.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textile and apparel products, produced and manufactured in the Dominican Republic and exported to the United States, notwithstanding the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

A facsimile of the certification stamp[1] and a list of authorizing officials are enclosed.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Visa Signing Authorities

Goverment of the Dominican Republic

Galdys A. DeJesus, Executive Secretary, National Council of Industrial Free Zones
Providencia Nunez, Coordinator, Santo Domingo Industrial Free Zone
Elsa Caraballo, Cordinator, Santiago Industrial Free Zone
Alvaro Messina, Coordinator, La Romana Industrial Free Zone
Ernesto Trejo, Coordinator, San Pedro de Macoris Industrial Free Zone, Kilday

Commitee for the Implementation of Textile Agreements

February 25, 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 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the period which began on

[1] Not published in the **Federal Register**.

June 1, 1986 and extends through May 31, 1987.

Effective on March 9, 1987, the restraint period established for Category 644 in the directive of May 22, 1986 is hereby amended to be for a six-month period which began on June 1, 1986 and extended to November 30, 1986.

In carrying out this directive, entries of man-made fiber textile products in Category 644, produced or manufactured in the Dominican Republic, which have been exported to the United States on and after June 1, 1986 and extending through November 30, 1986, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the period beginning on June 1, 1986 and extending through November 30, 1986.

This letter will be published in the Federal Register.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-4510 Filed 3-3-87; 8:45 am]
BILLING CODE 3510-DR-M

Announcing Planned U.S. Textile and Apparel Category System for Introduction with the Harmonized System on January 1, 1988

February 27, 1987

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, is publishing below the United States' planned textile and apparel category system, which CITA intends to implement with the scheduled advent of the Harmonized System on January 1, 1988. For further information contact Philip J. Martello or Martin Walsh, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Summary

CITA is planning revisions to the textile category structure for use in the implementation of the textile and apparel import program under the Harmonized System. The planned revisions affect primarily the yarn and fabric sections of the category structure. The apparel section of the category system is affected by the addition of infants' wear categories for sizes 0-24 months and the adjustment of suit categories to conform to the definitions of the Harmonized System. The United States plans to begin consultations on the revised category system with its bilateral agreement partners in March 1987

Background

CITA has approved planned revisions to the U.S. textile and apparel category system to conform with a tariff system based upon the Harmonized System. The category system groups into like product categories the more detailed classifications of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (T.S.U.S.A.) for the purpose of monitoring and establishing limits on imports under the Arrangement Regarding International Trade in Textiles (MFA), and Section 204 of the Agricultural Act of 1956. *See, e.g.* A description of the current 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

To conform its structure with that of other members of the General Agreement on Tariffs and Trade (GATT), the United States plans to replace the current T.S.U.S.A. with a tariff system based upon the Harmonized System. The planned revision of the textile and apparel category system reflects the Harmonized System while taking into account existing bilateral agreements and the evolution of international textile trade. The revised category system should better serve the needs of the textile program and commercial trade by relating categories more closely to the products in the U.S. market.

A chart listing the planned new categories follows. The chart has three columns: Columns one and two cite the new category number and the category name; column three cites the current category or categories that would be replaced by the new system. The numbering system for the categories retains the initial digit signifying the fiber subject to restraint, *i.e., 3* for products subject to cotton restraints; *4* for products subject to wool restraints; *6* for products subject to man-made fiber restraints; and *8* for products subject to blended silk or vegetable fiber other than cotton restraints. In addition, a new digit, *2,* has been introduced for products subject to a restraint covering either cotton or man-made fiber products.

The United States Government intends to consult with U.S. bilateral agreement partners on the revised category structure beginning in March 1987. The planned category structure is intended to be trade neutral and the goal of the consultations will be to deal with the consequences of the conversion.

The availability of the complete planned category system, including a listing of the tariff numbers encompassed within each category, will be announced at a later date. When available, copies may be purchased from the Office of Textiles and Apparel, Room H 3110, Department of Commerce, Washington, DC 20230, at a cost of $5 per copy.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

HS-BASED CATEGORIES

New category	Category title	Current categories
	Yarns:	
800	Silk blends and non-cotton vegetable fibers.	800
400	Wool	400pt, 469pt
200	Sewing thread & yarn put up for retail sale.	369pt, 605pt
	Other:	
	Cotton:	
300	Carded	300
301	Combed	301
	MMF:	
600	Textured filament	600pt
606	Non-textured filament	601, 602
603	Staple artifical (85% or more by weight).	600pt, 603
604	Staple synthetic (85% or more by weight).	600pt, 604
607	Staple (less than 85% by weight).	600pt, 605pt
201	Other yarns	369pt, 605pt
	Fabrics:	
810	Silk blends and non-cotton vegetable fibers.	810
413	Wool fabrics, woven, containing more than 15% but less than 36% wool.	410pt, 614pt
410	Wool fabrics, woven, containing 36% or more by weight wool.	410pt
414	Other wool fabrics (inc. knit and special purpose).	410pt, 411, 425, 429, 469pt
	Other:	
	Knit fabrics:	
221	Circular knit	369pt, 625pt
222	Other knits	369pt, 625pt
223	Non-woven fabrics	369pt, 669pt
621	Impression, MMF	614pt, 627pt
224	Pile and tufted fabrics	311, 312, 320pt, 369pt, 626
622	Filament glass fiber fabric	614pt
623	Cellulosic filament fabric	610
	Non-cellulosic filament fabric:	
624	Polyester not over 5 oz.	612pt
625	Other	612pt
229	Special purpose fabrics, braid, narrow, etc..	369pt, 627pt, 669pt
225	Denim	317pt, 318pt, 611pt, 613pt, 614pt
628	Spun/filament combinations	614pt
218	Yarns of different colors, except jacquard weave & denim.	310pt, 314pt, 316pt, 317pt, 318pt, 319pt, 369pt, 613pt

HS-BASED CATEGORIES—Continued

New category	Category title	Current categories
	Other:	
226	Cheesecloth, batistes, lawns, and voiles.	313pt, 319pt, 320pt, 611pt, 613pt
326	Sateens, cotton	317pt, 320pt
317	Other cotton twills	317pt, 320pt
617	MMF twills and sateens	611pt, 613pt
227	Oxford cloth	319pt, 320pt, 611pt, 613pt
	Poplin and broadcloth:	
314	Cotton	313pt, 314pt, 315pt, 319pt, 320pt
614	MMF	611pt, 613pt
	Printcloth:	
315	Cotton	315pt, 320pt
615	MMF	611pt, 613pt
	Sheeting:	
313	Cotton	313pt, 319pt, 320pt
613	MMF	611pt, 613pt
219	Duck	319pt, 320pt, 611pt, 613pt
220	Fabric of special weave, jacquard, dobby, momie, leno, dot or spot, lappet and swivel, basket weave, and coated.	316pt, 320pt, 369pt, 614pt

NOTE: Categories 221, 222, 223, 224, 225, 229, and 621 include yarns of different colors and spun filament combinations. Categories 622, 623, 624, 625, 229, and 627 include yarns of different colors. Category 229 includes fabrics such as pneumatic tire cord and lace fabric. Category 218 excludes spun filament combinations.

	Wearing apparel	
	Infants' wear (0-24 months):	
439	Wool	431-459
239	Cotton and MMF	330-359, 630-659
839	Other	830-859

NOTE: Effective with the implementation of the HS all boy's apparel in commercial sizes 2-6 will be categorized as men's and boy's apparel rather than as women's girls', and infants'. (I.e., boys' cotton coats sizes 2-6 are currently in category 335—in 1988 these coats will be categorized in category 334.) The United States will also bring the suit categories into conformity with the harmonized system definition. This change will result in minor quantitative adjustments to the trouser, skirt, and suit-type coat categories.

[FR Doc. 87-4511 Filed 3-3-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Certificate Pertaining to Foreign Interests; DD Form 441s (0704-0024)

The DD Form 441s is used to provide formal certification from contractors relative to foreign ownership, control or influence (FOCI) factors which are necessary for the DoD to determine a firm's eligibility for a facility security clearance. Since December 1974, OSD has made various commitments to the U.S. Congress regarding the scope of the FOCI which is captured in the content of the revised form. This form cannot be eliminated because it is basic to tabulating FOCI information for industrial firms who participate in the Defense Industrial Security Clearance Program. Use of DD Form 441s is prescribed by DoD Regulation 5220.22-R and DoD Manual 5220.22-M.

Responses 2560

Burden Hours 2816

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information proposal may be obtained from Mr. Dale L. Hartig, DIS, Chief, Information and Public Affairs, Room 5222, 1900 Half Street SW., Washington, DC 20324-1700, telephone (202) 475-1062.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1987.

[FR Doc. 87-4520 Filed 3-3-87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

DoD Facility Security Clearance Survey; DD Form 374 (0704-0009)

The Defense Investigative Service (DIS) is responsible for administration of the Industrial Security Program. In carrying out these responsibilities, DIS must determine what facilities are eligible to receive and safeguard classified information. DD Form 374 is used to record information obtained during the initial survey of a contractor facility and is part of the documentation used to determine and establish eligibility. The information is a prerequisite to participation in this program.

Contractor facilities:

Responses 1,400

Burden Hours 5,600

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Dale L. Hartig, DIS, Chief, Information and Public Affairs, 1900 Half Street SW., Washington, DC 20324-1700, telephone (202) 475-1062.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1987.

[FR Doc. 87-4521 Filed 3-3-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted by Department of the Air Force

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Minor Motor Vehicle Accident Report (AF Form 840) (0701–0041)

The Air Force requires a written report on all accidents which occur on Air Force installations whether government or privately-owned vehicles are involved. Minor motor vehicle accidents are reported on AF Form 840 by the drivers of the vehicles. The report is used by the Security Police to record relevant information about base accidents such as who and what were involved and where, when, and why the accident occurred.

Individuals:

Responses 500
Burden hours 150

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202)746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Captain Tamara L. Bradley, Air Force Office of Security Police, Kirtland AFB, NM 87117–6001, telephone number (505) 844–6627.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1987.

[FR Doc. 87–4523 Filed 3–3–87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public infromation collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Air Force Crime Prevention Program Field Interview (AF Form 1668) (0701–0044)

Air Force Security Police use the field interview as a crime prevention device and as a valuable investigative tool in the identification of witnesses and suspects. Generally, field interviews are used only in specific instances of reported or suspected crime, in response to particularly suspicious behavior, or at unusual times in a high crime area. During the interview, the Security Police attempt to learn the person's identity, his or her business in the area, and possible connection to the incident being investigated. This information is recorded on AF Form 1668.

Individuals:

Responses 47,540
Burden hours 2,377

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Captain Tamara L. Bradley, Air Force Office of Security Police, Kirtland AFB, NM 87117–6001, telephone number (505) 844–6627.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1987.

[FR Doc. 87–4524 Filed 3–3–87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Accident Information Exchange (AF Form 841) (0701–0043)

Air Force Form 841 is used to provide drivers involved in accidents on Air Force installations a means to exchange pertinent information. Use of the form is voluntary and the information exchanged is used by the drivers to inform their insurance companies and to complete accident reports required by state motor vehicle agencies.

Individuals:

Responses 205
Burden hours 34

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive

Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Captain Tamara L. Bradley, Air Force Office of Security Police, Kirtland AFB, NM 87117–6001, telephone number (505) 844–6627.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1987.

[FR Doc. 87–4525 Filed 3–3–87; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Temporary Vehicle/Visitor Installation Pass (AF Form 75) (0701–0047)

Air Force Form 75 is used by the Security Police to issue an identification pass to base visitors who do not have valid U.S. Government, state, or local identification credentials, and to provide for the temporary registration of vehicles that do not display Department of Defense vehicle registration decals. It is also used to satisfy legal requirements concerning the legality of base entry implied consent to search.

Individuals

Responses 1,600,000

Burden hours 80,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Captain Tamara L. Bradley, Air Force Office of Security Police, Kirtland AFB, NM 87117–6001, telephone number (505) 844–6627.

Patricia H. Means

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1987.

[FR Doc. 87–4526 Filed 3–3–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Intent To Prepare a Draft Environmental Impact Statement; Implementation of the Scoping Process for the Withdrawal of Approximately 181,000 Acres of Public Land in the State of Nevada for Use by Naval Air Station Fallon, NE

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality Regulations (40 CFR 1506.6), the Department of the Navy will prepare a Supplemental Environmental Impact Statement (SEIS) for the proposed withdrawal of 181,322.91 acres of public lands in the state of Nevada from all forms of appropriation under public land laws, including the mining laws but not the mineral leasing or the geothermal leasing laws. These public lands surround Target Ranges Bravo 16, 17 and 19 of the Naval Air Station (NAS) Fallon, Nevada.

NAS Fallon is the locatoin of the Fallon Training Range Complex (FTRC). The mission of the FTRC is to provide airspace and target range facilities to support aircrew training and evaluation in all aspects of air warfare and "Force-Projection-Ashore" scenarios. Advances in jet aircraft technology, changes in Navy training requirements, and the need to practice realistic, low-flying, high-speed attacks against ground targets has pushed the capabilities of the existing target ranges to their safety and operational limits. Therefore, the Navy must consider alternatives for acquiring the lands surrounding Target Ranges Bravo 16, 17, and 19 to continue their operations while ensuring public safety and compatible land uses.

The land withdrawal would be for the following purposes: (1) To meet Navy operational criteria for buffer zones against noise and safety hazards due to low-flying, high-speed aircraft flights involving weapons practice against ground targets within adjacent aerial weapons training ranges; (2) to avoid incompatible land uses around the ranges, and (3) to accommodate other training-related requirements in support of the Navy mission. Anticipated uses of the withdrawn area, in addition to noise and safety buffers, are training for tactical maneuvering and air support including active and passive visual cueing devices, electronic warfare radar emitter sites and Tactical Aircrew Combat Training System (TACTS) Receiver sites.

The proposed land withdrawal provides for continued land management and public uses under the auspices of the Department of the Interior, Bureau of Land Management and Bureau of Reclamation through a Resource Management Plan (RMP) and Memorandum of Understanding. Major actions and exceptions to be addressed by the RMP include:

a. *Mining and Mineral Leasing:* All lands would be reopened for mineral entry. Patents would continue to convey title to locatable minerals and the use of the necessary surface areas for purposes incident to timing. All patents would contain a reservation to the United States of the land surface and nonlocatable minerals.

b. *Livestock Grazing:* Livestock management would continue, per applicable law, including the Taylor Grazing Act and Executive Orders. Livestock range improvements would be allowed, with the concurrence by the Commanding Officer, NAS Fallon (CO NASF).

c. *Recreation:* Approximately 166,000 acres would remain open for casual use. Events requiring a Department of the Interior permit would be subject to CO NASF concurrence. For public safety, public use of approximately 15,000 acres (posted with signs) would require CO NASF approval, prior to entrance.

d. *Structures:* There would be a general height limitation of 50 feet. Existing structures (e.g., power lines) would be approved at current height. New construction including extensions to existing structures, would require CO NASF approval.

Alternatives to be evaluated in the SEIS include:

a. No action: Land would not be withdrawn and Navy operations would continue on existing ranges.

b. Proposed land withdrawal: Land would be withdrawn and public uses would be permissible as described above.

c. Total exclusion of withdrawn land: Land would be withdrawn and public uses would be totally excluded.

d. Relocate all or part or the FTRC: All or part of the existing ranges would be closed and relocated to other locations.

e. Change the size and/or shape of the FTRC: Size and shape of the ranges would be altered.

f. Use of other institutional mechanisms: Co-operative agreements or rights-of-way would be implemented.

The basis for evaluating the alternatives above are the following criteria:

a. Use of existing targets authorized by Congress.

b. Meet established Air Installation Compatible Use Zone (AICUZ) and Range Air Installation Compatible Use Zone (RAICUZ) safety and operational standards.

c. Meet Navy training mission requirements in support of National Defense.

d. Promote energy conservation by close proximity of ranges to NAS Fallon.

e. Promote least environmental impact.

Affected federal, state and local agencies and other interested parties are invited to submit written comments regarding the scope and significant issues to be analyzed in the SEIS. Comments should be submitted, as early as possible but no later than 17 March 1987, to: Ms. Diori Kreske, Western Division, Naval Facilities Engineering Command, P.O. Box 727, Code 2031, San Bruno, CA 94066–0720.

When the Draft SEIS is completed, a public notice of its availability for review by the public will be announced in order that affected agencies and interested parties may comment on the document. A public hearing was held on 27 March 1985 for the original Draft EIS on the subject withdrawal.

A decision on the proposed action will not be made until the NEPA process has been completed and a Record of Decision has been released.

Dated: February 25, 1987.

Harold L. Stoller,

CDR JAGC USN, Federal Register Liaison Officer.

[FR Doc. 87–4507 Filed 3–3–87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser-to-Submarine Communications will meet on March 19 and 20, 1987. The meeting will be held at the Naval Ocean Systems Center, San Diego, California on March 19; and held at the Northrop Electronics Division, 2301 West 120th Street, Hawthorne, California on March 20, 1987. The meeting will commence at 8:00 A.M. and terminate at 4:30 P.M. on March 19; and commence at 9:30 A.M. and terminate at 4:30 P.M. on March 20, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review and assess current laser technology programs with a view toward addressing communications problems pertaining to exploitation of the submarine over its full depth, range and speed capabilities. The agenda will include technical briefings and discussions addressing program plans and technology status. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N); 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: February 27, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–4508 Filed 3–3–87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Over the Horizon Targeting Capabilities will meet on March 18 and 19, 1987, at the Technical Planning Corporation, Crystal Gateway #1, Suite 100, 1235 Jefferson Davis Highway, Arlington, Virginia. The meeting will commence at 8:30 A.M. and terminate at 5:00 P.M. on March 18; and commence at 8:30 A.M. and terminate at 4:00 P.M. on March 19, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct a comprehensive review of existing and planned over the horizon targeting programs; determine current and projected over the horizon targeting and related command and control capabilities and limitations; and identify any problems and recommend solutions. The agenda will consist of technical briefings and discussions addressing over the horizon targeting capabilities, program tactics and operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: February 27, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–4509 Filed 3–3–87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense

(DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning the implementation of the Anti-Kickback Act of 1986.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy (202) 523–4820 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51–58). Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of Section 3 of the Act may have occurred, they are required to report the possible violation in writing to the contracting agency or the Department of Justice.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *2500;* responses per respondent, *1;* total annual responses, *2500;* hours per response, *1;* and total burden hours, *2500.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–00xx, Anti-Kickback Enforcement Act of 1986.

Dated: February 24, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–4527 Filed 3–3–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–259–000 et al.]

Electric rate and corporate regulation filings; The Potomac Edison Co. et al.

February 25, 1987.

Take notice that the following filings have been made with the Commission:

1. The Potomac Edison Co.

[Docket No. ER87–259–000]

Take notice that The Potomac Edison Company, on February 20, 1987, Volume No. 3. The proposed changes would increase revenues from jurisdictional sales and service by $1,637,000 based on the twelve-month period ending December 31, 1985. The proposed effective date for the increased rates is April 1, 1987.

The changes proposed are for the purpose of recovering increased costs incurred by the Company, as well as to correct and revise its tariff language.

Copies of the filing were served upon the jurisdictional customers, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: March 11, 1987, in accordance with Standard Paragraph E at the end of this document.

2. Public Service Company of Colorado

[Docket No. ER87–251–000]

Take notice that on February 20, 1987, Public Service Company of Colorado (Company) tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 40 relative to the Western Systems Coordinating Council Loop Flow Agreement (Agreement) between Company and various parties to the Agreement (Parties).

Company proposes an effective date of August 31, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power & Light Co.

[Docket No. ER87–256–000]

Take notice that on February 19, 1987, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated January 6, 1987, between the Village of Mazomanie and WPL. WPL states that this new wholesale power agreement supercedes the previous agreement between the two parties which was dated November 11, 1974, and designated FPC Rate Schedule No. 108 by the Commission.

The purpose of this new agreement is to provide for an exchange of customers resulting from an annexation. Other provisions of the agreement remain the same and are similar to the provisions for service to other W–3 customers.

WPL requests that an effective date concurrent with the contract effective date of November 21, 1986, be assigned this filing based upon the parties' mutual consent to the agreement and a provision in the agreement which establishes the effective date. WPL states that copies of the agreement and the filing have been provided to the Village of Mazomanie and the Wisconsin Public Service Commission.

Comment date: March 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Appalachian Power Co.

[Docket No. ER87–257–000]

Take notice that American Electric Power Service Corporation (AEP) on February 19, 1987, tendered for filing on behalf of its affiliate Appalachian Power Company (Appalachian), which is an AEP affiliated operating subsidiary, Modification No. 24 dated January 1, 1987 to the Interconnection Agreement dated February 1, 1948 between Appalachian and Virginia Electric and Power Company (Virginia). The Commission has previously designated the 1948 Agreement as Appalachian's Rate Schedule FERC No. 16 and Virginia's Rate Schedule FERC No. 7.

Modification No. 24, in response to Virginia's sale of assets to Appalachian, redesignates a point of interconnection between the parties.

Copies of the filing were served upon Public Service Commission of West Virginia and the Virginia State Corporation Commission.

Comment date: March 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corp.

[Docket No. ER87–75–002]

Take notice that on February 17, 1987, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a compliance report pursuant to Ordering Paragraphs B and C of the Commission's Suspension Order of January 2, 1987, reflecting the exclusion of EPRI expenses and the effects of the Tax Reform Act of 1986.

Niagara Mohawk states that copies of this filing were served on the entities that received the original application and the participants in this docket.

Comment date: March 11, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any prson wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4546 Filed 3-3-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2611-003, et al.]

Hydroelectric Applications (Scott Paper Co., et al.); Applications Filed With the Commission

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: Transfer of License.

b. Project No.: 2611-003.

c. Date Filed: December 12, 1986.

d. Applicant: Scott Paper Company and UAH-Hydro Kennebec Limited Partnership.

e. Name of Project: Hydro Kennebec Project.

f. Location: On the Kennebec River in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ms. Nancy J. Skancke, Ross, Marsh, & Foster 888 16th Street, NW., Washington, DC 20006, 202 822-8888.

i. Comment Date: March 26, 1987.

j. Description of Project: On October 15, 1986, a new license was issued to Scott Paper Company (licensee), to construct, operate, and maintain the Hydro Kennebec Project No. 2611. The licensee intends to transfer the license to Scott Paper Company and UAH-Hydro Kennebec Limited Partnership (Transferees), to facilitate financing, construction, and operation of the project.

k. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Exempt (5MW or less).

b. Project No.: 8671-001.

c. Date Filed: July 10, 1986.

d. Applicant: Mega Renewables.

e. Name of Project: Burney Creek Hydroelectric Project.

f. Location: On Burney Creek in Shasta County, California, In Sections 24, 25, 26, 35, and 36 T35N, R3E; and Section 1, 2, 11, and 12, T34N, R2N, R2E, M.D.M.& B.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)-835(r).

h. Contact Person: Mr. Fred Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding, CA 96002, (196) 222-1414.

i. Comment Date: March 26, 1414.

j. Description of Project: The proposed project would consist of: (1) An intake structure located at elevation 3,892 feet msl; (2) a 22,000-foot-long, 51-inch-diameter penstock; (3) a powerhouse containing an impulse type generating unit rated at 3 MW operated at a net head of 630 feet and a hydraulic capacity of 70 cfs with flows being returned to Burney Creek; and (4) a 2-mile-long, 12-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company transmission line. Applicant estimates the project's annual generation at 9.5 GWh.

k. Purpose of Project: Project power will be sold to Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

3 a. Type of Application: License.

b. Project No.: 9194-000.

c. Date Filed: May 16, 1985 and amended on December 1, 1986.

d. Applicant: Passaic Valley Water Commission.

e. Name of Project: Little Falls.

f. Location: On the Passaic River in Passaic County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Wendell R. Inhoffer, General Superintendent and Chief Engineer, Passaic Valley Water Commission, 1525 Main Avenue, Clifton, NJ 07015, (201) 772-3900.

i. Comment Date: April 16, 1987.

j. Description of Project: The proposed project would consist of: (1) The existing Beatties Mill Dam, which has an overall length of approximately 287 feet and a maximum height of 11.5 feet; (2) the existing 100-acre reservoir which has a storage capacity of 300 acre-feet; (3) the 4 existing 600 kW generating units are located in the High Service Pumping Station, owned and operated by the Applicant; (The powerplant is designed to provide power to the pumping station. The existing powerhouse was constructed with a fifth turbine bay for future expansion.) (4) the existing 26-foot-wide by 85-foot-long gatehouse; (5) an existing, approximately 75-foot-wide, 1,300-foot-long canal; (6) a existing 12-foot-diameter, 250-foot-long penstock; (7) an existing penstock composed of a 100-foot-long, 12-foot-diameter section and a 46-foot-long, 10-foot-diameter section; (8) the existing 2.4-kV generator leads; and (9) appurtenant facilities. The project would generate up to 11.5 GWh annually.

k. All existing project facilities are currently owned by: Beattie Manufacturing Company, 242 Main Street, Little Falls, New Jersey; and Passaic Valley Water Commission, 1525 Main Avenue, Clifton, New Jersey 07015.

l. Purpose of Project: The Applicant proposes to utilize all of the power generated at the pumping station with no power sales proposed.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4 a. Type of Application: Major License under 5 MW.

b. Project No.: P-9260-001.

c. Date Filed: May 8, 1986.

d. Applicant: Adirondack Hydro Development Corporation.

e. Name of Project: Sissonville.

f. Location: On the Raquette River in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Alan W. Rothe, Ayres, Lewis, Norris & May, Inc., 3983 Research Park Drive, Ann Arbor, MI 48104, (313) 761-1010.

i. Comment Date: April 17, 1987.

j. Description of Project: The proposed project would consist of: (1) The reconstruction of an existing concrete dam which is 11 feet and 370 feet wide including spillway at elevation 393 feet USGS with 2-foot-high flashboards; (2) a proposed 30-acre reservoir with a maximum storage capacity of 205 acre-feet at 395 feet m.s.l.; (3) a proposed concrete powerhouse approximately 40 feet wide and 100 feet long containing one turbine/generator with an installed capacity of 2.3 MW; (4) a proposed headrace channel fan approximately 160 feet long and 60 feet wide; (5) a proposed tailrace channel extending approximately 970 feet and 60 feet wide; (6) a proposed 13.2-kV transmission line approximately 4,000 feet long; and (7) appurtenant facilities. The estimated

average annual energy produced by the project would be 13 million kWh operating under a net hydraulic head of 16 feet. Project power would be sold to the Niagara Mohawk Power Corporation. The dam is owned by the applicant.

Prior preliminary permit was issued on October 21, 1985 for this project.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

5 a. Type of Application: Minor License under 5 MW.

b. Project No.: 10080–000.

c. Date Filed: September 12, 1986.

d. Applicant: Lower Falls Hydro Company, Inc.

e. Name of Project: Lower Falls Hydro.

f. Location: On the Mascoma River in Grafton County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Stephen L. Whitman, 10 Water Street, Lebanon, NH 03766, (603) 448–2600.

i. Comment Date: March 27, 1987.

j. Competing Application: Project No. 9732, Date Filed: 1/8/86.

k. Description of Project: The proposed project would consist of: (1) A reconstructed concrete gravity dam 7 feet high and 100 feet long with a crest elevation at 519.4 feet msl; (2) an existing 0.2-acre reservior with a storage capacity of 0.6 acre-feet with a maximum surface elevation of 519.4 feet msl; (3) a proposed intake structure; (4) a proposed 8-foot-diameter and 300-foot-long steel penstock; (5) a proposed reinforced concrete powerhouse containing one turbine/generator unit with an installed capacity of 335 kW; (6) a proposed tailrace channel approximately 30 feet long; (7) a new three phase 4.16-kV transmission line approximately 200 feet long; and (8) appurtenant facilities. The dam is owned by the Central Heating Supply Company. The estimated average annual energy produced by the project would be 1,465,000 kWh under a net hydraulic head of 16.7 feet.

l. Purpose of Project: Project power will be sold to the Granite State Electric Company.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 10115–000.

c. Date Filed: October 3, 1986.

d. Applicant: Idaho Hydroelectric Energy Company, Inc.

e. Name of Project: Bull Run.

f. Location: On Bull Run Creek in the Clearwater National Forest in T39N, R2E, near Elk River in Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. R. A. Sigismonti, 1228–21st Avenue, Lewiston, ID 83501.

i. Comment Date: April 20, 1987.

j. Description of Project: The proposed project would consist of: (1) A 75-foot-high rock filled diversion dam; (2) a reservoir with a surface area of 475 acres and a storage capacity of 19,215 acre-feet at maximum reservoir elevation 2,805 feet; (3) a 16,500-foot-long, 38-inch-diameter penstock; (4) a powerhouse containing one generating unit with a rated capacity of 3,950 kW; and (5) a 7-mile-long, 24-kV transmission line. Applicant estimates the average annual energy production to be 23,000 MWh and the cost of the work to be performed under the preliminary permit to be $75,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 10170–000.

c. Date Filed: November 18, 1986.

d. Applicant: Warren T. Jacobson.

e. Name of Project: Salt Gulch Water Power Project.

f. Location: On Sand Creek and Lake Creek in Garfield County Utah: Sections 27, 28, 33, 34, T32S, R3E; Sections 2, 3, 11, 13, 14, 24, T33S, R3E: SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Warren T. Jacobson, P.O. Box 241, Fountain Green, UT 84632.

i. Comment Date: April 20, 1987.

j. Description of Project: The proposed project would be located on lands of the Dixie National Forest and would consist of: (1) Two small existing diversion dams and one small new diversion dam on a system of existing irrigation ditches; (2) a new steel pipeline/penstock, 20 inches in diameter and 4 miles long; (3) a new powerhouse with an installed capacity of 800 kW under a head of 1,600 feet; (4) two tailraces returning flow to the irrigation ditches; (5) a new 7.2-kV transmission line, 2,000 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 4,905,600 kWh. The Applicant estimates that the cost of the studies under the preliminary permit would be $5,850.

k. Purpose of Project: Project energy would be sold to the Garkane Power Association.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10226–000.

c. Date Filed: January 2, 1987.

d. Applicant: Town of Summersville, WV.

e. Name of Project: Summersville Hydroelectric Development.

f. Location: On the Gauley River near Summersville, Nicholas County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James B. Price, Noah Corporation, 120 Calumet Ct., Aiken, SC 29801, (803) 642–2749.

i. Comment Date: April 20, 1987.

j. Description of Project: The proposed project would utilize the existing Corp of Engineers' Summersville Dam and reservoir and would consist of: (1) Three proposed steel penstocks, 11 feet in diameter and 200 feet long; (2) a proposed concrete powerhouse, 80 feet wide, 144 feet long, and 93 feet high housing three 23,300–kW hydropower units; (3) a proposed tailrace; (4) a proposed 138–kV transmission line approximately 8.5 miles long; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 188 GWh, and that the cost of the work to be performed under the preliminary permit would be $150,000. The applicant proposes to sell the energy to Monogahela Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10248–000.

c. Date Filed: January 15, 1987.

d. Applicant: F and T Services Corporation.

e. Name of Project: Toad Suck Ferry L & D No. 8.

f. Location: On the Arkansas River in Perry County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70806, Phone No.: 504–927–9321.

i. Comment Date: April 17, 1987.

j. Description of Project: The Applicant proposes to utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed 1,200-foot-long by 150-foot-wide inlet channel; (2) a proposed powerhouse containing two generating

units rated at 5 MW each; (3) a proposed 1,500-foot-long by 150-foot-wide outlet channel; (4) a proposed 13.8–kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 50,000,000 kWh. Power produced at the project would be sold to Arkansas Power and Light Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

k. 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.: 10249–000.

c. Date Filed: January 15, 1987.

d. Applicant: F and T Energy Corporation.

e. Name of Project: Lake O' The Pines.

f. Location: On Cypress Creek in Marion County, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896, Phone No.: 504–927–9321.

i. Comment Date: April 20, 1987.

j. Description of Project: The Applicant proposes to utilize the existing Ferrells Bridge Dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) Two proposed penstocks which would be connected to the Corps existing 10-foot-diameter conduits; (2) a proposed powerhouse containing two generating units rated at 5 MW each; (3) a proposed outlet channel; (4) a proposed 69–kV transmission line; and (5) appurtenant facilities. An alternate proposal would consist of modifying the existing spillway and to construct the penstocks from the spillway to the powerhouse in lieu of from the existing conduits to the powerhouse. The estimates average annual energy generation for the project is 24,000,000 kWh. Power produced at the project would be sold to the Upshar Rural Electric Cooperative. The Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10247–000

c. Date Filed: January 15, 1987.

d. Applicant: F and T Energy Corporation.

e. Name of Project: Wright Patman Dam.

f. Location: On the Sulphur River in Bowie County, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896, Phone No.: 504–927–9321.

i. Comment Date: April 30, 1987.

j. Description of Project: The Applicant proposes to utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) Modifications to the existing inlet channel; (2) a proposed powerhouse containing two generating units rated at 10 MW each; (3) modifications to the existing outlet channel; (4) a proposed 69–kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 50,000,000 kWh. Power produced at the project would be sold to the Bowie-Cass Rural Electric Cooperative. The Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Minor License.

b. Project No.: 9710–000.

c. Date Filed: December 24, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Croghan Island.

f. Location: West Canada Creek in Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Streets, Franklin, NH 03035, (603) 934–4202.

Mr. Neal F. Dunlevy, Stetson-Dale, Architects & Engineers, 185 Genesee Street, Utica, NY 13501, (315) 797–5800.

i. Comment Date: April 30, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam consisting of: (a) An 11.5-foot-high, 120-foot-long segment; and (b) a 9.5-foot-high, 103-foot-long segment both with a crest elevation of 817.7 feet MSL; (2) a reservoir with a surface area of 60 acres, a storage capacity of 535 acre-feet, and a normal water surface elevation of 818.7 feet MSL with; (3) 1-foot-high new wood flashboards; (4) an existing intake structure; (5) a new reinforced concrete powerhouse containing two generating units with a capacity of 225 Kw each for a total installed capacity of 450 Kw; (6) a new transmission line, 75 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 2,773,000 kWh. The existing dam is owned by Mr. Vaughn Zehr, Croghan Island Mill Lumber Company, and the Beaverite Products Corporation.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

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.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the intitial development application. No competing applications or notices of intent may be filed 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.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) 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 constuction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary 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", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "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 administration 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 Coodination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 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 set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent 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 any 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.

D3b. *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 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or 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 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 45 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: March 2, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4547 Filed 3-3-87; 8:45 am]

BILLING CODE 6717-10-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3164-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Toxic Substances

Title: Toxic Chemical Release Inventory Petitions (EPA ICR #1357). (This is a new collection.)

Abstract: Anyone may petition to add or delete a chemical from the list of toxic chemicals subject to annual reporting under section 313 of the Superfund Amendments and Reauthorization Act. Petitioners must provide supporting information only once. EPA will use the information to evaluate the petition for chemical addition or deletion.

Respondents: Environmental groups and firms, or anyone else, using chemicals on the list.

Estimated Annual Burden: 6900 hours.

* * * * *

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0184, Vehicle Emission Control System Defect Survey, was approved 2/9/87 (OMB #2060-0047; expires 2/29/90).

EPA ICR #1049, Notification Requirement for Oil or Hazardous Substance Spills, was approved 1/14/87 (OMB #2050-0046; expires 6/30/88).

EPA ICR #1334, Total Exposure Assessment Methodology (TEAM) Study in Baltimore, was approved 1/9/87 (OMB #2080-0026; expires 1/31/88).

EPA ICR #1335, Total Exposure Assessment Methodology (TEAM) Study in California, was approved 1/9/87 (OMB #2080-0027; expires 1/31/88).

* * * * *

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503

Dated: February 26, 1987.

Daniel J. Fiorino,

Director Information and Regulatory Systems.

[FR Doc. 87-4496 Filed 3-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180718; FRL-3163-7]

Receipt of Application for an Emergency Exemption From Arizona To Use Fenoxycarb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request from the Arizona Commission of Agriculture and Horticulture (hereafter referred to as "Applicant") to use the pesticide fenoxycarb (CAS 72490-01-8) to treat 650 acres of citrus, 120 acres of pasture and 60 acres of dairy feed lots in the city of Mesa, Arizona to eradicate colonies of imported fire ants (*Solenopsis invicta*). EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before March 19, 1987.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180718" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a quarantine exemption for the use of fenoxycarb N-[2-p-phenoxyphenoxy)ethyl]carbamic

acid ethyl[2-(p-phenoxyphenoxy)ethyl] carbamate to eradicate the imported fire ant.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Fenoxycarb is currently registered in the United States for control of fire ants on non-agricultural lands.

The Applicant states that recently, a single colony of the red imported fire ant was discovered at an old plant nursery at the center of the proposed treatment area. The nest was destroyed using currently registered materials. The destroyed nest was mature enough to have released new queens. A survey is currently being conducted to search for additional colonies. Although, no new colonies have been found, young colonies are easily overlooked. The use of fenoxycarb is intended as insurance against any overlooked colonies in a four square mile area which includes the currently unregistererd sites requested by the Applicant.

The Applicant proposes to make a single application of the product Logic, EPA Reg. No. 35977-4, by air application equipment at a rate of 0.015 pound active ingredient (1.5 pounds formulation) per acre from February 15, 1987 to April 15, 1987.

Since the main western front of the fire ant infestation is still several 100 miles to the east, the Applicant feels that the arrival of the fire ant can be delayed for a significant time, provided isolated infestations can be eliminated as they occur.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a quarantine exemption proposing the first food use of an active ingredient, i.e., use of an active ingredient on a food or in a manner which otherwise would be expected to result in residues in a food, if no permanent tolerance, exemption from requirement of tolerance, or food additive regulation for residues of the pesticide on any food has been established for the active ingredient under section 408 (d) or (e) or 409 of the Federal Food, Drug, and Cosmetic Act) (40 CFR 166.24(a)(2)). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: February 17, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-4277 Filed 3-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50666; FRL-3163-6]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By Mail:

Robert Taylor, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Rm. 245, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

10182-EUP-43. Issuance. ICI Americas, Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. This experimental use permit allows the use of 1,050 pounds of the plant growth regulator (±)-(R*,R*)-beta-[(4-chlorophenyl)-methyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on nectarines and peaches to evaluate methods of application, crop yield, crop quality, and crop residue. A total of 700 acres are involved; the program is authorized in the States of Alabama, Arkansas, California, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and West Virginia. The experimental use permit is effective from January 6, 1987 to January 6, 1989. This permit is issued with the limitation that all crops are destroyed or used for research purposes only.

10182-EUP-46. Issuance. ICI Americas, Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. This experimental use permit allows the use of 6,000 pounds of the plant growth regulator (±)-(R*,R*)-beta-[(4-chlorophenyl)-methyl]-alpha-(1,1-dimethylethyl)-1*H*-1, 2, 4-triazole-1-ethanol on apples to evaluate methods of application, crop yield, crop quality, and crop residue. A total of 2,000 acres are involved; the program is authorized in the States of Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia. The experimental use permit is effective from January 6, 1987 to January 6, 1989. This permit is issued with the limitation that all crops are destroyed or used for research purposes only.

Persons wishing to review these experimental use permit are referred to the designated product manager. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: February 18, 1987.

Edwin F. Tinsworth,

Director Registration Division, Office of Pesticide Programs.

[FR Doc. 87-4279 Filed 3-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180721; FRL-3163-8]

Receipt of Application for an Emergency Exemption From Wisconsin To Use Pyridate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") to use the herbicide pyridate (CAS 35512 33 9) to treat 5,000 acres of cabbage, a majority of which is grown for processing into sauerkraut, for post-emergent control of annual broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before March 19, 1987.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180721" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Jim Tompkins. Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of pyridate, 0-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbononthioate, for postemergent control of broadleaf weeds in cabbage.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Pyridate is not currently registered in the United States. Pyridate is applied commercially in Europe for selective post-emergence broadleaf weed control in maize, cereals, peanuts, lucerne, brassicas and other crops.

The Applicant states that since the withdrawl of TOK herbicide from the market, hand-hoeing and cultivation has been the only means of post-emergent broadleaf weed control in direct seeded cabbage. This labor-intensive weeding operation has proven to be extremely costly, and has limited the acreage which can be effectively managed. Thinning and hand-hoeing of cabbage is primarily done by high school age students because the work is concentrated in one month. It is uneconomical for growers to provide housing and benefits for migrant workers. Employment of high school workers, necessitates close supervision and is limited by their reliability and availability.

Most Wisconsin commercial growers plant cabbage transplants because the cost of hand-weeding direct seeded cabbage is considered too expensive and difficult to manage. Direct seeding is not possible without some means of post-emergent broadleaf weed control. However, the cost of transplanting cabbage is more expensive than direct seeding ($180/acre vs. $85/acre for direct seeding).

An emergency situation exists, according to the Applicant, because the increased cost of production due primarily to increased labor costs makes production of direct seeded cabbage uneconomical without the use of a post-emergent herbicide to control broadleaf weeds. However, no effective herbicides are registered for post-emergent broadleaf weed control in cabbage.

The Applicant proposes to make a single application of the product Lentagran (45% pyridate) in a minimum of 20 gallons of water per acre by ground application equipment at a maximum rate of 4 pounds formulation (1.8 lbs. active ingredient) per acre for post-emergent broadleaf weed control prior to the 2 true leaf stage or the 4 true leaf stage depending on the weeds present.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a new chemical (i.e. an active ingredient not contained in any currently registered pesticide). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: February 19, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-4278 Filed 3-3-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Arcadia Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 24, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Arcadia Financial Corporation,* Kalamazoo, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Arcadia Bank, Kalamazoo, Michigan, a *de novo* bank.

2. *Fort Wayne National Corporation,* Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Exchange Bank, Warren, Indiana.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Leachville State Bancshares, Inc.,* Leachville, Arkansas; to become a bank holding company by acquiring at least

90 percent of the voting shares of Leachville State Bank, Leachville, Arkansas.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Merchantile Partners and F–K Partnership,* Fort Worth, Texas; Landmark Financial Group, Wilmington, Delaware; Landmark Service Corp., Fort Worth, Texas; and Landmark Financial Group, Fort Worth, Texas; to become a bank holding company by directly or indirectly acquiring up to 100 percent of Security Bank of Arlington, Arlington, Texas; Landmark Bank—Mid Cities, Euless, Texas; Arlington Heights Bank of Fort Worth, Fort Worth, Texas; Landmark Bank of Fort Worth, Fort Worth, Texas; Merchantile Bank of Fort Worth, Fort Worth, Texas; and Landmark Bank-Northwest, White Settlement, Texas.

Board of Governors of the Federal Reserve System, February 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–4442 Filed 3–3–87; 8:45 am]

BILLING CODE 6210–01–M

Du Page County Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 23, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Du Page County Bancorp, Inc.,* Glendale Heights, Illinois; to become a bank holding company by acquiring 67.57 percent of the voting shares of the Southwest Bancorp, Inc., Worth, Illinois; M.G. Bancorporation, Inc., Chicago, Illinois, and thereby indirectly acquire Mount Greenwood Bank, Chicago, Illinois; Worth Bancorp, Inc., Worth, Illinois, and thereby indirectly acquire Worth Bank and Trust, Worth, Illinois; and Illini Bancorp, Inc., Danville, Illinois, and thereby indirectly acquire The First National Bank of Danville, Danville, Illinois.

2. *Lee Capital Corp.,* Fort Madison, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Lee County Bancorp, Inc., Fort Madison, Iowa, and thereby indirectly acquire Lee County Savings Bank, Fort Madison, Iowa. Comments on this application must be received by March 20, 1987.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Smith Associated Banking Corporation,* Little Rock, Arkansas; to acquire at least 98 percent of the voting shares of Stephens Security Bank, Stephens, Arkansas.

Board of Governors of the Federal Reserve System, February 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–4443 Filed 3–3–87; 8:45 am]

BILLING CODE 6210–01–M

First of America Bancorporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such as activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 outweight 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* Kalamazoo, Michigan; to acquire the successor by merger of Keystone Bancshares, Inc., Kankakee, Illinois, and thereby indirectly acquire City National Bank of Kankakee, Kankakee, Illinois, and Illinois Trust and Savings Bank, Ottawa, Illinois. In connection with this application, First of America Bancorporation-Illinois, Inc., Libertyville, Illinois, has applied to merge with Keystone Bancshares, Inc., Kankakee, Illinois, and thereby indirectly acquire City National Bank of Kankakee, Kankakee, Illinois, and Illinois Trust and Savings Bank, Ottawa, Illinois.

In connection with these applications, Applicants propose to acquire Keystone Bancshares Life Insurance Company, Kankakee, Illinois, and thereby engage in underwriting credit life, accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y. This activity will be conducted in the counties of Kankakee and LaSalle in the State of Illinois. Applicants also propose to acquire Keystone Data Corporation, Kankakee, Illinois, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. This activity will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, February 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-4444 Filed 3-3-87; 8:45 am]

BILLING CODE 6210-01-M

Irving Bank Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 25.23(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 CFR 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 outweight 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 March 23, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage de novo in servicing loans, primarily related to credit card purchases, for the account of others; providing data processing services to others; and furnishing and performing services for Irving Bank Corporation's subsidiaries, as well as unaffiliated institutions, including solicitation of customers for such subsidiaries and institutions pursuant to § 225.25(b)(1) and (7) of the Board's Regulation Y. Comments on this application must be received by March 20, 1987.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Incorporated*, Columbus, Ohio; to engage *de novo* through its subsidiary, The Huntington Service Company, Columbus, Ohio, in providing data processing and data transmission services, facilities, data bases or access thereto pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Meredosia Bancorporation, Inc.*, Springfield, Illinois; to engage *de novo* in the making and servicing of mortgage loans for its account and the account of others, such as would be done by a mortgage company, purusant to § 225.25(b)(1)(iii); providing trust management expertise for subsidiaries' trust departments in a manner consistent with federal and state law, pursuant to § 225.25(b)(3); providing securities brokerage services and incidental activities such as offering custodial services, individual retirement accunts, and cash management services; these securities brokerage services will be restricted to buying and selling securities solely as agent for the accoung of customers, which is pursuant to § 225.25(b)(15); providing management consulting advice to nonaffiliated bank and nonbank depository institutions on an explicit fee basis, pursuant to § 225.25(b)(11); to perform appraisals of real estate utilizing only qualified appraisers on an explicit fee basis, pursuant to § 225.25(b)(b)(13); and providing advice and strategies to minimize tax liabilities for individuals as well as prepare tax forms and impart advice concerning liability based on records and receipts provided by the client, pursuant to § 225.25(b)(21) of the Board's Regulation Y. these activities will be conducted at the offices of Applicant's subsidiary banks in and around Meredosia, Illinois, and Virden, Illinois.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to engage *de novo* through its subsidiary, Security Pacific Securities, Inc., Los Angeles, California, in underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-4445 Filed 3-3-87; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under §225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to

acquire Gross & Webster, Inc., Omaha, Nebraska, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in Omaha, Nebraska and other nearby communities.

Board of Governors of the Federal Reserve System, February 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-4446 Filed 3-3-87; 8:45 am]

BILLING CODE 6210-01-M

Mary Pat Woodard, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 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 March 18, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Mary Pat Woodard,* Woodard Voting Trust and James M. Woodard, Jr., trustee, all of Englewood, Colorado; to increase their ownership of Aurora First National Company, Aurora, Nebraska, to 27.2 percent of the voting shares of that bank holding company.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Rosa Leong,* Los Angeles, California, to acquire up to 24.9 percent of the voting shares of Willshire Center Bancorp, Los Angeles, California.

Board of Governors of the Federal Reserve System, February 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-4447 Filed 3-3-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On June 18, 1986 (51 FR 22129), the Commission published a request for public comment on a petition for exemption from the requirements of its trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" that had been filed by Austin Rover Cars of North America. The Commission now grants the petition and determines that the provisions of Part 436 shall not apply to the advertising, offering, licensing, contracting, sales or other promotions of dealerships for the sale of motor vehicles by Austin Rover Cars of North America.

EFFECTIVE DATE: March 4, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/PC-A-4631, Neil J. Blickman, Esq., Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580 (202) 326-3038.

SUPPLEMENTARY INFORMATION:

Order Granting Exemption

In the matter of a Petition for Exemption from Trade Regulation Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" filed by Austin Rover Cars of North America.

On June 18, 1986, the Commission published a notice in the Federal Register soliciting comments on a petition filed by Austin Rover Cars of North America, a general partnership that will be engaged in the regional distribution of the "Sterling" line of motor vehicles. The petition sought an exemption, pursuant to section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures." In accordance with section 18(g), the Commission conducted an exemption proceeding under section 553 of the Administrative Procedure Act, 5 U.S.C. 553. The 60-day public comment period concluded on August 15, 1986. The Commission has reviewed the petition and the comments received in response to the notice and concludes that the Petitioner's request for an exemption should be granted.

The statutory standard for exemption requires a determination of whether or not the application of the Trade Regulation Rule to any person or class of persons is "necessary to prevent the unfair or deceptive act or practice to which the rule relates." The Commission's Statement of Basis and Purpose for the Franchise Rule concluded that deceptive acts or practices in the marketing of franchises or business opportunities had a greater chance of occurring in instances where there was:

(1) A relative lack of business sophistication of the proposed franchisee,

(2) A lack of adequate time for franchisses to review complex franchise agreements prior to establishment of the franchise relationship, and

(3) A serious informational imbalance between the franchisor and the franchisee such that the franchisee often was unaware of relevant and essential facts germane to the proposed investment.

The Commission's Franchise Rule employs a regulatory scheme of pre-sale disclosure of material information in an effort to neutralize the potential for deceptive acts and practices where the above-described conditions are present. However, if these conditions are not present, then a regulatory remedy designed to eliminate them is likely to be unnecessary.

Our review of the record in this proceeding indicates that an exemption is warranted. The Petitioner has convincingly demonstrated both the absence of the major conditions which actively contribute to the existence of unfair or deceptive acts or practices in the sale of franchises and other circumstances which reduce the likelihood that unlawful acts or practices will occur in connection with the sale of automobile franchises.

The petition shows that prospective motor vehicle dealers make extraordinarily large investments. As a practical matter, investments of this size and scope involve knowledgeable, experienced investors, the use of independent business advisors, and an extended period of negotiation. The record is consistent with the conclusion that the transactions negotiated by such knowledgeable investors over time and with the aid of business advisors produce the pre-sale information disclosure necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits of the proposed investment. Indeed, the Commission twice before reviewed the potential for unfair or deceptive acts or practices in

connection with the sale of automobile dealerships and found an absence of significant abuse by petitioning automobile company franchisors. Thus, by order dated July 17, 1980, the Commission granted the exemption petitions filed by the Automobile Importers of America, Inc. on behalf of its Members and Subscribing Members and by the American Motors Corporation; by Order dated October 28, 1983, the Commission granted the exemption petitions filed by Volkswagen of America, Inc. and twelve independent distributors of Subaru, Toyota and Volkswagen motor vehicles.

It thus appears that Petitioner's present sales transactions are accomplishing now what the Rule was intended to achieve through the required dissemination of a variety of disclosures. Inasmuch as (i) the conditions most likely to lead to consumer abuses are absent from Petitioner's sale of dealerships for the sale of motor vehicles and (ii) such sales transactions include sufficient disclosure to ensure that the prospective investor is in the position to make an informed decision, the Commission finds that the application of the Franchise Rule to Petitioner's sale of dealerships for the sale of motor vehicles is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

The record does not provide an adequate basis for exemption of all motor vehicle manufacturers, distributors and dealerships as a class. The Commission will continue to review exemption petitions on a case-by-case basis in light of the statutory standard for exemption pursuant to section 18(g) of the Federal Trade Commission Act.

List of Subjects in 16 CFR Part 436

Trade practices and franchising.

Accordingly, the Commission has determined that the provisions of Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of dealerships for the sale of motor vehicles by Austin Rover Cars of North America.

The Commission also rescinds, as moot, the temporary stay of Franchise Rule compliance previously granted to Petitioner (51 FR 22129) pending the Commission's final decision on the exemption request.

It is so ordered.

By the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-4458 Filed 3-3-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Advisory Committee Reports; Availability

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463 (5 U.S.C. Appendix 2), the Fiscal Year 1986 annual reports for the following Federal advisory committees utilized by the Centers for Disease Control have been filed with the Library of Congress:

Board of Scientific Counselors, National Institute for Occupational Safety and Health

Immunization Practices Advisory Committee

Mine Health Research Advisory Committee

Safety and Occupational Health Study Section

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC (telephone 202/287-6310). Additionally, on weekdays between 9 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, SW., Washington, DC (telephone 202/245-6791).

Dated: February 25, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-4372 Filed 3-3-87; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreement Preventive Health Services; Epidemiologic Study of the Natural History of Human Immunodeficiency Virus (HIV) [1] in Male Homosexuals Previously Enrolled in Studies of Hepatitis B Infection

Introduction

The Centers for Disease Control (CDC) announces that competitive applications are being accepted to assist public and private health care organizations providing services to homosexual and bisexual males to conduct epidemiologic and behavorial research of HIV infection and acquired immunodeficiency syndrome (AIDS). Studies will be conducted in cohorts of homosexual and bisexual males previously enrolled in earlier studies of hepatitis B infection and vaccine efficacy.

Program Objectives

The objectives of this cooperative agreement are to assist health providers in:

1. Defining more precisely the natural history of infections with HIV in homosexual and bisexual males.

2. Identifying risk factors for infection and "co-factors" for the development of disease in persons infected with HIV.

3. Measuring changes in high-risk behaviors (i.e., reduction in numbers of sexual partners, deferral of blood donations, etc.).

4. Evaluating the effectiveness of counseling based upon U.S. Public Health Service recommendations for the prevention of HIV infection and the development of AIDS.

Authority

This program is authorized under section 301(a) of the Public Health Service Act, as amended. Catalog of Federal Domestic Assistance Number is 13.118.

Eligibility Requirements

Eligible applicants are the public and private health care providers in Chicago, Denver, Los Angeles, New York City, San Francisco, and St. Louis who originally enrolled, interviewed, and obtained sera from homosexual males in hepatitis B infection studies conducted during the period 1978-80.

Justification

The cities listed above have had considerable experience in working with cohorts of homosexual males as a result of enrolling them in hepatitis B infection and vaccine trials. These cohorts have been well established and are actively being followed in some of these cities (Chicago, Denver, New York and San Francisco). Retrospective serum specimens and behavorial risk factor data are available from participants in these studies. Members of these cohorts have demonstrated a willingness to participate in studies of AIDS and HIV infection. The establishment of new cohorts elsewhere in the United States would be more expensive and time-

[1] The AIDS virus has been variously termed human T-lymphotropic virus type III (HTLV-III), lymphadenopathy-associated virus (LAV), AIDS-associated retrovirus (ARV), or human immunodeficiency virus (HIV). The designation "human immunodeficiency virus" (HIV) has been accepted by a subcommittee of the International Committee for the Taxonomy of Viruses as the appropriate name for the retrovirus that has been implicated as the causative agent of AIDS (Science 1986;232:697).

consuming. This and the availability of banked specimens and risk factor data make it imperative to continue and to expand existing cohorts to study the natural history of AIDS in homosexual males.

Cooperative Activities

The collaborative and programmatic involvement of the recipients of funds and CDC are as follows:

1. Recipients' Activities

a. In conjunction with CDC, design and conduct research on the natural history of HIV infection in homosexual males previously enrolled in studies of hepatitis B infection. Also, in conjunction with CDC, develop a plan for including these men in future vaccine, drug prophylaxis, and/or drug thereapy trials for HIV infection or AIDS.

b. Identify, obtain informed consent, and enroll as many eligible men as possible.

c. For those who have died, determine dates of seroconversion (or first known seropositivity) for antibodies to HIV, dates of development and forms of AIDS, and dates and causes of death.

d. For those who enroll in follow-up studies, obtain the following every four (4) months for the next five (5) years: specific information regarding patients' medical histories and sexual practices that may be related to the acquisition of AIDS or HIV infection; clinical specimens including blood or serum; and results of a brief, but specific physical examination for AIDS or AIDS-like signs and symptoms.

e. In conjunction with other participaing sites, design and use standard questionnaires.

f. Collect, prepare, and store clinical specimens including lymphocytes, sera, stools, and urine.

g. Design and establish a data-management system for the project.

h. Provide or arrange for risk reduction counseling of all participants based on their serologic test results and clinical findings.

i. Analyze data and publish results of the research in cooperation with CDC and other collaborators.

2. Centers for Disease Control Activities

a. Provide technical assistance in the design and conduct of the research.

b. Assist in the evaluation of drugs and/or vaccines that may appropriately be used to prevent or treat HIV infection or AIDS.

c. Provide technical guidance in the development of study protocols, consent forms, and interview instruments, including training and pretesting as necessary.

d. Assist in designing a data management system.

e. Perform all or a portion of the laboratory tests.

f. Coordinate research activities among the different sites, including laboratories and consultants.

g. Participate in the analysis of research information and presentation of research findings.

Availability of Funds

Approximately $900,000 is available in Fiscal Year 1987 to fund 3–4 new collaborative studies. Applications should be submitted for a 12-month budget period and a 5-year project period. Continuation awards within a project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate outlined above may vary and is subject to change, depending upon the availability of funds.

Type of Assistance

Awards resulting from this announcement will be cooperative agreements.

Reporting Requirement

Annual performance and financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of each project period.

Applications

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before May 8, 1987.

Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, Atlanta, Georgia 30305

Application forms should be available in the institution's business office or from the above address.

2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date.

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Applications

Applications that do not meet the criteria in either paragraph 2a or 2b immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

5. Content

Applications must include a narrative which details the following:

a. The background and need of project support including information that relates to factors by which the application will be evaluated.

b. The objectives of the proposed project which are consistent with the purpose of the cooperative agreement and which are measurable and time-phased.

c. The methods that will be used to accomplish the objectives of the project. Of special importance will be the applicant's plans to identify and enroll study participants.

d. The methods that will be used to evaluate the progress of the research.

e. Fiscal information pursuant to utilization of awarded funds in a manner consistent with the purpose and objectives of the project.

f. Any other information that will support the request for assistance.

Use of Funds

Cooperative agreement funds may be used to support personnel and to purchase supplies, services, and equipment directly related to the study. Funds may not be used to supplant funds supporting existing AIDS activities provided by the health department or to support construction or major renovation costs.

Review Criteria

1. Initial applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicants' abilities to meet the following criteria:

a. The ability of the applicants to enroll 100 or more eligible men who participated in the applicants' earlier studies of hepatitis B infection. Preferably, the majority of enrollees will be HIV seropositive men in whom the

date of seroconversion can be specified within a 12-month period.

b. The ability of the applicants to follow prospectively a cohort of the above men every 4 months over the five-year period of the project.

c. The details of how the applicants plan to develop and implement studies of these cohort members describing how men will be enrolled and followed.

d. The plan to protect the rights and confidentiality of all participants and ensure adequate participation.

e. The applicants' understanding of the research objectives and their ability and willingness to engage in a collaborative study with CDC.

f. The applicants' current activities in HIV research, especially in regard to men still in the hepatitis B vaccine efficacy study, and how current activities will be applied to acheiving the objectives of the study.

g. The size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the study.

h. How the project will be administered.

i. A proposed schedule for accomplishing the activities of the cooperative agreement including time frames.

j. The quality of an evaluation plan which specifies the methods and instruments of measurement to be used.

k. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will enable the recipient to monitor whether the methods are effective.

e. The budget requested is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggans, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575, FTS 236-6575. Technical information may be obtained from Scott Holmberg, M.D., or William Darrow, Ph.D., AIDS Program, CID, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-3162, FTS 236-3162.

Dated: February 26, 1987.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 87-4441 Filed 3-3-87; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 87D-0020]

Availability of List of Biopharmaceutic Guidances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a list of guidance documents (guidances) for in vivo bioequivalence studies and in vitro dissolution testing. These guidances have been prepared by FDA's Division of Bioequivalence, Center for Drugs and Biologics.

ADDRESS: Requests for a copy of the list of guidences should be sent to the Division of Bioequivalence (HFN-250), Rm. 17B-06, 5600 Fishers Lane, Rockville, MD 20857. An updated list of guidances is also prohibited as Appendix 3 to each cumulative supplement of the FDA publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations," The list of guidances contains information on how to obtain specific biopharmaceutic guidances.

FOR FURTHER INFORMATION CONTACT: Shrikant V. Dighe, Center for Drugs and Biologics (HFN-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0181.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a list of guidances for in vivo bioequivalence studies and in vitro dissolution testing. FDA has developed biopharmaceutic guidances since 1977 to offer advice in conducting bioequivalence studies to applicants seeking drug product approval. As of September 1986, FDA has issued 55 biopharmaceutic guidences. Future guidances will be developed as FDA determines they are needed.

Biopharmaceutic guidances are informal documents issued pursuant to 21 CFR 10.90(b)(9) and describe acceptable standards or procedures for bioequivalence testing. They do not bind or otherwise obligate the agency or a person referring to them and are not formal agency opinions. The agency does not require applicants to follow any guidance procedures, although the agency may request a test that differs from the one used by an applicant. An applicant is free to use an alternative or modified approach on how to conduct a study, although applicants are encouraged to consult the Division of Bioequivalence about methodology so that any differences in scientific opinion can be reconciled before a testing process begins.

FDA has followed the practice of issuing guidances rather than regulations or guidelines to assist applicants interested in bioequivalence testing. The guidance approach promotes successful bioequivalence studies with some uniformity as to methodology while avoiding inflexibility or regidity.

Request for copies of the list of biopharmaceutic guidances should be sent to the Division of Bioequivalence (HFN-250), Rm. 17B-06, 5600 Fishers Lane, Rockville, MD 20857. An updated list of guidances is also published as Appendix 3 to each cumultative supplement of the FDA publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, 202-783-3238. This list of guidances contains information on how to obtain specific biopharmaceutic guidances.

Dated: February 25, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-4448 Filed 3-3-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of Disapproval of a California State Plan Amendment

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 22, 1987 in San Francisco, California to reconsider our decision to disapprove California State Plan Amendment 86-7.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk March 19, 1987.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a California State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether California SPA 86–7 violates section 1902(a)(4) and section 1902(a)(19)(B) of the Social Security Act.

California SPA 86–7 establishes a medically needy income level for determining Medicaid eligibility for an aged, blind or disabled couple which exceeds 133⅓ percent of the payment level for a family of two in the State's AFDC program.

Although the 133⅓ limit under section 1903(f)(1)(B) of the Act is not a State plan requirement, the statute is clear that FFP is not available for medical assistance to persons whose income exceeds that limit. By setting the MNIL for an aged, blind or disabled couple in excess of 133⅓ percent of the AFDC level for a family of two, California could provide medical assistance to individuals in families with income in excess of the limitation. The likelihood of this occurring is increased by the fact that the State has not demonstrated that it has methods for excluding claims for persons whose income exceeds the FFP limitation. Therefore, HCFA has determined approval of the proposed SPA would not be consistent with the "proper and efficient operation of the plan, and would thus violate section 1902(a)(4) of the Act. Further, HCFA has determined such approval would not be "consistent with simplicity of administration" as required under section 1902(a)(19) of the Act.

In a February 7, 1986 decision in the case of *Cubanski v. Heckler* the U.S. Court of Appeals for the Ninth Circuit revised HCFA's approval of another SPA from California (No. 83–14) containing an MHIL for two adults which was disapproved on exactly the same basis as we are now disapproving California SPA 86–7. The mandate of the *Cubanski* decision only governs California amendment No. 83–14. HCFA believes the Court of Appeals decision to be wrong and petitioned the United States Supreme Court for *certiorari* to review that decision. On February 23, 1987 the writ of *certiorari* was granted. Thus, unless the Supreme Court affirms the *Cubanski* holding, HCFA will not apply the Court of Appeals interpretation of section 1903(f) or the Deficit Reduction Act moratorium to any situation not covered by the mandate in the *Cubanski* case. Therefore, HCFA has evaluated California SPA 86–7 under the existing Social Security Act and regulations which do not support the amendment.

The statute requires us to schedule a hearing on the State's request for reconsideration within 30 days of the receipt. Thus we must schedule the hearing on amendment 86–7.

This notice to California announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. John Rodriquez,
Deputy Director, Medical Care Services, Department of Health,
714/744 P Street, Sacramento, California 95814.

Dear Mr. Rodriquez:

This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 86–7 was received on January 29, 1987.

California State Plan Amendment 85–11 establishes a medically needy income level for determining Medicaid eligibility for an aged, blind or disabled couple which exceeds 133⅓ percent of the payment level for a family of two in the State's AFDC program. You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. The issues to be considered at the hearing are: (1) whether approval of the proposed SPA would not be consistent with the "proper and efficient operation of the plan" and would thus violate section 1902(a)(4) of the Act and (2) whether approval of the plan would not be "consistent with simplicity of administration" as required under section 1902(a)(19) of the Act, and (3) whether the disapproval of the amendment is precluded by the moratorium established by section 2373(c) of the Deficit Reduction Act of 1984.

I am scheduling a hearing on your request to be held at 10:00 a.m. on April 22, 1987 in the 21st Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L Roper, M.D.,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: February 25, 1987.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 87–4457 Filed 3–3–87; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–87–1678; FR–2107]

Statement of Policy; Discretionary Grant and Cooperative Agreement Policies and Procedure

AGENCY: Office of Administration, HUD.

ACTION: Statement of policy.

SUMMARY: This Statement of Policy sets forth Departmental policies and procedures to be used in awarding discretionary grants and cooperative agreements.

FOR FURTHER INFORMATION CONTACT: Edward Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Room 5260, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755–5294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In April 1985, the Department issued Handbook

2210.17, "Discretionary Grant and Cooperative Agreement Policies and Procedures". The handbook set forth Department policy and procedures for the award and administration of (1) grants and cooperative agreements involving the transfer of money from HUD to a non-Federal entity and (2) grants and cooperative agreements which are discretionary in nature. This Statement of Policy reiterates the information contained in that handbook. It provides general policy guidance in such areas as: instrument selection, eligibility, solicitation and application contents, cost/price analysis, funding arrangements and disputes. it also provides information on processing requirements when an award is to be made by the Office of Procurement and Contracts in Headquarters or by a Regional Contracting Officer in the field, as well as requirements for administration and closeout of agreements awarded.

Findings and Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of Rules Docket Clerk at the above address.

Information collection requirements contained in this Policy Statement have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2535–0084.

A. Introduction

1. *Purpose.* This Statement of Policy sets forth Departmental policy and procedures for the award and administration of discretionary grants and cooperative agreements. Because some discretionary awards are made in response to unsolicited proposals, this part also applies to awards made to unsolicited proposals.

2. *Scope.* The policy set forth in this Statement only applies to HUD grants and cooperative agreements when the following conditions are present:

a. The transfer of money is from HUD to a non-Federal entity; and

b. The agreement is discretionary in nature; *i.e.,* HUD by statute is authorized to select the recipient and project to be support and to determine the amount to be awarded. Funding is provided for fixed or known periods for specific projects or for the delivery of specific services. In the Catalog of Federal Domestic Assistance, discretionary grants and cooperative agreements are referred to as "project" awards.

3. *Applicability.* Parts A and B apply to all organizational elements involved in the award and administration of discretionary grants and cooperative agreements. No individual requirement of Part B shall apply if it conflicts with any statute, or with any regulation effective as of April 1985, when HUD Handbook 2210.17 was issued.

4. Definitions.

a. *Applicant.* An individual, organization, agency, unit of Government, or entity which submits an application for a HUD discretionary grant or cooperative agreement.

b. *Application.* A written request for a HUD discretionary grant or cooperative agreement, submitted in response to a solicitation.

c. *Assistance.* The transfer of money, property, services, or anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. Types of assistance instruments are:

(1) *Grant.* An assistance instrument used by HUD when no substantial involvement, as discussed under section 2 of Part B, is anticipated between HUD and the recipient during performance of the contemplated activity.

(2) *Cooperative Agreement.* An assistance instrument used by HUD when substantial involvement, as discussed under section 2 of Part B, is anticipated between HUD and the recipient during performance of the contemplated activity.

d. *Award.* The written document, signed by a HUD Grant Officer after an application is approved, that contains the terms and conditions for providing monetary assistance to the recipient.

e. *FAR.* The Federal Acquisition Regulation published as 48 CFR Chapter 1.

f. *Grant Officer (GO).* The HUD official delegated the authority by the Head of the Awarding Activity (HAA) to award and administer grants and cooperative agreements. For certain programs, some Grant Officer responsibilities may be retained by the HAA.

g. *Head of Awarding Activity (HAA).* A HUD official, at the Assistant Secretary level or equivalent, with authority for policy, award, and administration of discretionary grants and cooperative agreements within one or more HUD organizational elements.

h. *HUD.* The United States Department of Housing and Urban Development.

i. *HUDAR.* The HUD Acquisition Regulation published as 48 CFR Chapter 24.

j. *OMB.* The Office of Management and Budget.

k. *Organizational Element.* A component of HUD that holds program funds, *i.e.,* Fair Housing and Equal Opportunity, Community Planning and Development, Policy Development and Research, Housing, and Public and Indian Housing.

l. *Procurement Executive.* The Assistant Secretary for Administration.

m. *Recipient.* The individual, organization, agency, unit of Government, or entity that receives an award from HUD, is financially accountable for the use of any HUD funds provided for performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

n. *Selection Official.* A HUD official at the Assistant Secretary level or equivalent (or designee) who, when a competitive solicitation is used, is responsible for selecting the applicants for award.

o. *Solicitation.* A document issued by HUD that requests the submission of applications and that describes program objectives, recipient and project eligibility requirements, evaluation criteria, award terms and conditions, and information about the funding availability.

p. *Unsolicited Proposal.* A request for HUD funding which is not submitted in response to a solicitation.

B. Policy for Award and Administration of Discretionary Grants and Cooperative Agreements

1. Program Purpose and Instrument Selection

a. The Department has general authority to procure goods or services for its direct benefit and use. However, it has general authority to provide assistance in the form of grants or cooperative agreements *only when* it has legislative authority to provide assistance to a non-Federal entity and then only for the recipients and purposes authorized.

b. When selecting the appropriate instrument (contract, grant, or cooperative agreement) to be used, the organizational element shall first look to the specific authorizing legislation for authority to enter into assistance or contractual relationships. Then the organizational element shall select a

legal instrument that (according to the criteria established in paragraph d of this section 1) matches the intended and authorized relationship specified in the authorizing legislation—regardless of the terminology used in that legislation.

c. In selecting the appropriate instrument, the following items may also be considered:

(1) The statement of programmatic purpose; and,

(2) The purpose of the individual transaction.

d. Pursuant to OMB guidance which implemented the Federal Grant and Cooperative Agreement Act of 1977, the following instruments shall be used:

(1) A grant agreement is to be used as the legal instrument reflecting a relationship between HUD and a State or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, and substantial Federal involvement is not anticipated, as described under section 2 of Part B.

(2) A cooperative agreement is to be used as a legal instrument reflecting a relationship between HUD and a State or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services and anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, and substantial Federal involvement is anticipated, as described under section 2 Part B. Each cooperative agreement shall include an explicit statement of the nature, character, and extent of anticipated Federal involvement.

(3) A contract is to be used as a legal instrument reflecting a relationship between HUD and a State or local government or other recipient whenever the principal purpose of the instrument is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal government or when it is determined in a specific instance that the use of a procurement contract is appropriate.

e. An "intermediary situation" presents distinct problems in selecting the appropriate instrument. Such a situation arises when assistance is authorized to certain entities, but the Department provides that assistance by funding an intermediary organization. In determining the proper type of instrument to be entered into with the intermediary, the Grant Officer must decide whether the Department's purpose as defined by program legislation is to *acquire* the intermediary's services, or to *assist* the intermediary to do the same thing. If the proposed recipient of the award is not an organization that the Department is authorized to assist, but is merely being used to provide a service to another entity that is eligible for assistance, the proper instrument is a procurement contract.

2. Substantial Involvement

Substantial involvement is anticipated when the instrument indicates that the recipient can expect collaboration, participation, or close agency oversight and control beyond routine Federal stewardship of funding in the management of the project. The basis for substantial Federal involvement may arise either from the needs of the applicant (such as access to HUD records or personnel) or the government (such as a need to coordinate the project with other work). The final decision as to whether there shall be substantial Federal involvement shall be made by the HAA. The HAA may turn down an applicant's request if the resources sought cannot be made available, or the HAA may determine that no award will be made unless it includes the desired HUD involvement.

a. Substantial involvement is not anticipated when the terms of an assistance instrument indicate that the recipient can expect to run the project without agency collaboration, participation, or intervention as long as it is performed in accordance with the terms of the assistance instrument.

b. Substantial involvement does not include:

(1) Approval of recipient plans or applications prior to award;

(2) Normal Federal stewardship during the project such as site visits, performance reporting, financial reporting, and audits to ensure the standards, objectives, terms, and conditions of the project are accomplished;

(3) General statutory requirements agreed to in advance of award such as civil rights, environmental protection, and provisions for the handicapped;

(4) Review of performance after completion;

(5) General administrative requirements such as those set forth in OMB Circulars A-21, A-87, A-102, A-110, or A-122; and,

(6) Unanticipated HUD involvement to correct deviations in project or financial performance from the terms of the assistance instrument.

c. Examples of activities generally associated with substantial involvement are:

(1) Authority to halt activity if specifications or work statements are not met;

(2) Review and approval of one stage of work before another can begin;

(3) Review and approval of substantive provisons of proposed subgrants or contracts beyond existing Federal policy;

(4) HUD and recipient collaboration or joint participation;

(5) Monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects;

(6) Highly prescriptive HUD requirements which limit recipient discretion;

(7) Review and approval of key personel; and,

(8) Substantial, direct HUD operational involvement or participation during the assisted activity.

3. Basis or Award

Grant Officers shall only make discretionary grant and cooperative agreement awards on the basis of:

a. Applications submitted in response to a solicitation; or,

b. Unsolicited proposals.

4. Eligibility

a. The eligibility of recipients and projects for discretionary grants and cooperative agreements shall be determined in accordance with the applicable statute or program regulation and this section 4.

b. Grant Officers shall solicit applications for discretionary grants and cooperative agreements in a manner that provides for the maximum amount of competition feasible, in consonance with program purposes.

c. If a Grant Officer restricts eligibility in a solicitation to less than all otherwise eligible applicants under paragraph a of this section 4, an explanation of why the restriction is necessary shall be included in the official file. Any restriction of eligibility shall be supported by a written determination approved by the responsible HAA.

5. Solicitation

a. *General.* A solicitation for applications shall be in the form of a publicly available document that invites the submission of applications by a common due date or within a prescribed period of time. Formats available for a solicitation include:

(1) Program regulations;

(2) Notice of fund availability;

(3) Application kit;

(4) Request for application; or

(5) A combination of the above.

b. *Public Notice.* Generally, an announcement of the availability of a solicitation or the solicitation itself shall be published in the **Federal Register** or other publications that the recipient audience is most familiar with, at least 45 calendar days before the application deadline. For programs with recurring application due dates, an annual announcement of the availability of solicitations generally shall be made. Additional announcements may be made in other publications and media as necessary. (For those programs for which solicitations or notices are furnished directly to all eligible recipients, public notice is not required.)

c. *Availability of Funds.* The Grant Officer shall ensure that funds are available to support the award of the proposed grant or cooperative agreement prior to the release of the solicitation. This is done through the issuance of a form HUD–718, or other approved reservation form, validated by the HUD Office of Finance and Accounting (OFA). In no event shall an award be executed before it is ascertained that funds are available.

d. *Contents.* Each solicitation shall state or incorporate by reference all information necessary to allow potential applicants to decide whether to submit an application, understand how applications will be evaluated, and understand their obligations should an award be made. Generally, a solicitation should provide the following:

(1) The authorization to solicit applications;

(2) The types of projects or activities eligible for support;

(3) Who is eligible to apply;

(4) The expected duration of HUD support;

(5) The type of award instrument anticipated;

(6) The amount of money available for award, the expected number of awards, and the expected dollar range of individual wards;

(7) The stipulation that assistance awards are made with no allowance for fee or profit;

(8) Catalog of Federal Domestic Assistance number for the program;

(9) The application form or format to be used (including guidance on the expected order of information required in the application), location for application submission, and number of copies required;

(10) The name, address, and phone number of the responsible HUD official to contact for additional information;

(11) Deadline(s) for submission of applications and a statement describing the consequences of late submissions;

(12) Evaluation criteria and the weight or relative importance of each;

(13) A listing of program policy factors, if any, indicating the relative importance of each (see paragraph d of section 8 of Part B);

(14) Required pre-submission reviews and clearance, including a statement as to whether review under Executive Order 12372, "Intergovernmental Review of Federal Programs" is required; and,

(15) Dates by which selections and awards are expected to be made and the disposition of unsuccessful applications.

6. Application Content

a. Applications shall be on the form or in the format specified in the solicitation. Generally, applicants shall not be required to submit more than the original and two copies of the application.

b. The application shall be signed by an individual who is authorized to act for the applicant and to commit the applicant to comply with the terms and conditions of the instrument, if awarded.

c. Generally, an application shall consist of:

(1) The Standard Form 424 as a facesheet;

(2) A narrative description of the proposed project, the applicant's qualifications, and the applicant's plan for carrying out the project;

(3) A budget with supporting justification and documentation; and,

(4) Any required pre-award assurances, including, in the case of for-profit firms, an acknowledgement that no fee or profit will be allowable in the event of an award.

[Approved by the Office of Management and Budget under OMB control number 2535–0084]

7. Application Deadline

a. Each solicitation shall state a deadline date and time for submission of applications. The established deadline shall also apply to any amendments to an application initiated by the applicant unless otherwise stated in a program regulation. However, deadlines shall not apply to amendments requested by HUD after initial review. For solicitations which do not involve a competition for award (*i.e.*, all eligible applicants will receive an award), an application deadline may not be necessary.

b. Each solicitation shall state whether applications must be:

(1) Received in a designated HUD office by the application deadline (documentation of timely receipt is the notiation on the application of the time and date received by the responsible HUD office); or

(2) Mailed on or before the application deadline date. In such cases, applicants must use certified or registered mail to enable them to substantiate the date of mailing. Private metered postmarks shall not be acceptable proof of the date of mailing.

c. Generally, the method described in paragraph (b)(2) above shall be preferred for solicitations that involve potential applicants without close physical proximity to the HUD office designated for submission of applications.

d. A Grant Officer may extend an established application deadline either by publishing a timely notice of the extension in the same manner as the solicitation was publicized or by direct notice to all potential applicants. The extension of time shall apply to all applicants.

e. Each solicitation shall state the consequences of late submission of an application. Late applications shall be returned to applicants unopened, unless opened for identification purposes. For programs involving recurring application deadlines, a late application may be held for the next funding cycle with notification to the applicant to that effect. In no case shall late applications be considered for award as unsolicited proposals.

8. Application Review and Selection

a. Applications shall be evaluated by reviewers appointed by the responsible HUD selection official.

b. Each application shall be reviewed initially for completeness and eligibility. The Grant Officer may reject an application that does not include all information and documentation required by the solicitation, if, in the judgment of the Grant Officer, the lack of such material is considered a major deficiency. An application shall be rejected for a project that is ineligible for award based on eligibility criteria stated in the solicitation.

c. Each complete and eligible application shall be evaluated in accordance with the evaluation factors stated in the solicitation. At a minimum, the evaluation shall include a full reading of the application, judgement of the application against each evaluation criterion, and a record of the evaluation (narrative, formula, or a combination thereof) that justifies the funding decision.

d. Program policy factors are factors that the selection official may use to select a range of projects that would best serve program objectives. The Grant Officer shall describe in the solicitation any program policy factor(s)

that may be used in making selections, the impact of such factor(s) on the selection process, the justification for their use, and, if appropriate, the relative priority of each such factor. Examples of program policy factors are geographic distribution, diverse types and sizes of applicant entities, avoidance of the concentration of program resources in one or a limited number of applicants, and diversity of methods, approaches, or kinds of projects.

e. The results of the evaluation shall be provided to the responsible HUD selection official. Selection shall be made based on the evaluation, published program policy factors, if any, and comments, if any, under E.O. 12372 (Intergovernmental Review of Federal Programs). Such comments typically reflect the views of State and local officials that would be directly affected by the proposed assistance. For programs covered by E.O. 12372, the Department must accommodate State and local recommendations or explain why the recommendations were not accepted.

9. Unsolicited Proposals

a. *General.* The determination of the appropriate instrument for funding an unsolicited proposal shall be made in accordance with section 1 of Part B. However, all unsolicited proposals, whether for contracts or discretionary grants or cooperative agreements, shall generally be treated uniformly from receipt through evaluation in accordance with the Federal Acquisition Regulation (FAR), 48 CFR 15.504, 15.505, 15.506, and the HUD Acquisition Regulation (HUDAR), 48 CFR 2415.5.

b. *Content of Unsolicited Proposals.* In addition to any information required by program regulations, a full unsolicited proposal should contain the following basic information, as stated in FAR at 48 CFR 15.505:

(1) Offeror's name and address and type of organization, e.g., profit, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identity of proprietary data to be used only for evaluation purposes;

(4) Names of other Federal, State, local agencies, or parties receiving the proposal or funding the proposed effort;

(5) Date of submission;

(6) Signature of a person authorized to represent and contractually commit the offeror;

(7) Concise title and abstract of the proposed effort;

(8) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of HUD's mission;

(9) Names and biographical information on the offeror's key personnel who would be involved, including alternates;

(10) Type of HUD support needed, e.g., facilities, equipment, materials, or personnel resources;

(11) Proposed price or total estimated cost for the effort with supporting documentation in sufficient detail for meaningful evaluation;

(12) Period of time for which the proposal is valid (a six-month minimum is suggested);

(13) Type of funding instrument preferred, e.g., cost-reimbursement, fixed-price, etc.;

(14) Proposed duration of effort;

(15) Brief description of the organization, previous experience in the field, and facilities to be used; and,

(16) Required statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts.

Any unsolicited proposal for research shall contain a commitment to provide cost-sharing (see section 17 of Part B).

c. *Contact Points.* In accordance with HUDAR at 48 CFR 2415.506, unless otherwise specified in a FEDERAL REGISTER announcement, unsolicited proposals of summary proposal letters shall be submitted to the following contact points:

(1) For research—Department of Housing and Urban Development, Assistant Secretary for Policy Development and Research, Correspondence Unit, 451 Seventh Street, SW., Washington, DC 20410;

(2) For funding under the Secretary's Discretionary Fund Program—Department of Housing and Urban Development, Assistant Secretary for Community Planning and Development, Office of Program Policy Development, 451 Seventh Street, SW., Washington, DC 20410; and,

(3) For all others—Department of Housing and Urban Development, Director, Office of Procurement and Contracts, 451 Seventh Street, SW., Washington, DC 20410, for prompt transmission to the appropriate program offices for review and evaluation.

d. *Preliminary Review.* A preliminary review shall be conducted to determine if the unsolicited proposal:

(1) Contains sufficient technical and cost information;

(2) Has been approved by a responsible official or other representative authorized to contractually obligate the offeror; and,

(3) Contains the appropriate marking of proprietary data, if applicable (see FAR at 48 CFR 15.509(a)).

e. *Evaluation.* If the proposal does not meet the requirements of paragraphs d(1), (2) and (3) above, the offeror shall be notified and provided an opportunity to submit the required data.

If the proposal does meet the requirements, it shall be provided a full, comprehensive evaluation as stated in FAR at 48 CFR 15.506–2. Specifically, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique or innovative methods, approaches or ideas originated or assembled by the offeror;

(2) Overall scientific, technical, or socio-economic merits of the proposal;

(3) Potential contribution of the effort to HUD's missions;

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives; and,

(5) The offeror's capabilities, related experience, facilities, techniques or unique combination of these that are integral factors for achieving the proposal objectives.

f. *Final Determination.* If it is determined that an unsolicited proposal meets the criteria for a grant or cooperative agreement as stated in section 1 of Part B, and decided that the proposal will be funded, *and* determined that competition is not feasible, the HAA shall execute a written determination justifying the restriction of eligibility to one source. In those cases where assistance products have been approved by the Secretary in accordance with program regulations, the Secretary's decision abstract may serve as the written determination. The unsolicited proposal shall then be used as a basis for negotiation.

If it is determined that such an unsolicited proposal will *not* be funded, HUD shall return the proposal to the offeror, citing the reason(s) for rejection.

Note.—Unsolicited proposals that are considered for *contract* awards must be processed in accordance with FAR at 48 CFR 15.507.

10. Cost/Price Analysis

a. *Definitions.*

(1) Cost analysis means the review and evaluation of the cost data and judgmental factors which form the basis of the applicant's budget in order to

develop an opinion as to the allowability, allocability, and reasonability of the budget.

(2) Price analysis means the review and evaluation of a proposed price without evaluating separate cost elements.

b. Some form of cost or price analysis shall be performed by Grant Officers for each award. The type and extent of analysis should be based on:

(1) the nature of the program;

(2) The funding arrangement;

(3) The size and nature of the project; and

(4) Previous experience with, or the capacity of the recipient.

c. Cost/price analysis shall include all project costs, including any cost sharing. The results of the cost/price analysis shall be discussed in the negotiation records.

11. Funding Arrangements

a. *Types.*

(1) Cost-reimbursement awards provide for payment of allowable incurred costs to the extent prescribed in the award. Such awards establish an estimate of total HUD cost for the purpose of obligating HUD funds and determining a ceiling that the recipient may not exceed except at its own risk without the approval of the Grant Officer. Cost-reimbursement awards may provide for advance payments by Treasury check or Letter-of-Credit.

(2) Fixed-amount awards provide for payment of a firm fixed amount of HUD funding, regardless of actual costs, as prescribed in the award.

b. HAAs shall determine and publish the funding arrangement for award programs. Discretion may be provided to Grant Officers to determine the funding arrangement on a transaction basis. In such cases, Grant Officers shall document the basis for selection of the funding arrangement in the negotiation record.

c. Given the uncertainties involved in discretionary grants and cooperative agreement programs, cost-reimbursement type awards generally are made. However, appropriate consideration fixed-amount awards shall be made if:

(1) The HUD funding amount is definitely less than the total actual cost of the project;

(2) The HUD funding amount is less than $25,000, and it is determined that the HUD amount is less than the costs of administering a cost-reimbursement arrangement; or,

(3) The project scope is very specific, and adequate cost data are available to establish a fixed-amount award with assurance that the recipient will realize no increment above actual cost.

d. For assistance awards where part of the funding will come from future program appropriations, a clause shall be included in the solicitation and the subsequent award instrument stating that the funding is subject to the availability of future appropriations. Should the appropriations not materialize, HUD and the recipient shall agree to a mutual Termination for Convenience as discussed in section 5 of Part D.

12. Negotiation

a. After the selection of an application, the Grant Officer is responsible for entering into negotiations with the applicant, as necessary. Such negotiations are not a commitment that HUD will make an award.

b. The purpose of negotiations is to establish mutual agreement between HUD and the prospective recipient as to project purpose, definition, timing, HUD's role, and the resources appropriate to support the project. Negotiations may be conducted in person, by telephone, or in writing. Ordinarily, negotiations focus on special terms and conditions, budget items and funding amount, and proposed effort.

c. Any changes from the original application resulting from negotiations, shall be explicitly included in the award document. Additionally, a file memorandum shall be prepared by the Grant Officer to summarize negotiations including the participants, dates, positions, and agreements reached.

13 Integrity and Capacity of the Prospective Recipient

a. Before any award, the Grant Office shall examine the current and prior performance of prospective recipients to ensure that they have the ability and capacity to comply with all award requirements. This examination may include discussions with other Grant Officers and Program Officials about applicants' performances on prior government awards.

b. The Grant Officer shall review the Consolidated List of Debarred, Suspended and Ineligible Contractors and Grantees or obtain previous participation information (which includes a review of the Consolidated List) from the Office of Inspector General in determining whether prospective recipients should receive awards. The Grant Officer shall also verify prior credit history by comparison to credit reports in accordance with OMB Circular A-129, "Managing Federal Credit Programs".

c. Generally, the signature of the authorized representative of the applicant on the application shall represent the applicant's pre-award assurance that it is in compliance with or shall comply with:

(1) The standards for financial management systems, property, procurement, and other terms and conditions stated in the solicitation; and

(2) Generally applicable requirements.

d. HUD shall reserve the right to make a pre-award review of the applicant's ability to manage and account for the award. If the applicant is not in compliance or cannot or will not comply with the standards and requirements, the Grant Officer shall so determine in writing and may use apecial restrictive conditions or disapprove the application.

e. If the above Grant Office determination results from a history of poor performance, lack of financial stability, or noncompliance with the standards stated in paragraph c(1) above, special restrictive conditions in excess of requirements stated in OMB Circulars A-102 and A-110 may be imposed on an applicant covered by those Circulars, but only if the applicant is notified in writing of the restrictive conditions and what corrective action is necessary to remove the conditions. Copies of such notification shall be provided to OMB by the awarding official.

14 Award

a. Each discretionary grant and cooperative agreement award shall be made in writing by a Grant Officer and shall include the following:

(1) A unique instrument identification number;

(2) The duration of the award;

(3) The source and amount of HUD funds obligated;

(4) The amount and/or percentage and terms of any required cost sharing;

(5) The instrument type, whether grant or cooperative agreement. If the instrument is a cooperative agreement, the substantial involvement of HUD shall be stated;

(6) The HUD funding arrangement, whether fixed-price or cost-reimbursement;

(7) The general terms and conditions of award, including or incorporating by reference the applicable program statute or regulations, OMB Circulars, and generally applicable requirements;

(8) The special terms and conditions of award, including those necessary to achieve program objectives or protect HUD's interests;

(9) A reference to, or inclusion of, the approved application, as negotiated, or other statement of the purposes and objectives of the approved project (e.g., statement of work); and,

(10) Any other provisions necessary to establish the respective rights, duties, obligations, and responsibilities of HUD and the recipients.

b. Generally, awards are signed by the authorized representative of the recipient and the Grant Officer. Awards may be signed by the Grant Officer without a recipient counter-signature only when an application is accepted in its entirety by HUD without change, and the application was signed by a person with authority to bind the recipient.

c. In signing an award or amendment, the Grant Officer is certifying HUD's compliance with all applicable requirements for awards or amendments.

15. Notifications

a. *Congressional/Intergovernmental*— The Grant Office shall coordinate with the Office of Legislation and Congressional Relations and the Office of Intergovernmental Relations concerning required notifications of assistance awards.

b. *Unsuccessful Applicants.* The Grant Officer shall promptly notify in writing each applicant whose application did not receive an award. The notification shall briefly explain why the application was not selected and shall offer the unsuccessful applicant an opportunity for a more detailed explanation upon request.

16. Cost Determinations

a. *General.* Costs allowable under cost-reimbursement type discretionary grants and cooperative agreements shall be determined in accordance with the applicable cost principles cited in paragraph (b) below. Additionally, the applicable cost principles shall be used as guidance in determining the amount of fixed-amount (lump sum— grants and cooperative agreements.

b. *Cost Principles.* The following cost principles in effect on the date of award shall apply to HUD discretionary grants and cooperative agreements as specified:

(1) OMB Circular A–21, Cost Principles Applicable to Grants, Contracts and Other Agreements with Institutions of Higher Education.

(2) OMB Circular A–87, Cost Principles Applicable to Grants, Contracts and other Agreements with State and Local Governments. These cost principles shall also apply to Indian Tribal Governments.

(3) OMB Circular A–122, Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Organizations.

(4) FAR at 48 CFR 31.2, Cost Principles for Contracts with Commercial Organizations. These cost principles shall also apply to all other recipients not identified above (e.g., individuals and foreign entities).

c. *Approvals.* Costs that by the terms of the cost principles or other terms and conditions of award require the approval of the Grant Officer shall be considered to have been approved if they are included in an approved direct cost budget or an approved final indirect cost rate or amount. If costs requiring prior approval are not included in the approved direct cost budget, specific prior written approval must be obtained from the Grant Officer. No approval may be given which is inconsistent with the purpose of the award or which deviates without authorization from the cost principles.

d. *Indirect Costs.*

(1) HUD shall provide for reimbursement of indirect costs in accordance with either:

(i) Applicable approved indirect cost rates established by the recipient's cognizant Federal agency responsible for establishment of such rates; or,

(ii) Negotiated agreement between the Grant Officer and recipient based on applicable cost principles if no cognizant Federal agency exists.

(2) In no case shall indirect costs create an obligation for HUD to bear any costs in excess of the maximum HUD obligation stated in the award.

e. *Fee or profit.* No increment above cost may be paid to a recipient under a HUD discretionary grant or cooperative agreement.

17. Cost-Sharing

a. *General.* Cost-sharing refers to the portion of project costs to be contributed by the recipient. Depending on the source and nature of the requirement, terms such as "matching share" or "cost participation" may also be used to denote cost-sharing. A requirement for cost sharing may be stated in statute or regulation or may be negotiated. The nature and specific terms of the cost-sharing shall be a matter of negotiation between the Grant Officer and the recipient.

b. *Types.* Cost-sharing may be expressed in award documents as:

(1) A fixed percentage of project costs;

(2) Recipient responsibility for specified elements or items of project costs;

(3) Recipient responsibility for project costs in excess of the HUD share;

(4) Recipient responsibility for some or all costs during a specified period of the project; or

(5) Recipient best efforts to accomplish cost-sharing at a specified target.

c. *Composition.* Cost-sharing may be derived from:

(1) Project costs incurred by the recipient whether or not they require a cash outlay;

(2) Project costs financed with cash contributed to the recipient by non-Federal parties; or,

(3) Project costs represented by the value of goods and services donated to the recipient by non-Federal parties.

d. *Allowability.* To be allowable as cost sharing, cash expenditures or in-kind contributions shall:

(1) Be verifiable from the recipient's records;

(2) Not be incurred as a cost under any other federally assisted project or program;

(3) Meet all requirements of the terms and conditions of award including the tests of allowability of the applicable cost principles and the provisions of Attachment E of OMB Circular A–110 and Attachment F of OMB Circular A–102;

(4) Not be paid by the Federal government under another agreement unless authorized under the other agreement and the laws and regulations to which it is subject; and,

(5) Be accountable as project costs on the specific project being funded as described in the project description (e.g., statement of work). Costs on "related" projects not included in the project description shall not be allowable.

e. *Valuation.* The value of in-kind contributions shall be determined in accordance with the standards stated in OMB Circular A–102, Attachment F, if the recipient is a State, local or Indian tribal government. For all other recipients, OMB Circular A–110, Attachment E shall be used.

18. Generally Applicable Requirements

a. Generally applicable requirements are Federal policies and administrative requirements that apply to assistance awards of two or more Federal agencies. Any individual requirements may or may not apply to any Federal program, award, or recipient. HAAs are responsible for publicizing the applicability of requirements to their programs. Grant Officers shall assure that each award states or incorporates by reference all generally applicable requirements.

b. *Uniform administrative requirements:* HAAs shall provide for

implementation of OMB Circulars A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, and A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable, in program policy documents.

C. HAAs shall require that recipients, where applicable, assist HUD in meeting its responsibilities under the National Environmental Policy Act of 1969, as identified in 24 CFR Parts 50 and 58.

19. Disputes

HAAs shall issue program policy and procedures for resolution of disputes under discretionary grants and cooperative agreements. Generally, the procedure shall provide:

a. Negotiated efforts between the Grant Officer and recipient to resolve differences;

b. When such efforts fail, the Grant Officer shall issue a written final decision concerning the dispute with an appeal right to the HAA; and

c. Appeal of the decision to the HAA with no further recourse for the recipient except as provided by Federal statute or regulation.

20. Amendments

Awards may be modified at any time by written amendment. The Grant Officer and the recipient shall execute amendments that involve the rights or obligations of either party. Administrative amendments, such as changes in appropriation data or HUD administering staff, may be issued unilaterally by the Grant Officer. The recipient shall have no independent authority to unilaterally amend the award, unless otherwise specified in the award.

C. Processing Requirements for Award of Discretionary Grants and Cooperative Agreements by the Office of Procurement and Contracts in Headquarters and Regional Contracting Officers in the Field

1. Project Description

There are various methods for informing potential recipients about the nature of the work efforts under an award.

The method chosen will depend upon the nature of the program, governing statutes, program guidelines, eligibility restrictions, the level of competition anticipated and the degree of flexibility afforded to the applicant to designing the project. The following project description designs are presented as a continuum, from the most general to the most specific.

a. *Program Narrative* is an explanation of the program. It can be as simple as an overview of the program legislation or regulations or very comprehensive. In the latter case, the program officials may want to provide detailed information on the program's background and purpose, provide definitions of pertinent terminology, and list eligibility criteria for both projects and applicants.

This type of project description leaves the selection and design of the project to the applicant. The applicant may be required to draft a project narrative which will serve as the scope of work for the award.

b. *Problem Statement* is an explanation of the specific problem which the Government is requesting the applicant to address. In this instance, the project to be undertaken shall be defined by the Government (to solve the particular problem), to both the design of the project and methodology to be employed are left to the applicant.

The Government's request for applications shall generally contain a description of the problem's background, a statement of the project's objective, and a list of expected outcomes. The applicant's response shall detail the tasks to be undertaken to achieve the objectives and produce the expected outcomes and shall serve as the scope of work for the award.

c. *Statement of Work* is the least flexible of the three project description designs provided herein. In this instance, both the project to be undertaken and specific tasks of work to be followed shall be defined by the Government.

The Statement of Work shall contain a background section, a statement of objectives and a series of tasks that the recipient must follow in completing the work effort. The work shall be listed in order of substantive relationship or serially in order of chronological completion dates. The interrelationship of each task shall be clearly stated and each milestone, event, or work product that signifies task completion shall be clearly defined.

Applicants are free to suggest alternative tasks as a means of accomplishing the objectives of the Statement of Work. The final Statement of Work shall be the subject of negotiations between the successful applicant and HUD. Both parties should be careful to include any changes negotiated in the award to reduce ambiguities and the possibility of a dispute over the scope of the project during its progress.

2. Justification for Restricted Eligibility

The determination to restrict eligibility for a particular solicitation shall be supported by a written justification approved by the responsible HAA. Any of the following factors may restrict eligibility to one applicant or a limited range of eligible applicants. They may be used individually or in any combination to justify a restricted solicitation or the funding of an unsolicited proposal:

a. The applicant is uniquely qualified to perform the work described in the project scope;

b. The applicant has submitted an unsolicited proposal that offers a significant opportunity because its acceptance would leverage substantial funding from other sources;

c. The applicant has submitted an unsolicited proposal that offers a unique idea or concept, and it is not feasible to pursue the project competitively without disclosing the applicant's proprietary ideas;

d. The applicant's organizational and professional affiliations would significantly enhance the likelihood of success for the sponsored project by virtue of the organization's credibility or existing communication network;

e. The project to be sponsored would logically build upon the applicant's predominant expertise and leadership in previous work in the same area;

f. The proposed assistance award is less than $50,000, the project is the only one of its kind, and the applicant is highly qualified to perform the proposed effort;

g. The project must be pursued non-competitively to avoid jeopardizing legitimate programmatic goals of the authorizing legislation. The justification shall thoroughly describe the relevant goals and the reasons why funding the proposed applicant would enhance their achievement; or,

h. The proposed project has received the direct approval of the Secretary in accordance with program regulations.

3. Solicition

a. *Public Notice.* An announcement of the availability of a solicitation or the solicitation itself should be published in the **Federal Register** (or other media with which the audience is most familiar) at least 45 calendar days before the application deadline. Additional announcments may be made in other publications and media as necessary. Where applicable, E.O. 12372 (Intergovernmental Review of Federal Programs) requirements shall be included. The *Commerce Business Daily*

may also be used for publicizing a solicitation—generally when applications from commercial organizations are expected or substantial subcontracting opportunities are anticipated. For those programs where solicitations or notices are furnished directly to all eligible recipients, public notice shall not be required.

b. *Issuance.* Solicitations shall be provided to:

(1) All potential applicants identified directly by HUD through source or mailing lists; and

(2) Any party requesting a solicitation, whether or not a potential applicant.

c. *Inquiries.* In responding to inquiries, Grant Officers shall assure no potential applicant is afforded a competitive advantage over any other potential applicant.

d. *Amendment.* A solicitation may be amended at any time before the application deadline, provided:

(1) A reasonable amount of time is provided applicants to respond to the amendment; and

(2) The amendment is either publicized in the same manner as the solicitation or provided by direct notice to all potential applicants.

4. Application Receipt

Unless otherwise stated in the solititation, late applications and late amendments shall be rejected and the applicant notified immediately. Late applications shall be returned to applicants after the agreements are awarded, with an explanatory cover letter from the Grant Officer. Late applications and late amendments shall remain unopened unless opened for identification purposes only.

5. Application Review

a. *Rejection.* The Grant Officer may reject an application that does not include all information and documentation required by the solicitation if the nature of the omission precludes review. The Grant Officer shall reject an application from an applicant or project that is ineligible for award based on the eligibility criteria stated in the solicitation. The applicant shall be informed promptly by the Grant Officer of the rejection of the application and the reasons for the rejection.

b. All complete and eligible applications shall be forwarded by the Grant Officer to the evaluation panel.

6. Evaluation of Solicited Applications

a. Complete and eligible applications shall be evaluated in accordance with the evaluation criteria stated in the solicitation by an evaluation panel appointed by the selection official.

b. The evaluation panel shall consist of an least three voting members. All voting members shall be Federal Government employees. Non-voting advisors may be appointed to the panel. Non-voting advisors may be other than Federal Government employees.

c. Each application shall be read and judged independently. The decision shall be supported by a narrative justification for each evaluation criterion.

d. The Selection official shall review the panel's report and either make final selection or select those applicants with which discussions will be held prior to final selection. Selection shall be based on the panel's evaluation, published program policy factors, if any, and comments, if any, under E.O. 123472. The selection official's decision may differ from the panel's recommendation, provided justification is stated in a written selection statement.

e. Should the selection official decide discussions are necessary before final selection, the Grant Officer shall conduct discussions with the participation of the evaluation panel. Discussions may be held in person, by telephone, or in writing. After discussions, each applicant shall be given an opportunity to revise its application by a common date and time.

f. Upon receipt of the selection official's final statement, the Grant Officer shall enter into negotiations with the selected applicants.

7. Preparation for Negotiations

a. The purpose of negotiations is to establish mutual agreement between HUD and the prospective recipient as to the terms and conditions of award. Items that may require negotiations are:

(1) Instrument type;
(2) Funding arrangement;
(3) Funding amount;
(4) Cost sharing;
(5) Budget items and amounts;
(6) Project description;
(7) Project period;
(8) Extent of HUD involvement;
(9) Payment method;
(10) Use of program income;
(11) Property acquisition and disposition;
(12) Extent of contracting;
(13) Key personnel;
(14) Use of consultants;
(15) Reporting requirements; and
(16) Other terms and conditions.

b. The actual items to be negotiated for any individual award will depend on the enabling statute, program regulations, solicitation, application, and selection conditions. For some awards, some items may not be negotiable due to fixed requirements. In other cases, discretion may be available concerning the negotiation of individual items.

c. When adequate cost or pricing data are not available from other sources, the Grant Officer shall request the Office of Inspector General (OIG) to perform a pre-award audit for fixed-amount awards in excess of $250,000 and cost-reimbursement awards in excess of $500,000. At the discretion of the Grant Officer, the OIG may be requested to perform a pre-award audit of any award.

d. Prior to negotiations, the Grant Officer shall review the applicant's responsibility to comply with award requirements in accordance with section 13 of Part B. This includes requesting the Office of Inspector General to check previous participation information of the proposed recipient(s). Should the review raise doubts as to the applicant's responsibility, the Grant Officer shall resolve the issues through negotiations or deny the award. Special restrictive conditions of award may be used in accordance with section 13 of Part B.

9. Negotiation

Selection for negotiations is not a commitment that an award will be made. The Grant Officer shall terminate the negotiations if the parties are unable to reach mutual agreement concerning the terms and conditions of award.

8. Award

a. Three original copies of the award shall be signed in accordance with paragraph b of section 14 of Part B. An original copy of the award shall be provided to the recipient, the official file, and either the Office of Finance and Accounting or Regional Accounting Division.

b. The Grant officer's signature on an award or amendment constitutes a certification as to compliance with all applicable requirements for award or amendment.

c. Notification shall comply with the requirements of section 15 of Part B.

D. Requirements for Administration and Closeout of Discretionary Grants and Cooperative Agreements Awarded by the Office of Procurement and Contracts in Headquarters and Regional Contracting Officers in the Field

1. Definitions

a. *Government Technical Representative (GTR).* The individual in the Program Office who is responsible for the technical and financial oversight and evaluation of the recipient's performance.

b. *Government Technical Monitor (GTM).* The individual(s) designated to provide technical monitoring, advice, and assistance, to aid the GTR in the technical and financial oversight and evaluation of the recipient's performance. The GTM is usually selected for special skills or knowledge necessary for the Government's supervision of the recipient's project, or to represent the interest of another program office concerned with the project. The GTM may be from the program office concerned with the recipient's project, the program office initiating and funding the assistance action, or another part of the Department.

2. General Provisions

For grants and cooperative agreements awarded by Grant Officers, the uniform administrative requirements of OMB Circulars A–102 and A–110 are implemented by the General Provisions which are made a part of every award.

3. Monitoring Recipient Performance

a. *General.* Recipients are responsible for managing the day-to-day operations of activities supported by HUD grants and cooperative agreements. HUD's role is to monitor recipient performance in accordance with the administrative requirements stated in OMB Circular A–102 and A–110.

b. *Exceptions.* HUD shall not take any action related to recipient performance in excess of its monitoring responsibilities except:

(1) In accordance with specific requirements identified in the statement of substantial involvement of a cooperative agreement;

(2) In accordance with restrictive award conditions established under § 75.33(e); or

(3) Upon failure of the recipient to comply with award conditions as determined by the Grant Officer.

3. *Reports.* Recipient performance and financial reports are HUD's primary tool for recipient monitoring. Each award document states requirements for recipient performance and financial reporting—usually on a quarterly basis. Additionally, events that have significant impact on the project are required to be reported as soon as possible rather than in the next scheduled report.

[Approved by the Office of Management and Budget under OMB control number 2535–0084.]

(1) *Assuring Receipt.* The GTR shall monitor recipient compliance with reporting requirements. When reports are late, the GTR shall contact the recipient and request immediate submission. Should the recipient fail to submit the reports or should a pattern of late or incomplete submissions develop, the GTR shall inform the Grant Officer and appropriate action shall be taken in accordance with section 4 of Part D.

(2) *Review.* The GTR and Grant Officer shall each review performance and financial reports and resolve any programmatic, financial or administrative issues.

d. *Site Visits.* In accordance with program office practice, GTRs may make site visits for recipient monitoring and technical assistance. Site visits shall be documented in a brief file memorandum with a copy to the Grant Officer.

4. Noncompliance

a. *Corrective Action.* Appropriate action shall be taken to enforce any award requirement that is not being met by the recipient. If a recipient is not complying with a specific requirement of the award, such as submitting financial and performance reports or performing the project, the following steps shall be taken:

(1) The GTR or Grant Officer shall inform the recipient of the problem and request the recipient to remedy the situation. A deadline shall be established and follow-up action taken if the recipient does not correct the situation.

(2) If the recipient does not agree that a problem exists, the GTR or Grant Officer shall learn the basis for the recipient's position. If the recipient's position appears incorrect, the Grant Officer, in cooperation with the GTR, shall determine the appropriate course of action to resolve whether or not the recipient is complying with the award.

(3) If the recipient is not in compliance with award requirements, the Grant Officer shall write the recipient stating:

(i) The basis for noncompliance;

(ii) Required corrective action;

(iii) The date, not less than 30 calendar days, by which corrective action must be taken; and,

(iv) The action the Grant Officer shall take if the recipient does not take corrective action.

b. *Remedies.* If a recipient does not achieve compliance or provide satisfactory evidence that compliance will be achieved, the Grant Officer may:

(1) Convert payment from an advance to a reimbursement method;

(2) Withhold payment;

(3) Recover misspent funds;

(4) Suspend the award; or

(5) Terminate the award for cause.

c. *Suspension or Termination for Cause.* Except as provided in paragraph d below, a suspension or termination for cause shall not be taken until at least 10 calendar days after the Grant Officer provides written notice to the recipient of HUD's intention to suspend or terminate for cause. The notice in paragraph a(3) above is sufficient for this purpose, provided the notice specifies that suspension or termination for cause may result from the recipient's failure to collect the noncompliance.

d. *Immediate Action.* The Grant Officer may take any of the actions specified in paragraphs b and c above immediately, without prior notice to the recipient, if the Grant Officer determines that:

(1) Serious mismanagement or misuse of funds exists:

(2) The recipient has ceased to exist or becomes incapable of fulfilling its award responsibilities;

(3) There is evidence the award was fraudulently obtained; or,

(4) Immediate termination is otherwise determined necessary in the best interest of the Government.

5. Termination for Convenience

A Termination for Covenience occurs when both the recipient and HUD agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. A Termination for Convenience may be initiated by either party, and the agreement may be terminated either in whole or in part. HUD and the recipient must agree upon the termination conditions, including the effective date. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for HUD's share of the noncancellable obligations, properly incurred by the recipient prior to termination.

6. Amendments

a. *General.* An amendment is a written change, signed by a Grant Officer, in the terms and conditions of the award document. Amendments that reflect the rights and obligations of either party shall be signed by the recipient and the Grant Officer. Administrative amendments, such as changes in the GTR or appropriation data, or cases where the recipient has submitted a signed request from an authorized individual and HUD adopts it without any change, may be signed by the Grant Officer only.

b. *Processing.* Changes usually originate with the recipient. HUD has no right to unilaterally direct changes in the

recipient's project. Recipient requests shall be directed to the Grant Officer with a copy to the GTR. The proposed change shall be evaluated by the GTR who shall inform the Grant Officer in writing of the merits of the proposal. If the GTR recommends that a change shall be made, a request shall be prepared and forwarded to the Grant Officer for action. If the GTR does not agree with the recipient's proposed change, the GTR shall so inform the Grant Officer.

c. Requests for amendments that substantially change or exceed the existing scope of the project shall be treated as unsolicited proposals, becoming a separate project award, if funded.

7. Payment of Vouchers

a. *Reimbursement method.* Standard Form 270, "Request for Advance or Reimbursement," is the form by which recipient seek reimbursements when advance payments are not authorized. Because the costs have already been incurred by the recipient, it is imperative that requests for reimbursement be handled expeditiously. As with many HUD cost-reimbursement contracts, most assistance agreements that are paid from the Office of Finance and Accounting (OFA) in Headquarters are placed under the "direct-pay" procedure. Under this system, the recipient mails the original and two copies of the SF-270 directly to OFA with copies to the Grant Officer and GTR. If OFA receives no notification from the Grant Officer to the contrary, OFA shall pay the voucher after 30 calendar days, assuming that the voucher is mathematically correct and that undisbursed funds are available. The GTR shall review the vouchers promptly to assure that costs claimed for reimbursement are reasonable and allocable. HUD reserves the right, however, to remove any recipient from the "direct-pay" procedure should a recipient fail to provide accurate, complete, and timely data.

[Approved by the Office of Management and Budget under OMB control number 2535-0084]

The GTR shall support recommendations for disallowance of claimed costs. A written statement shall be prepared outlining why costs are considered unreasonable or not allocable (or both).

The GTR shall review claims for reimbursement promptly. The payment clause promises the receipient that HUD will, *promptly* after receipt of each voucher and statement of cost, make payment as approved by the Grant Officer. HUD's standard practice, in accordance with Department of Treasury directives, is to pay each acceptable voucher within 30 calendar days of receipt. Therefore, the GTR ordinarily shall not hold a voucher pending clarification of questions but shall send the voucher along to the Grant Officer with a notation as to any costs questioned. In this way, claimed costs, the allowability of which is not in question, can be paid promptly. If the questioned costs later appear to be allowable, on the basis of additional information provided by the recipient, they shall be added to payments on a subsequent voucher.

b. *Advance payment by Treasury check.* Recipients may also use the SF-270 to claim advance payments, *i.e.,* funds received in advance of performing the work and incurring the costs. A recipient shall receive advance payments only if expressly authorized under the agreement terms and conditions. Under this method, the recipient receives a lump sum amount which is anticipated to cover the costs for a specific period of time. The GTR shall review this amount and determine its reasonableness as to the work to be performed during the specified time frame.

[Approved by the Office of Management and Budget under OMB control number 2535-0084]

c. *Letter of Credit.* A letter of credit (LOC) is another form of advance payment. As with advance by Treasury check, its use must be authorized in the agreement. Once the LOC has been established, the recipients may request funds in the form of drawdowns by preparing a TFS Form 5805, Request for Funds, and submitting it to their commercial financial institution. The financial institution will then request the funds on behalf of the recipient from Treasury via the Treasury Financial Communications System. The GTR and Grant Officer shall monitor the request for funds in accordance with the requirements of HUD Handbook 1900.28, Letter of Credit Pocedures—Treasury Financial Communications System (HUD staff). The LOC shall only be used when the grant or cooperative agreement meets the requirements of Treasury Circular 1075 and HUD Handbook 1900.28.

8. Closeout

a. *General.* Closeout is the process by which HUD determines that all applicable administrative and project requirement have been completed by the recipient and HUD.

b. *Evaluation.* The GTR shall prepare a final evaluation of recipient's performance. The assessment shall indicate:

(1) Whether the recipient has completed all performance requirements;

(2) The acceptability of performance by major objective or task;

(3) Whether any patentable items were developed;

(4) Whether property was furnished to or acquired by the recipient; and,

(5) A qualitative rating of the recipient's performance. This rating should candidly address the recipient's expertise, ability to keep actual costs and completion times in line with those originally estimated, and other aspects of their performance.

c. *Administrative Actions.* After receipt of the GTR assessment, the Grant Officer initiates necessary action to close the award. They may include audit resolution, financial settlement, payment approval, deobligation of unexpended balances, property disposition, and the execution of closeout agreements.

d. *Recipient Notification.* Upon completion of all administrative actions for closeout, the recipient shall be notified, by a letter from the Grant Officer or an amendment to the award, of the terms and conditions of closeout including:

(1) Final financial settlement;

(2) Provision for submission of audit reports and due dates;

(3) Record retention requirements; and,

(4) If closeout is made without full audit coverage, a statement that HUD reserves the right to recover disallowed costs or take other appropriate action if HUD determines that information provided by the recipient was false or erroneous.

Dated: February 24, 1987.

Judith L. Hofmann,

Assistant Secretary for Administration.

[FR Doc. 87-4438 Filed 3-3-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[ID-050-4410-08]

Intent to Amend the Bennett Hills, Sun Valley, and Magic Management Framework Plans and the Monument Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare a planning amendment for public land in

Blaine, Camas, Elmore, Gooding, Jerome, and Lincoln counties, Idaho.

SUMMARY: Pursuant to 43 CFR Part 1600 the Shoshone District of the Bureau of Land Management proposes to consider amending the Sun Valley Management Framework Plan (MFP), the Bennett Hills MFP, the Magic MFP, and the Monument Resource Management Plan (RMP) to allow the designation of five Research Natural Areas (RNAs)/Areas of Critical Environmental Concern (ACECs), change 20 parcels from a retention category to a transfer category, and change one parcel from a moderate use category to designation as an isolated tract dedicated to wildlife habitat. Also included will be a plan for 1,000 acres of recently acquired lands.

DATE: Comments concerning this plan amendment must be received by April 3, 1987.

ADDRESS: Written comments concerning this plan amendment should be sent to the BLM District Manager, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: John Lytle, Shoshone BLM District Office, P.O. Box 2 B, Shoshone, Idaho 83352, telephone (208) 886–2206.

SUPPLEMENTARY INFORMATION: The amendments which are proposed for the Monument RMP include designation of the Brass Cap Kipuka RNA/ACEC, 854 acres; the change from retention to transfer category of approximately 3,000 acres; and the change of one 850-acre parcel from a moderate use category to an isolated tract dedicated to wildlife habitat. The amendments proposed for the Bennett Hills MFP include the designation of the Dry Creek RNA/ACEC, 1,500 acres; the Pot O'Gold RNA/ACEC, 1,254 acres; the Fir Grove RNA/ACEC, 320 acres; and the change from retention to transfer of approximately 410 acres. New planning on the 1,000 acres acquired in the Thorn Creek Exchange will be proposed. The amendments proposed for the Magic MFP include designation of the Camas Creek RNA/ACEC, 100 acres; and the change from retention to transfer of 40 acres. The proposed amendment to the Sun Valley MFP would change 809 acres from the retention to transfer category.

The plan amendments will include the proposals for changing plan status on these parcels and appropriate alternatives to these proposals. The following resources will be considered in preparing the planning amendment: Lands, wildlife, range, minerals, cultural, watershed/soils, and threatened/endangered plant and animal species. Staff members representing each resource will make up the planning team.

Designation of the five RNAs/ACECs is expected to be the major issue of this amendment. Transfer designations are not expected to be controversial.

No public meetings are scheduled.

Location and Availability of Documents Relevant to the Planning Process: All documents are located at the Shoshone District Office. The hours of availability are 7:45 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Jon H. Idso,

District Manager.

FR Doc. 87–4486 Filed 3–3–87; 8:45 am]

BILLING CODE 4310-GG-M

[OR-010-07-4322-10; GP7-127; OR-010]

Grazing Advisory Board Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of tour April 22, 1987.

SUMMARY: The tour will center on the Plush, OR area including the Potholes, Rabbit Basin, Sharptop seeding near Poor Jug Camp, and the Little Juniper Area.

FOR FURTHER INFORMATION CONTACT: Dick Harlow, Lakeview District Office, P.O. Box 151, Lakeview, OR 97630, (Telephone: 503–947–2177).

Dated: February 24, 1987.

Dick Harlow,

Associate District Manager.

[FR Doc. 87–4487 Filed 3–3–87; 8:45 am]

BILLING CODE 4310-33-M

[AA-620-4211-022-24-10]

Availability of Assignment of Record; Title and Transfer of Operating Rights Forms for Onshore Federal Oil and Gas and Geothermal Resources

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Form 3000–3, "Assignment of Record Title Interest in a Lease for Oil and Gas or Geothermal Resources" and Form 3000–3a, "Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources".

SUMMARY: The subject forms, numbered 3000–3 and 3000–3a, have been designed to replace the single Form 3000–3, originally created to replace Forms 3106–5, 3106–14 and 3200–17.

EFFECTIVE DATE: March 4, 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, (202) 653–2190.

SUPPLEMENTARY INFORMATION: Form 3000–3, "Assignment of Record Title Interest in a lease for Oil and Gas Geothermal Resources," and Form 3000–3a, "Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources," have been approved by the Office of Management and Budget with an expiration date of August 31, 1989. The two forms replace Form 3000–3 which was originally created to replace Form 3106–5, 3106–14, and 3200–17. Previously, all such documents were referenced as assignments, and a single Form 3000–3 was designed to record those interests for the required approval by the Bureau of Land Management authorized officer on behalf of the Secretary of the Interior. However, in accordance with a legal interpretation of the Mineral Leasing Act of 1920, as amended, particularly 30 U.S.C. 187a, by the Office of the Solicitor, it has been determined that operating rights constitute subleases under the meaning of the law and should be referred to as *transfers*, with record title interests referred to as *assignments*. Under an operating agreement, a lessee may transfer certain rights in a lease, including the right to drill for and produce oil or gas, but does not divest record title interest in the lease.

Therefore, after consideration of comments received from individuals and industry, the Bureau of Land Management has designed two separate forms, one for the *Assignment* of record Title Interest in Lease for Oil and Gas or Geothermal Resources and another for the *Transfer* of Operating Rights (sublease) in a Lease for Oil and Gas or Geothermal Resources. These forms are not required for the filing of a transfer of overriding royalty interests, however, space is provided for that purpose on the two forms as a convenience to the assignor/assignee of such interests. Copies of the new forms may be obtained only from Bureau of Land Management State Offices. (See 43 CFR 1821.2–1 for office locations.)

The information collection requirements contained in Forms 3000–3 and 3000–3a have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0034.

Dated: February 20, 1987.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 87-4488 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-84-M

[WY-920-07-4111-15-7001; W-96355]

Proposed Reinstatement of Terminated Oil and Gas Lease; Johnson County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-96355 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-96355 effective October 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-4529 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15-7001; W-92317]

Proposed Reinstatement of Terminated Oil and Gas Lease; Campbell County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-92317 for lands in Campbell County, Wyoming, was timely filed and was acompanied by all the requried rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-92317 effective June 6, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-4530 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15-7001; W-99372]

Proposed Reinstatement of Terminated Oil and Gas Lease; Carbon County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-99372 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-99372 effective April 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-4531 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15-7001- W-86564]

Proposed Reinstatement of Terminated Oil and Gas Lease; Fremont County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-86564 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-86564 effective October 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-4532 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-07-4212-11; CA 14154]

California; Realty Action; Classification of Public Lands for Recreation and Public Purposes; San Diego Co., CA

Correction

In notice document 86-27170 appearing on page 43476 in the issue of Tuesday, December 2, 1986, make the following corrections:

1. In the first column in the legal description for T. 11 S., R. 1 E., in Section 6, change "E ½ SE ¼" to "E ½ SW ¼."

2. In the same column in the legal description for T. 13 S., R. 2 E., in Section 8, change "N ½ NW ¼" to "N ½ NW ¼ NW ¼."

3. On the same page in the second column under the section heading "Third Party Reservations", make the following corrections:

a. In line two "mining claims" should be "a mining claim."

b. The third paragraph which reads as follows should be deleted.

"b. Claim No. 130864 LO; located by Glen Frost on August 22, 1983 in T. 13 S., R. 2 E., SBM; Section 8: W½, San Diego County, California."

c. In line 12 of the fourth paragraph, "contests" should be "contest" and "mining claims" should be "mining claim."

d. In the fifth paragraph, "validity determinations" should be "a validity

determination" and "contests" should be "contest."

e. In the sixth paragraph, "validity determinations" should be "validity determination", "contests" should be "contest", and "mining claims" should be "mining claim."

Dated: February 24, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 87-4587 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Endangered and Threatened Species; Receipt of Application for a Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 716136

Applicant: American Association of Zoological, Parks and Aquariums (AAZPA) Sumatran, Rhino Species Survial Trust (SRT).

The AAZPA-SRT consists of 5 primary member institutions—Los Angeles Zoo, Cincinnati Zoo, Miami Metrozoo, New York Zoological Park, and San Diego Zoo and Wild Animal Park. The applicant has applied to import ten (five male and five female) Sumatran rhinocerus (*Dicerorhinus sumatrensis*) from Indonesia. The application, and accordingly, a final decision as to whether to issue the permit is contingent upon finalization of an agreement between the AAZPA-SRT and the Indonesian Directorate General of Forest Protection and Nature Conservation. The United States government (USG) would not be a party to the agreement, and takes no position as to its merits. The only USG involvement would be the final decision on permit issuance should the proposed agreement be ratified.

The applicant states that this program would be part of a global strategy for the conservation of the Sumatran rhino. Applicant further contends that the animals to be imported are "doomed", i.e., having no possibility of contributing to the survival of the species in their present situation in the wild because they cannot be protected from poachers, their habitat is unalterably destined for destruction and/or they are not part of a population large enough to be viable in genetic and demographic terms. Captive breeding activities would be conducted in Indonesia as well as in this country. The animals to be imported would be on permanent loan to AAZPA-SRT, but would remain the property of the Indonesian government. In addition to captive breeding activities, the proposed agreement calls for the applicant to provide technical assistance to the Indonesians, and to donate $50,000 per animal received to the Indonesian Wildlife Fund to assist in preservation of the species in the wild. When the population of rhinos in SRT facilities reached 25, animals would be available for reintroduction in the wild if it is deemed necessary and appropriate in consultation between SRT and the Indonesian government.

Documents and other information submitted with this application is available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service at the above address.

Interested persons may comment on any of this application within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: March 2, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-4581 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Conoco, 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 Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6801, Block 74, South Pass Area, of offshore Louisiana. 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 Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 20, 1987. Comments must be received on or before March 4, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana and Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-4533 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Elf Aquitane, 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 Elf Aquitane, Inc. has submitted a DOCD describing the activities it proposes to conduct on lease OCS–G 4137, Block 557, Matagorda Island Area, offshore Louisiana. 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 Old Gulf Texas.

DATE: The subject DOCD was deemed submitted on February 18, 1987.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–4534 Filed 3–3–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document, Hall-Houston Oil 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 Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7647 and 5365, Block 121 and 122, respectively, East Cameron Area, offshore Louisiana. 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 Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 24, 1987. Comments must be received on or before March 4, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 25, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–4535 Filed 3–3–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Martin Luther King, Jr. National Historic Site Advisory Commission; Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of Advisory Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: March 11, 1987.

ADDRESS: The Martin Luther King, Jr. Center for Non-Violent Social Change, Inc., Feedom Hall, Room 261, 449 Auburn Avenue, NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312, telephone (404) 331–4979.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr. National Historic Site. The members of the Advisory Commission are as follows:

Mr. William Allison, Chairman
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphery
Mrs. Christine King Farris
Mr. Handy Johnson, Jr.
Mr. James Patterson
Mrs. Valena Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include: (1) The status of park development and interpretive activities as called for in the park's approved General Management Plan.

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file a written statement with the commission concerning the matters to be discussed. Written statements my also be submitted to the Superintendent at the above address. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: February 18, 1987.

C. W. Ogle,

Regional Director, Southeast Region.

[FR Doc. 87-4439 Filed 3-3-87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-285 and 286 (Final)]

Industrial Phosphoric Acid From Belgium and Israel

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701-TA-285 and 286 (Final) under section 705(b)s of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether 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 from Belgium and Israel of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce, in preliminary determinations, to be subsidized by the Governments of Belgium and Israel. Unless these investigations are extended, Commerce will make its final subsidy determinations on or before April 14, 1987, and the Commission will make its final injury determinations by June 5, 1987 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subpart A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Bob Eninger (202-523-0312), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by assessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Belgium and Israel of industrial phosphoric acid. The investigations were requested in a petition filed on November 5, 1986, by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO. In response to that petition the Commission conducted preliminary countervailing duty investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 612, January 7, 1987).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing, Staff Report, and Written Submissions

The Commission will hold a hearing in connection with these investigations at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC; the time and date of the hearing will be announced at a later date. A public version of the prehearing staff report in these investigations will be placed in the public record prior to the hearing, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21). The dates for filing prehearing and posthearing briefs and the date for filing other written submissions will also be announced at a later date.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 26, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-4541 Filed 3-3-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-347 and 348 (Final)]

Certain Malleable Cast-Iron Pipe Fittings From Japan and Thailand

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-347 and 348 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether 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 from Japan and Thailand of nonalloy, malleable cast-iron pipe fittings,[1] whether or not advanced in condition by operations or processes (such as threading) subsequent to the casting process, provided for in items 610.70 and 610.74 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before April 21, 1987 and the Commission will make its final injury determinations by June 15, 1987 (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202–523–0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by accessing the Office of Investigation's remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a resut of affirmative preliminary determinations by the Department of Commerce that imports of certain malleable cast-iron pipe fittings from Japan and Thailand are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on August 29, 1986 by the Cast-Iron Pipe Fittings Committee.[2] In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (FR 37498, October 22, 1986).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on April 17, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on April 28, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 20, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on April 21, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 21, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the precedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 5, 1987. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigation on or before May 5, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section § 201.6 of the Commission's rules (19 CFR § 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 24, 1987.

[1] The malleable cast-iron pipe fittings covered by these investigations are those with standard pressure ratings of 150 pounds per square inch (psi) or heavy-duty pressure ratings of 300 psi. Groove-lock fittings are not included.

[2] The 5 member producers of this committee are Stanley G. Flagg & Co., Inc., Grinnell Corp. (successor to the fittings business of ITT Corp.), Stockham Valves & Fittings Co., U-Brand Corp., and Ward Manufacturing, Inc. (successor to Ward Foundry Division of Clevepak Corp.)

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-4542 Filed 3-3-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-271 (Final) and 731-TA-318 (Final)]

Oil Country Tubular Goods From Israel

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] [3] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from Israel of oil country tubular goods,[4] provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Israel.

Further, the Commission determines,[2] [3] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Israel of oil country tubular goods, provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective June 11, 1986, and August 25, 1986, following preliminary determinations by the Department of Commerce that imports of oil country tubular goods from Israel were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671) and were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institutions of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of July 9, 1986 (51 FR 24947), of September 10, 1986 (51 FR 32258), and of October 16, 1986 (51 FR 36874). The hearing was held in Washington, DC, on January 14, 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 February 20, 1987. The views of the Commission are contained in USITC Publication 1952 (February 1987), entitled "Oil Country Tubular Goods from Israel: Determinations of the Commission in Investigations Nos. 701-TA-271 (Final) and 731-TA-318 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: February 24, 1987.

By order of the Commission:

Kenneth R. Mason,

Secretary

[FR Doc. 87-4543 Filed 3-3-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-241]

Certain Prefabricated Bow Forms; Decision Not To Review Initial Determination; Termination of Investigation on the Basis of no Violation of Section 337

AGENCY: International Trade Commission.

ACTION: (1) Decision not to review the presiding administrative law judge's (ALJ) initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation; and (2) termination of the investigation.

SUMMARY: On November 20, 1986, the ALJ issued an ID holding that there is no violation of section 337 in the importation or sale of the accused bow forms. The basis for this negative determination were (1) no evidence of the importation or sale of bow forms that infringe claim 1 of the patent in controversy, and (2) a finding that the accused imported bow forms do not infringe claim 2 of that patent—literally or under the doctrine of equivalents. Since the ID held that there was no violation of section 337, the investigation is now terminated.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., or Marcia Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337-TA-241 was conducted to determine whether there was a violation of section 337 in the importation or sale of certain prefabricated bow forms from the Philippines, Italy, Hong Kong, and Taiwan. The imported were alleged to infringe claims 1 and 2 of U.S. Letters Patent 3,637,455 (the '455 patent.) The complainant was the patent owner, Minnesota Mining and Manufacturing Co. ("3M") of St. Paul, Minn. Ten domestic and foreign companies were named as respondents. *See* 51 FR 6183 (February 20, 1986); 51 FR 24949 (July 9, 1986).

The ALJ rejected the respondents' patent invalidity and patent misuse defenses. The ALJ also found that, if the accused bow forms had infringed the '455 patent, such infringement would have had an effect or tendency to substantially injure an efficiently and economically operated domestic industry. Because of the finding of noninfringement, however, the ALJ determined that there was no violation of section 337.

Complainant 3M and domestic respondents Berwick Industries and Harvard Fair Corp. each petitioned for review of the ID. 3M sought review of the ALJ's narrow interpretation of the patent claims in relation to the issues of patent validity and infringement. Berwick and Harvard Fair sought review of all other patent issues and the economic issues as well. Each petition was opposed by the Commission investigative attorney and other parties.

On February 20, 1987, after considering the arguments advanced by the parties, the Commission (i.e., Chairman Liebeler, Commissioner Eckes, and Commissioner Roh) determined to deny the petitions and not to review the ID on the Commission's own motion. (Vice Chairman Brunsdale and Commissioner Lodwick did not participate in the determination.) By virtue of the Commission's decision not to review the ID, the ID became the final determination of the Commission concerning the violation of section 337 in this investigation. 19 CFR 210.53(h).

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2 (i)).

[2] Chairman Liebeler determines that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry is not materially retarded, by reason of imports from Israel that are being subsidized and sold at LTFV in the United States.

[3] Vice Chairman Brunsdale is not participating.

[4] For purposes of these investigations, the term "oil country tubular goods" includes casing and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications, provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States.

Public Inspection

Copies of the public version of ID, the petitions for review, the responses thereto, and all other nonconfidential documents on the record of the investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–724–0002.

Issued: February 25, 1987.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–4544 Filed 3–3–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[No. 40117]

Galveston Wharves; Demurrage Reimbursement Plan Petition for Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts Galveston Wharves' demurrage reimbursement plan from the tariff filing, discrimination, and rebate provisions of 49 U.S.C. Subtitle IV.

DATES: This exemption is effective on April 3, 1987. Petitions to stay must be filed by March 16, 1987 and petition for reconsideration must be filed by March 24, 1987.

ADDRESSES: Send pleadings referring to Docket No. 40117 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: John A. Schmidt, McLeod, Alexander, Power & Apffel, Galveston, TX 77553.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The exemption relates to a plan by Galveston Wharves (GW) under which shippers and consignees can seek reimbursement from GW for rail car demurrage they pay because of delays by GW in providing port service (including rail car loading and unloading, provision of pallets and storage space, and provision of vessel dock space). Tariffs incorporating the plan will be filed with the Federal Maritime Commission and the Railroad Commission of Texas, but not with the Interstate Commerce Commission.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), toll-free (800) 424–5403.

Decided: February 12, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented and will submit a separate expression at a later date.

Noreta R. McGee,

Secretary.

[FR Doc. 87–4493 Filed 3–3–87; 8:45 am]

BILLING CODE 7035–01–M

[No. MC–F–17985]

General Electric Co.—Continuance in Control Exemption—RCA Corp.; Corrected Notice [1]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: General Electric Company (GE), a noncarrier, has filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval of its continuance in control of its wholly-owned subsidiary, RCA Corporation (RCA), which in seeking authority in No. MC–197068 as a motor contract carrier of general commodities (with exceptions), between points in the United States, serving the class of commercial shippers or receivers of such commodities.

GE has three wholly-owned carrier subsidiaries: General Electric Transportation Services, Inc. (GETS) MC–170202), and Products Distribution Company (PDC) (MC–161523), both motor carriers of property, acquired pursuant to Nos. MC–F–14841 and MC–F–15456 respectively; and East Erie Commercial Railroad (EECR), a Class III switching and terminal railroad operating approximately 12 miles of track and connecting GE's, Erie, PA plant with the facilities of other raillroads. Because GE currently controls RCA and EECR, the proposed control appears to fall under *Motor Carrier Operating Authority—Railroads*, 132 M.C.C. 978 (1982).

When RCA becomes a carrier, noncarrier GE will directly control another carrier in addition to GETS, PDC, and EECR. Acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers may be carried out only under Commission regulation or under an exemption from regulation. *See* 49 U.S.C. 11343(a)(5) and 11343(e).

Petitioners state that RCA's entry into regulated motor carrier transportation will not result in any change in the service or operations of GE's existig carrier subsidiaries. They argue that approval of this exemption and of RCA's application for motor carrier authority will increase competition and therefore benefit other shippers, receivers and consumers by giving them an additional transportation alternative.

DATES: Comments must be received by April 30, 1987.

ADDRESSES: Send comments (an original and 10 copies) referring to Docket No. MC–F–17985 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

or

(2) Petitioners' representative. William H. Borghesani, Jr., 1150 17th Street, NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Harold Johnson, (202) 275–7971.

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: January 28, 1987.

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

Noreta R. McGee,

Secretary.

Vice Chairman Lamboley, dissenting in part:

I would grant this exemption under section 10505. As I have stated many times previously, I do not believe that section 11343(e) was intended to apply and to impart antitrust immunity to intermodal transactions as this.

Commissioner Simmons, dissenting in part:

Because GE controls a rail carrier, I would

[1] This notice was inadvertently omitted from publication in both the *ICC* and the **Federal Register**. Accordingly, the comment due date has been extended.

treat its petition as a request for exemption under 49 U.S.C. 10505. As I have stated previously, I do not believe section 11343(e) or our rules adopted under that section were intended to apply when common control of a rail carrier is involved.

[FR Doc. 87-4494 Filed 3-3-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-282X]

Graham County Railway, Abandonment in Graham County, NC; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 12.5-mile line of railroad between Topton and Robbinsville, in Graham County, NC.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective 30 days from service of this decision (unless stayed pending reconsideration). Petitions to stay must be filed by 10 days after service, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by 20 days after service with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Zeyland G. McKinney, Jr., P.O. Box 337, Robbinsville, NC 28771.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: February 25, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-4366 Filed 3-3-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30989]

Grank Trunk Western Railroad Co., Trackage Rights, Consolidated Rail Corporation; Exemption

The Consolidated Rail Corporation has agreed to grant overhead trackage rights to Grand Trunk Western Railroad Company (GTW) over its Cincinnati-Columbus main line extending from approximately milepost 188.2 at Cold Springs to milepost 182.5, at Springfield, a distance of approximately 5.70 miles in the state of Ohio. The trackage rights were scheduled to become effective on February 5, 1987.[1]

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. 653 (1980).

Dated: February 25, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-4367 Filed 3-3-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Portland Cement Assoc.; National Cooperative Research Notification

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. Specifically, Ciment Quebec has resigned from the Association effective January 1, 1987, and Blue Circle West Inc. became a member effective January 1, 1987. Accordingly, at present the members of the PCA are:

Aetna Cement Corporation
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Ash Grove Foreman Cement Company
Blue Circle Inc.
Blue Circle West Inc.
CalMat Co.
Calaveras Cement Company
Capitol Aggregates, Inc.
Dragon Products Company
General Portland Inc.
Hawaiian Cement
Ideal Basic Industries, Cement Division
Canada Cement Lafarge Ltd.
Federal White Cement Ltd.
Inland Cement Limited
Independent Cement Corporation
Lehigh Portland Cement Company
Lone Star-Falcon
Lone Star Industries, Inc.
Blue Circle Atlantic, Inc.
Medusa Cement Company
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Cement Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corportation

In additon, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
F.L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company

The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification, identifying the original parties to the venture and describing in general terms the area of planned

[1] Although the notice of exemption filed by GTW indicated that the trackage rights would become effective on January 22, 1987, indeed they could not become effective until 7 days after the January 29, 1987 filing date.

activities of the venture, is published at 50 FR 5015 (1985).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-4518 Filed 3-3-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment Standards Administration

Report of Ventilatory Study; Roentgenographic Interpretation; Roentgenographic Interpretation; Medical History and Examination for Coal Mine Workers' Pneumoconiosus; Report of Arterial Blood Gas Study
1215-0090; CM-907; CM-933; CM-933b; CM-988; CM-1159
On occasion
38,500 responses; 8341 hours; 5 forms

20 CFR Part 718 specifies that certain information relative to the medical condition of a claimant who is alleging the presence of pneumoconiosis be obtained as a routine function of the claim adjudication process. The medical specifications in the regulations have been formatted in a variety of forms to promote efficiency and accuracy in gathering the required data. These forms were designed to meet the need of establishing medical evidence.

Revision

Employment Standards Administration

Employer's Report of Injury or Occupational Illness; Physicians Report on Impairment of Vision
1215-0031; LS-202; LS-205; LS-210
On occasion
Individual or households; Businesses or other for-profit; Small businesses or organization
45,410 responses; 22,136 hours; 3 forms

Forms are used to report injuries, periods of disability, and medical treatment under the Longshore and Harbor Workers' Compensation Act.

Extension

Employment Standards Administration

Annual Report of Earnings
1215-0136; CM-777
Annually
Individuals or households
600 responses; 100 hrs.; 1 form

Black Lung beneficiaries' annual report of earnings is used to adjust benefits disbursed for the preceding year and to estimate adjustments, if any, for the following year due to excess earnings.

Extension

Employment Standards Administration

Work Experience and Career Exploration Programs
12215-0121; FLSA 570.35a
Biennially
State or local governments
25,010 responses; 4,170 hours; 1 form

Statement educational agencies are required to file applications for approval of Work Experience and Career Exploration Programs which are exceptions to the Fair Labor Standards Act child labor regulations. State educational agencies are also required to maintain certain records with respect to approved programs.

Extension

Employment Standards Administration

Application for Continuation of Death Benefits for Student
1215-0073; LS-266
On occasion
Individuals or households; Small businesses or organizations
43 Responses; 22 hours; 1 form

The form is used as an application for continuation of death benefits for a dependent who is also a student.

Extension

Employment Standards Administration

Medical Recordkeeping Requirements
1215-0133; CA-37
Businesses or other for-profit; Small businesses or organizations
208,000 recordkeepers; 1 hour

Medical providers must keep records concerning the examination and/or treatment of claimants under the FECA so that they may furnish medical reports as required under 20 CFR 10.410 (b) and (c).

Extension

Employment Standards Administration

Comparability of Current Work to Coal Mine Employment; Coal Mine Employment Affidavit; Affidavit of Deceased Miner's Condition
1215-0056; CM 913, CM 1093, and CM 918
On occasion
Individuals or households
14,000 responses; 5,084 hours; 3 forms

CM 913 is completed by beneficiaries and compares non-coal mine work to

coal mine work; CM 918 is completed by people with direct knowledge of miner's coal mine work to supplement evidence; CM 1093 is completed by people with direct knowledge of the deceased miner's medical condition only if medical evidence is insufficient. Forms are used to help determine eligibility for benefits.

Extension

Employment Standards Administration

Overpayment Recovery Questionnaire
1215–0144; OWCP 20
On occasion
Individuals or households
8,000 responses, 8,000 hours; one form

To determine whether or not an individual is able to pay a claim for recovery of an overpayment. Consideration must be given to the individual's present and potential income, possible concealment or improper transfer of assets, and assets of the individual which may be available in enforced collection procedures.

Reinstatement

Employment Standards Administration

Carrier's or Self-Insurer's Report on Rehabilitation to Deputy Commissioner
1215–0051; LS–222
On occasion
Businesses or other for profit
2,500 responses; 625 hrs.; 1 form

Notify OWCP of injured workers who may need vocational rehabilitation services. Acts as an early referral mechanism to assure injured workers receive rehabilitation services before their disabilities become fixed and they develop unwholesome attitudes that are difficult to change. Submitted by insurance carriers and self-insured.

Reinstatement

Employment Standards Administration

Request to be Selected as Payee
CM–910
On occasion
Individuals or households
36,000 responses; 1,200 hours, 1 form

If a beneficiary is incapable of handling his own affairs, his legal guardian or other responsible party may apply to receive the benefits on the beneficiary's behalf as a representative payee. Form CM–910 is the application completed by the potential representative payee.

Signed at Washington, DC, this twenty-sixth day of February, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87–4437 Filed 3–3–87; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by March 16, 1987.

ADDRESSES: Send comments to Mrs. Judy Egan, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Ave, NW., Washington, DC 20506, (202–682–5464); from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepared the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Inter-Arts Application Guidelines FY 1988.

OMB Number: 3135–0061.

Frequency of Collection: One-time.

Respondents: State or local governments, non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from state and local arts agencies and nonprofit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 608.

Estimated Hours for Respondents to Provide Information: 23,520.

Murray R. Welsh,

Director, Administrative Services Division National Endowment for the Arts.

[FR Doc. 87–4504 Filed 3–3–87; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee; Meeting

In accordance with the Arctic Research and Policy Act, Pub. L. 98–373, the National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee
Date & Time: March 23, 1987 9:30 a.m.
Place: National Science Foundation, Room 540, 1800 G Street, NW., Washington, DC
Type of Meeting: OPEN—entire meeting
Contact Person: Jerry Brown, Division of Polar Programs, Room 627, National Science Foundation, Washington, DC 20550. Telephone: (202) 357–7820

Purpose of Committee: The Interagency Arctic Research Policy Committee was established by Pub. L. 98–373, the Arctic Research and Policy Act, to survey arctic research, help determine priorities for future arctic research, assist in the development of a national arctic research policy, prepare a single, integrated multi-agency budget request for arctic research, develop a 5-year plan to implement national arctic research policy, and facilitate cooperation in and coordination of arctic research.

Agenda:

9:30 Welcome and Introduction
9:40 Arctic Budget Plans
9:50 Presentation of Arctic Research Plan
10:10 Comments by Arctic Research Commission
10:20 Discussion and Approval of Arctic Research Plan
10:30 Report of Arctic Research Commission Activities
10:45 Other business

Public Participation: Committee meetings are not designed as public hearings and will not normally receive

verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to 5 minutes each. An invitation to address the Committee is contingent upon advance submission of the proposed statement and a determination by the Committee that such statement is relevant and appropriate to the agenda at that particular meeting. The texts of such statements shall not exceed 5 double-spaced typed pages each.

Peter E. Wilkniss,

Division Director, Division of Polar Programs.

[FR Doc. 87-4489 Filed 3-3-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 31—General Domestic Licenses for Byproduct Material.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Reports are submitted as events occur. Registration Certificates may be submitted at any time. Changes to the information on the Registration Certificate are submitted as they occur.

5. Who will be required or asked to report: Persons desiring to own byproduct material and persons desiring to possess byproduct material in certain items.

6. An estimate of the number of responses: 653.

7. An estimate of the total number of hours needed to complete the requirement or request: 799.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR Part 31 establishes general licenses for the possession and use of byproduct material in certain items and a general license for ownership of byproduct material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Richard D. Otis, Jr., (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 27th day of February 1987.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 87-4536 Filed 3-3-87; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 to Regulatory Guide 1.63, "Electric Penetration Assemblies in Containment Structures for Nuclear Power Plants," describes a method acceptable to the NRC staff for complying with the design, construction, testing, qualification, installation, and external circuit protection of electric penetration assemblies in containment structures of nuclear power plants. The guide endorses, with one exception, IEEE Std 317-1983, "IEEE Standard for Electric Penetration Assemblies in Containment Structures for Nuclear Power Generating Stations."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NITS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 25th day of February 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 87-4537 Filed 3-3-87; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, and 50-287]

Duke Power Co. (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

Duke Power Company (DPC or the licensee) holds Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55 which authorize the operation of the Oconee Nuclear Station, Units Nos. 1, 2, and 3 (Oconee or the facilities) at steady-state power levels not in excess of 2568 megawatts thermal for each unit. These licenses provide, among other things, that the facilities are subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located at the licensee's site in Oconee County, South Carolina.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard (ANSI) N45.1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage calculation be performed using either the point-to-point method or the total time method. This standard indicates that the point-to-point method applies more to uninsulated containments where atmospheric stability is affected by outside diurnal changes, while the total time method applies more to insulated (for example,

concrete) containments, that are relatively unaffected by diurnal changes.

In 1976, a comparison was made of the results of test analyses that were performed using point-to-point, total time, and mass-plot (or mass-point) techniques. ("Containment Leak Rate Testing: Why the Mass-Plot Analysis Method is Preferred," Power Engineering, February 1976). A revision fo ANSI/ANS Standard 56.8–1981, "Containment System Leakage Testing" specifies the use of mass-plot, to the exclusion of the two older methods. A proposed revision to Appendix J, which has been published for public comment (Proposed Rules, **Federal Register** Volume 51, No. 209, October 29, 1986), incorporates the new standard.

On August 1, 1986, the licensee was notified via telephone that mass-plot method was not inconformance with the current Appendix J and was therefore not permitted without exemption. Pending the revision of Appendix J which incorporates the mass-plot analysis, licensees who wish to use the mass-plot techniques must submit an application for exemption from the Appendix J requirement that Containment Integrated Leak Rate Tests (CILRTs) will conform with ANSI–N45.4–1972.

III

By letter of August 13, as superseded on August 20, 1986, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all Type A CILRTs be performed in accordance with ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." ANSI N45.4–1972 requires that leakage calculations be performed using either the total time method or the point-to-point method. In the same letter, the licensee proposed an amendment to the Technical Specifications (TSs) to maintain consistency between the TSs and Appendix J. The Commission will respond to the proposed amendment by separate correspondence.

The licensee indicated that in 1976 the Commission's staff recognized the merits of the mass-plot technique and that this method became the staff recommended method to use. On that basis, the licensee has been performing calculations using the mass-plot method. While in the process of performing the leak-rate tests, the licensee was informed by the Commission that the 1976 staff position with regard to the mass-plot method has not been incorporated into the current provisions of 10 CFR Part 50, Appendix J, and is therefore not permitted without an exemption. The licensee has stated that, in support of the application for exemption from Appendix J, the mass-plot method is a more accurate method of calculating containment leakage.

It has been recognized by the professional community that the mass-plot method is superior to the two other methods, point-to-point and total time, which are referenced in ANSI N45.4–1972 and endorsed by the present regulations. The mass-plot method calculates the mass at each point in time, and plots it against time. A linear regression line is plotted through the mass time points using a least square fit. The slope of this line is the leak rate. The Commission's staff believes that the mass-plot method was not specified in ANSI N45.4–1972 because the other more conservative methods (point-to-point and total time) were adequate and suitable for the sensitivity levels of the instrumentation in use at that time. However, with the present developments in technology, the mass-plot method has gained recognition as the proper one to use. The superiority of the mass-plot method becomes apparent when it is compared with the two other methods. In the total time method, a series of leakage rates are calculated on the basis of air mass difference between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the results of the test will be affected. In the point-to-point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the point-to-point method ignores any mass readings during the tests and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The present position of the Commission's staff is formulated in the "Draft Regulatory Guide and Value/Impact Statement," published for comment, dated October 1986, which, with exceptions, endorses the ANSI/ANS Standard 56.8–1981.

Furthermore, it recommends the extended ANSI method which is basically the mass-plot method with two additional conditions pertaining to the quality of the regression fit obtained using the mass-plot method. Condition 1 represents a limit on the deviations of the data points from a straight line. Conditions 2 provides a limit on the scatter of the data points about the regression line.

The licensee's letter submitted information to identify the special circumstances for granting this exemption for Oconee pursuant to the Final Rule amendment 10 CFR 50.12 (50 FR 50764) published on December 12, 1985. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight intergrity can be verified periodically throughout the service lifetime so as to maintain containment leakage. The licensee proposes as an alternative method to use the mass-plot method to calculate containment leakage. The licensee has described a special circumstance which was not considered when the regulation was adopted in that the mass-plot analysis has been approved in its proposed rule by the Commission and because this type of analysis was initiated and conducted at Oconee with the knowledge and the recommendation of the Commission's staff.

Based on the above discussion, the licensee's proposed exemption from Paragraph III.A.3. of Appendix J, for using the mass-plot method as requested in the submittal dated August 13, as superseded on August 20, 1986, is acceptable for each of the three units until the presently proposed changes to Appendix J (51 FR 39538) become effective. Thereafter, the licensee shall comply with the provisions of such rule (or may renew its request for exemption). The exemption applies only to the method of calculating leakage by use of the mass-plot and not to any other aspects of the tests.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule specifying particular methods for calculating leakage rates is to assure that accurate and conservative methods are used to assess the results of containment leak rate tests As set forth

above, over recent years, the mass-plot method has become a widely used method providing accurate results. Accordingly, the Commission hereby grants an exemption as described in Section III above from Paragraph III.A.3 of Appendix J to the extent that the mass-plot method may be used for containment leakage calculations. The exemption is granted for each of the three units until the presently proposed changes to Appendix J become effective. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage by use of the mass-plot and not to any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (52 FR 5510).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 24th day of February, 1987.

For the U.S. Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B.

FR Doc. 87-4538 Filed 3-3-87; 8:45 am]

BILLING CODE 7490-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a new information collection from the public. RI 20-61, Alternative Annuity Election, will permit non-disability retirees, who retire on or after June 6, 1986, to elect to receive either the annuity ordinarily payable, or an alternative annuity (reduced) and lump sum payment of the retirement deductions and interest to their credit. For copies of this proposal call William C. Duffy, Acting Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Acting Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management

James E. Colvard,

Deputy Director.

[FR Doc. 87-4553 Filed 3-3-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-24132; File No. SR-Amex-87-1)

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Changes to Rule 618 (Schedule of Fees)

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 January 12, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend its arbitration rules to conform them to recent changes in the securities industry's Uniform Code of Arbitration regarding the schedule of fees to be deposited by parties in connection with arbitrations submitted to self-regulatory organizations.[1]

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

[1] In its filing, the Amex included copies of its revised fee schedule. Copies of the fee schedule are available from the Commission at the address noted in Section IV below and from the Amex.

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 proposed 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Securities Industry Conference on Arbitration ("SICA") is continually recommending ways to further refine industry arbitration procedures, and, in this regard, has implemented amendments to the Uniform Code of Arbitration regarding the schedule of fees to be deposited by parties in connection with arbitrations submitted to self-regulatory organizations. (This schedule is codified in Amex Rule 618, *et seq.*) The Exchange is proposing to similarly amend Rule 618, thereby increasing the amount required to be deposited in connection with certain disputes under Rule 618 (a) and (b).

Specifically, the deposits would be modified in the following manner:

Current	Amendment
$300 where amount in controversy is between $10,000 and $20,000..	$400 where amount in controversy is between $10,000 and $50,000.
$500 where amount in controversy is between $20,000 and $100,000..	$500 where amount in controversy is between $50,000 and $100,000.
$750 for all cases exceeding $100,000..	$750 where amount in controversy is between $100,000 and $500,000.
	$1,000 for all cases exceeding $500,000.

The amendments would also increase the maximum fee allowable in disputes which do not involve or disclose money claims under Rule 618(c) to $1,000 (currently $750).

The proposed rule change is intended to conform the Amex's arbitration rules to the Uniform Code of Arbitration. Specifically, the proposed rule change will permit the Exchange to defray a greater proportion of the costs incurred in providing the arbitration facility while maintaining an affordable fee schedule for the public.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and respectively furthers the objectives of sections 6(b)(4) and 6(b)(5) in particular in that it provides for the equitable allocation of reasonable fees among persons using the Exchange's facilities and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be availabe for inspection and coping at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-4548 Filed 3-3-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24123; File No. SR-PSE-86-29]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Modification of Exchange Fee Schedules Relating to Equities Transaction Fees, Equities Listing Fees, and Equities and Options Floor Booth Fees

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 December 15, 1986, the Pacific Stock Exchange, Incorporated ("PSE" 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 PSE proposes to amend and modify its fee schedules relating to Equities transaction fees, Equities listing fees, and Equities and Options Floor booth fees. These proposed changes will reflect a more equitable allocation of fees and charges and will provide more competitive fees in comparison to those charged by other exchanges. [1]

I. Self-Regulatory Organization Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III 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.

[1] In its filing, the PSE attached a schedule of the proposed rule changes. A copy is available from the Commission, at the address noted below, or the PSE.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed change in Exchange fees are intended to increase the competitiveness of the Exchange in attracting order flow and the marketability of multiple listings. This is the first proposed change in Exchange listing fees since 1983 (SR-PSE-83-11; Release No. 20260). The proposed changes which are the subject of this rule filing are in Exchange fees in Equities transaction fees, Equities listing fees, and Equities and Options Floor booth fees.

The proposed rate change in Equities transcation fees is a 50,000 share cap on the per trade side application of the current value-based transaction charge. This is designed to improve the Exchange's competitiveness in attracting large trades. While this change will result in an anticipated revenue reduction it is felt that this will be offset by an increase in order flow due to the more competitive posture of the charges. This is to become effective for the January 1987 trade month.

The proposed changes in listing rate changes will create a two-tiered rate for original listing fees that will increase the incentive for a company to list secondary issues and improve the marketability of multiple PSE listings by a single company. The current PSE flat fee for original listing creates no incentive to list more than the common stock. Assessing the same fee for original and secondary issues is often unacceptable to a prospective listing company and with few exceptions, secondary issue listings cost the PSE significantly less to process and admit to dealings. Lowering the fee for all secondary issues will address these concerns. The fee for original listings will become effective January 31, 1987, and the fee for secondary issues will become effective January 1, 1987. The proposed increase in listing maintenance fees more accurately reflects the cost of monitoring listed companies. This proposed maintenance fee is seen to be competitive with those charged by the Midwest, Philadelphia and Boston exchanges. This will become effective on January 1, 1987.

The proposed changes in Equities and Options Floors booth fees are estimated to improve monthly revenue will also be the result of a proposed increase in specialist counter fees and alternate specialist fees. These proposed rate changes are the result of the PSE's policy of regularly examining fees to

ensure that they are competitive and that the fees reflect the steadily rising costs of providing services. This will become effective on January 1, 1987.

These proposed rate changes and this submitted rule proposal are consistent with section 6(b)(4) of the Act in that it will provide for an equitable allocation of reasonable dues, fees and other charges among its members and issuers using the facilities of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to file number SR–PSE–86–29 and should be submitted by March 25, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 20, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–4549 Filed 3–3–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 09/12–0150]

Crocker Capital Corp.; Surrender of License

Notice is hereby given that Crocker Capital Corporation, 111 Sutter Street, Suite 600, San Francisco, California 94104 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Crocker Capital Corporation was licensed by the Small Business Administration on February 13, 1970.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on February 9, 1987, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: February 26, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–4502 Filed 3–3–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1053]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on the Carriage of Dangerous Goods; Meeting

The Working Group of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on March 19, 1987 at 9:30 a.m., in Room 2415 at Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

The purpose of the meeting is to discuss:

—Upcoming 39th Session of the International Maritime Organization, (IMO) Subcommittee on the Carriage of Dangerous Goods to be held April 6–10, 1987;

—United States proposals made to the 39th Session of the IMO Subcommittee on the Carriage of Dangerous Goods;

—Inclusion of additional shipping requirements in the IMDG Code for marine pollutants;

—Inclusion of requirements in the IMDG Code for solid dangerous goods in bulk packagings;

—Inclusion of requirements for lithium batteries in the IMDG Code; and

—IMO activities of a continuing nature.

Members of the public may attend up to the seating capacity of the room. For further information, contact Lieutenant Commander Phillip C. Olenik, U.S. Coast Guard Headquarters (G–MTH–1), 2100 2nd Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1577.

Dated: February 19, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87–4490 Filed 3–3–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 43343; Notice 87–5]

Electronic Tariff Filing System; Advisory Committee meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Department announces the first meeting of the Electronic Tariff Filing System Advisory Committee to be held on March 24–25, 1987 in Washington, DC. The agenda for the first meeting includes an open forum discussion of the Automated Data Processing Systems Requirements Study under development by the Department's Transportation Systems Center. The meeting will be open to the public.

DATE: The Advisory Committee meeting will commence on March 24, 1987, at 9:00 a.m. and, if necessary, continue through March 26, 1987.

ADDRESS: The Advisory Committee meeting will be held in Room 2230 at 400 7th St., SW., Washington, DC. Comments should be sent to Docket Clerk, C–55, Docket 43343, Department of Transportation, Room 4107, 400 7th St., SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments

should include a stamped, self-addressed postcard with their comments. The docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Committee Executive Director, Douglass Leister, Office of International Aviation, 400 7th St., SW., Washington, DC, Telephone: (202) 366–2422.

SUPPLEMENTARY INFORMATION: The Department of Transportation's Electronic Tariff Filing System Advisory Committee will meet at 9:00 a.m. on March 24, 1987, in conference Room 2230 at the Department Headquarters Building, 400 7th St., SW., Washington, DC.

The Advisory Committee was established in November of 1986 (51 FR 42327) to advise the Department on the study, development and operation of an automated tariff filing system. The Committee will consist of no more than 20 members, including a balanced representation of airlines, airline associations, tariff agents, consumers groups, and the information industry.

The agenda for the meeting is: 1. Committee organization and determination of work objectives and attainment dates.

2. Discussion of Transportation System Center study of automated data processing requirements of an electronic tariff system.

3. Discussion of cost/benefit analysis completed by Vanguard Corporation.

4. Open discussion of issues involved in the rulemaking proceedings; including posting requirements, maintenance of the data base, and filing/user fees.

The meeting will be open to public observation. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes for each individual. Public comments regarding committee affairs may be submitted at any time before or after the meeting. Approximately 25 seats will be available for the public (including 5 seats reserved for media representatives) on a first-come, first-serve basis.

Copies of the minutes will be available at cost on request 30 days after the meeting.

Dated: February 26, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–4491 Filed 3–3–87; 8:45 am]

BILLING CODE 4910–62–M

Request for Applicants by Office of Small and Disadvantaged Business Utilization

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary, DOT

ACTION: Notice and Request for Applications from Banks to participate in a financial assistance program for Disadvantaged Business Enterprises (DBEs).

SUMMARY: Pursuant to 49 U.S.C. 332, the OSDBU is authorized to develop by cooperative agreement, support mechanisms, including capital assistance programs, that will enable DBEs bidding for contracts to provide goods and services to the Department, its grantees, recipients, and their contractors and subcontractors.

The OSDBU is interested in entering into agreements with one or more Banks which can provide short-term financial assistance to DBEs bidding for or performing contracts or subcontracts within the Transportation industry. The OSDBU would agree to set up the funding mechanism totaling $5.5 million. The funds will enable the Bank(s) to make financial assistance available to DBEs participating in DOT programs. The funds will be used by the Bank(s) to cover all expenses, including a profit margin, incurred in servicing DBEs.

The OSDBU is particularly interested in offering this assistance to DBEs in States east of the Mississippi. Other areas will be considered at a later date.

DATE: The deadline for submitting a letter expressing interest in the program and request additional information is Monday, March 16, 1987.

ADDRESS: Interested Banks may submit letters to the Director, Office of Small and Disadvantaged Business Utilization U.S. Department of Transportation, 400 7th Street SW., Room 9414, Washington, DC 20590, not later than the submission date shown above. Such submission shall indicate the docket number shown on this notice.

Dated: February 27, 1987.

Amparo B. Bouchey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 87–4554 Filed 3–3–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Anchorage, AL

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 the Municipality of Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Tom Neunaber, Field Operations Engineer, Federal Highway Administration, P.O. Box 1648, Juneau, Alaska 99802, Telephone (907) 586–7428; or Merlyn L. Paine, Central Region Environmental Coordinator, Alaska Department of Transportation and Public Facilities, P.O. Box 196900, Anchorage, Alaska 99519–6900, Telephone (907) 266–1508.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF), will prepare an Environmental Impact Statement (EIS) on proposed improvements to Tudor Road between Minnesota Drive and Boniface Parkway in the Municipality of Anchorage, Alaska. The proposed project is approximately five miles long.

Proposed improvements would include: widening from four to six lanes; construction of turning lanes; construction of interchanges at several of the major intersections; upgrading intersections at other cross streets; signalization and illumination; drainage improvements; and facilities for pedestrians, bicyclists, handicapped and transit users.

The proposed action is necessary to help meet current and future traffic demands on the facility. The existing four lane roadway is one of the primary arterials between east and west Anchorage. At the present, most of its intersections operate at or near capacity during peak hours. The proposed action is an integral part of the Anchorage Metropolitan Area Transportation Study Long Range Transportation Plan and Transportation Improvements Plan, and the Municipality of Anchorage Official Streets and Highway Plan.

Since Tudor Road lies within an established urban corridor, no location alternatives to the proposed action are proposed. However, several design options will be evaluated. Alternatives that will be considered within the DEIS include: no action; transportation systems management; and mass transit.

The scoping process to identify the full range of issues related to the proposed action will include solicitation of comments from appropriate Federal, State, and local agencies, private organizations, and the public. This

process will include information/scoping meetings to be held both during and after business hours. All meetings will be announced well in advance of their scheduled dates.

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 questions concerning the proposed action should be directed to the FHWA or the ADOT&PF at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program

Issued on: February 24, 1987.

Barry F. Morehead,

Division Administrator, Federal Highway Administration, Juneau, Alaska.

[FR Doc. 87-4492 Filed 3-3-87; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP-86-08; Notice 2]

Wayne Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Wayne Corporation, of Richmond, Indiana, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for apparent noncompliance with 49 CFR 571.217, Motor Vehicle Safety Standard No. 217, *Bus Window Retention and Release*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on July 22, 1986, and an opportunity afforded for comment (51 FR 26335).

Paragraph S5.2.2 of Standard No. 217 specifies the requirements for a manually opened window in a bus with a gross vehicle weight rating of 10,000 pounds or less. These windows must provide "an opening large enough to admit unobstructed passage, keeping a major axis horizontal at all times, of an ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 20 inches and a minor axis of 13 inches."

Wayne indicated that not more than 10 non-school buses that it manufactured between September 1, 1978 and March 14, 1986 did not meet the ellipsoid opening requirements of paragraph S5.2.2. These buses consist of three models: Chaperones, Transettes and Busettes.

Wayne stated that the windows received from its supplier have variances in window opening from 19.875 inches to 20.25 inches. Since the standard requires a major axis to be 20 inches, the Wayne windows that are 19.875 inches fall below the requirement. Because of this noncompliance, the major axis must be rotated approximately 6 degrees from the horizontal in order to meet the test requirements of Standard No. 217.

Wayne contends that the overall window opening in the non-complying vehicles is large enough to provide space for a larger than average person to egress, although the passenger may need to rotate hips or shoulders 6 degrees.

The presence of numerous emergency exits is believed by Wayne to improve emergency egress. The worst case situation in Wayne buses, maximum number of passengers with minimum number of exits, provides better than one exit for every three passengers.

No comments were received on the petition.

The agency has considered Wayne's arguments. The maximum deviation from compliance is .125 inch, and a noncompliance exists on "less than 10 buses". At most, exit through one of these windows will require only a slight rotation of hips and shoulders. Generally, there is somewhat more than one emergency exit provided for each three passengers. Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 27, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-4555 Filed 3-3-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series No. 5-87]

Treasury Notes, Series V-1989

Washington, February 25, 1987.

The Secretary announced on February 24, 1987, that the interest rate on the notes designated Series V-1989, described in Department Circular—Public Debt Series—No. 5-87 dated February 19, 1987, will be 6¼ percent. Interest on the notes will be payable at the rate of 6¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-4440 Filed 3-3-87; 8:45 am]

BILLING CODE 4810-40-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 623]

Dollar Limitation for Display and Retail Advertising Specialties

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: General notice.

SUMMARY: This notice sets forth the annually updated dollar limitations prescribed for alcohol beverage industry members under the "Tied House" provisions of the Federal Alcohol Administration Act.

DATES: This notice shall be effective as of January 1, 1987.

ADDRESSES: Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Ave. NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Norbert Hymel, Tax and Trade Compliance Branch, (202) 566-7715.

SUPPLEMENTARY INFORMATION: Based on data of the Bureau of Labor Statistics, the consumer price index was 1.1 percent higher in December 1986 than in December 1985. Therefore, effective January 1, 1987, the dollar limitation for "Product Displays" (27 CFR 6.83(c)) is increased from $127.00 to $128.00 per brand. Similarly, the "Retailer Advertising Specialties" (27 CFR 6.85(b)) is increased from $62.00 to $63.00 per brand. Also, the "Participation in Retail Association Activities" (27 CFR 6.100(e)) is increased from $127.00 to $128.00 per year.

Industry members who wish to furnish, give, rent, loan or sell product displays or retailer advertising specialties to retailers are subject to dollar limitations (27 CFR 6.83 and 6.85). Industry members making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show are also subject to dollar limitations (27 CFR 6.100). The dollar limitations are updated annually by use of a "cost adjustment factor" in accordance with 27 CFR 6.82. The cost adjustment factor is defined as a percentage equal to the change in the Bureau of Labor Statistics' consumer price index. Adjusted dollar limitations are established each January using the consumer price index for the preceding December.

Stephen E. Higgins,

Director.

February 20, 1987.

[FR Doc. 87-4516 Filed 3-3-87; 8:45 am]

BILLING CODE 4810-31-M

Fiscal Service

[Dept. Circ. 570, 1986 Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds; Fidelity and Guaranty Insurance Underwriters, Inc.

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, 1986 Revision, on page 23934 to reflect this addition:

Fidelity and Guaranty Insurance Underwriters, Inc., Business Address: 100 Light Street, P.O. Box 1138, Baltimore, MD 21203. Underwriting Limitation [b]: *$4,492,000.* Surety Licenses [c]: All except AS, GU, HI, PR, VI. Incorporated In: Ohio. 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 223). 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 The Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2119.

Dated: February 26, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87-4462 Filed 3-3-87; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

[Delegation Order No. 97]

Delegation of Authority

AGENCY: Internal Revenue Service; Treasury.

ACTION: Delegation of Authority.

SUMMARY: The revised delegation order delegates to the Chief of the Windfall Profit Tax Staff in the Austin Service Center/Compliance Center to enter into closing agreements concerning Internal Revenue tax liability. The text of the delegation order appears below.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Harry Lebedun, OP:EX:C:W, Room 2136, 1111 Constitution Ave. NW., Washington, DC 20224, (Telephone 202-566-6806—This is not a toll-free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Donald H. Anderson,

Director, Office of Coordinated Examinations.

Order No. 97 (Rev. 26)

Effective date: 2-20-87

Closing Agreements Concerning Internal Revenue Tax Liability

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121-1(a); Treasury Department Order No. 150-32; Treasury Department Order No. 150-36; and Treasury Department Order No. 150-83, subject to the transfer of authority covered in Treasury Department Order No. 221, as modified by Treasury Department Order No. 221-3, as revised, this authority is hereinafter delegated.

1. The Chief Counsel is hereby authorized in cases under his/her jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed.

2. The Deputy Chief Counsel, the Associate Chief Counsel (International), and the Assistant Commissioners (Examination) and (International), are hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. The Associate Commissioner (Operations) is also authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) with respect to the performance of his/her functions as the competent authority under the tax conventions of the United States.

3. The Assistant Commissioner (Employee Plans and Exempt Organizations) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, that is, in respect of any transaction concerning employee plans or exempt organizations.

4. The Assistant Commissioner (International); Regional Commissioners; Regional Counsel; Regional Directors of Appeals; Assistant Regional Commissioners (Examination); Service Center Directors; District Directors; Chiefs and Associate Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction (but excluding cases docketed before the United States Tax Court) to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.

5. The Associate Chief Counsels (Technical) and (International); the Assistant Commissioners (Employee Plans and Exempt Organizations) and (International); Regional Commissioners; Regional Counsel; Regional Directors of Appeals; Chiefs and Associates Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their

jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) but only in respect to related specific items affecting other taxable periods.

6. The Assistant Commissioner (International) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, and to provide for the mitigation of economic double taxation under section 3 of Revenue Procedure 64–54, C.B. 1964–2, 1008, under Revenue Procedure 72–22, C.B. 1972–1, 747, and under Revenue Procedure 69–13, C.B. 1969–1, 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65–17, C.B. 1965–1, 833.

7. The authority delegated herein does not include the authority to set aside any closing agreement.

8. Authority delegated in this Order may not be redelegated, except that the Chief Counsel may redelegate the authority contained in paragraph 1 to the Associate Chief Counsels (Technical) and (International), the Deputy Associate Chief Counsel (International), and to the technical advisors on the staffs of the Associate Chief Counsels (Technical) and (International) for cases that do not involve precedent issues; the Assistant Commissioners (Examination) and (International) may redelegate the authority contained in paragraph 2 of this order to the Deputy Assistant Commissioners (Examination) and (International); the Deputy Chief Counsel may redelegate the authority in paragraph 2 of this Order but not lower than the Deputy Associate Chief Counsel (Litigation) or the Deputy Associate Chief Counsel (International); and the Assistant Commissioner (Employee Plans and Exempt Organizations) may redelegate the authority contained in paragraph 3 of this Order to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) and to the Technical Advisors on the Staff of the Assistant Commissioner (Employee Plans and Exempt Organizations) for cases that do not involve precedent issues; Service Center Directors and Director, Austin Compliance Center may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Examination Support Unit with respect to agreements concerning the administrative disposition of certain tax shelter cases; and not below the Chief, Windfall Profit Tax Staff, Austin Service Center or Austin Compliance Center with respect to entering into and approving a written agreement with the Tax Matters Partner/Person (TMP) and one or more partners or shareholders with respect to whether the partnership or S corporation, acting through its TMP, is duly authorized to act on behalf of the partners or shareholders in the determination of partnership or S corporation items for purposes of the tax imposed by Chapter 45, and for purposes of assessment and collection of the windfall profit tax for such partnership or S corporation taxable year. The Assistant Commissioner (International) and District Directors may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Quality Review Staff/Section with respect to all matters, and not below the Chief, Examination Support Staff/Section, or Chief, Planning and Special Programs Branch/Section, with respect to agreements concerning the administrative disposition of certain tax shelter cases, or Chief, Special Procedures function, with respect to the waiver of right to claim refunds for those responsible officers who pay the corporate liability in lieu of 100-percent penalty assessment under IRC 6672.

9. To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

10. Delegation Order No. 97 (Rev. 25), effective May 12, 1986, is hereby superseded.

Dated: February 20, 1987.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 87–4500 Filed 3–3–87; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 42
Wednesday, March 4, 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).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 9, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–4550 Filed 2–27–87; 4:21 pm]

BILLING CODE 6210–01–M

LEGAL SERVICES CORPORATION

TIME AND DATE: The meeting will commence at 9:00 a.m., Saturday, March 21, 1987, and continue until all official business is completed.

PLACE: The Grove Park Inn, Windsor Room, 290 Macon Avenue, Asheville, North Carolina 28804.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c)(2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —January 30, 1987
3. Training Task Force Report
4. Regional Training Centers Report
5. FY 1987 Consolidated Operating Budget—Unallocated Reserve
6. Consideration of Amendments to the FY 1988 Budget Request
   —Law School Civil Clinical Project
   —Migrant Funding
   —Support for the Delivery of Legal Services Funding
7. Public Comment
8. Personnel and Personal Matters (closed)
9. Litigation and Investigation Matters (closed)

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863–1839.

Dated issued: February 27, 1987.

Timothy H. Baker,

Secretary

[FR Doc. 87–4551 Filed 2–27–87; 4:22 pm]

BILLING CODE 6820–35–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 2, 9, 16, and 23, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 2

Thursday, March 5

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 9—Tentative

Thursday, March 12

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle-1 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 16—Tentative

Monday, March 16

2:00 p.m.
Briefing on Status of TVA (Public Meeting)

Thursday, March 19

2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Clinton (Public Meeting)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 20

10:00 a.m.
Discussion/Possible Vote on Restart of Palisades (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Week of March 23—Tentative

Thursday, March 26

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 27

10:00 a.m.
Briefing on NRC Strategic Planning (Public Meeting)

ADDITIONAL INFORMATION: Briefing on Consideration of Proposed Emergency Planning Rule Changes (Public Meeting) scheduled for February 23, held on February 24 due to government closing (snow) on February 23.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

February 26, 1987.

[FR Doc. 87–4557 Filed 2–27–87; 4:59 pm]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. § 552b).

STATUS: Open.

TIME AND DATE: March 11, 1987; 1:00 p.m. and March 12, 1987; 9:00 a.m.

PLACE: Boise State University, Student Union Building/Boisean Lounge, Boise, Idaho.

MATTERS TO BE CONSIDERED:

1. Public Comment on Bonneville Power Administration's Conservation/Moderization Program's Consistency with the Northwest Power Act. This review is pursuant to the resource acquisition provisions of section 6(c).
2. Staff Presentation on FY 88 Federal Agency Budgets.
3. Council Decision on Amendment to the Model Conservation Standards regarding Model Conservation Standards for Federal Agency Customers.
4. Council Decision on Amendment to the Model Conservation Standards regarding a Surcharge for Conversion Standards.

5. Council Action on Entering Rulemaking for a Generic Model Conservation Standard.
6. Council Action on Response to Comments on Model Conservation Standards Amendment.
7. Council Action on Response to Comments on Amendments to the Columbia River Basin Fish and Wildlife Program.
8. Council Business.
9. Public Comment.

FOR FURTHER INFORMATION CONTACT:
Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–4611 Filed 3–2–87; 1:08 pm]

BILLING CODE 0000–00–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: March 18, 1987; 9:30 a.m.

PLACE: Council Offices, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

1. Council Decision on Bonneville Power Administration's Conservation/Modernization Program's Consistency with the Northwest Power Act. This review is pursuant to the resource acquisition provisions of section 6(c).

FOR FURTHER INFORMATION CONTACT:
Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–4612 Filed 3–2–87; 1:08 pm]

BILLING CODE 0000–00–M

Corrections

Federal Register
Vol. 52, No. 42
Wednesday, March 4, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 371

[Docket No. 70223-7023]

General Licenses for Exports to Cooperating Governments and Certified End-Users

Correction

In rule document 87-3656 beginning on page 5274 in the issue of Friday, February 20, 1987, make the following correction:

§ 371.14 [Corrected]

On page 5275, in the second column, in § 371.14(c), in the last line, "§ 371.6(d)(1)." should read "§ 377.6(d)(1).".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF87-226-000, et al.]

Encogen One Partners, Ltd., et al; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Correction

In notice document 87-3234 beginning on page 4805 in the issue of Tuesday, February 17, 1987, make the following corrections:

1. On page 4805, in the second column, the 21st line from the bottom should read "[Docket No. QF87-246-000]".

2. On the same page, in the third column, the ninth line should read "[Docket No. QF87-228-000]".

3. On the same page, in the third column, the 36th line should read "[Docket No. QF87-227-000]"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 86F-0049]

Indirect Food Additives; Paper and Paperboard Components

Correction

In rule document 87-176 beginning on page 527 in the issue of Wednesday, January 7, 1987, make the following correction:

On page 529, in the first column, in the second paragraph, in the 13th line from the bottom, the exponent "^{5}" should read "^{9}".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 77N-0076]

New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures re Medicated Feed Applications; Editorial Amendments

Correction

In rule document 87-1409 beginning on page 2681 in the issue of Monday, January 26, 1987, make the following correction:

§ 558.55 [Corrected]

On page 2684, in the first column, in amendatory instruction 9, the second line should read "amended in paragraph (d)(1)(i)(*b*) and (ii)(*b*) by".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0465]

Action Levels for Residues of Benzene Hexachloride in Food and Feed

Correction

In notice document 87-2822 beginning on page 4386 in the issue of Wednesday, February 11, 1987, make the following correction:

On page 4387, in the third column, in the table, the "Action level (parts per million)" for "Rabbits" should read "0.3 (fat basis) [2]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86E-0492]

Determination of Regulatory Review Period for Purposes of Patent Extension; Noroxin

Correction

In the notice document beginning on page 3705 in the issue of Thursday, February 5, 1987, make the following corrections:

1. On page 3706, in the first column, in the first complete paragraph, in the third line, the date should read "April 6, 1987".

2. In the file line at the end of the document, the FR Document Number should read "87-2349".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86E-0491]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tegison

Correction

In notice document 87-2350 beginning

on page 3706 in the issue of Thursday, February 5, 1987, make the following corrections:

1. On page 3706, in the second column, in the first complete paragraph, in the 15th line, "extention" should read "extension".

2. On the same page, in the same column, in the same paragraph, in the 19th line, "substrated" should read "subtracted".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-07-4220-11; C-013628]

Colorado; Proposed Continuation of Withdrawal

Correction

In notice document 87-2926 appearing on page 4537 in the issue of Thursday, February 12, 1987, make the following corrections:

1. In the second column, in the land description for Routt National Forest Gore Pass Campground, Sec. 10, the second line should read "SE¼NW¼ NE¼NE¼";

2. In the third column, in the land description for Fish Creek Recreation Area, Sec. 15 should read "N½NW¼ NE¼NE¼"; and

3. In the third column, in the last paragraph of the document, in the sixth line, "prepared" was misspelled, and in the last line, "determination" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-07-4212-14; I-22256, I-22257, I-22258, I-22259, I-22260, I-22261, I-22262, I-22264, I-23355, I-23356, I-23357, I-23358, I-23359]

Notice of Action; Amendment of the Malad Management Framework Plan (MFP) and the Cassia Resource Management Plan (RMP)/Notice of Realty Action, Sale of Public Land in Power and Cassia Counties, ID

Correction

In notice document 87-3069 appearing on page 4665 in the issue of Friday, February 13, 1987, make the following correction:

In the second column, in the table, under T. 9 S., R. 29 E., B.M., Section 24, the second line should read "E½NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-030-07-4212-14]

Realty Action; Idaho Falls District; Bonneville County

Correction

In notice document 87-778 appearing on page 1534 in the issue of Wednesday, January 14, 1987, make the following correction:

In the first column, in the first table, in the second column, the tenth line should read "T. 1N., R. 43E., B.M."

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Washington State Standards; Notice of Approval

Correction

In notice document 87-108 beginning on page 470 in the issue of Tuesday, January 6, 1987, make the following correction:

On page 470, in the second column, in the 11th line from the bottom, "WAC 296-24-3305" should read "WAC 296-24-33015".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-41]

Public Citizen; Denial of Petition for Rulemaking

Correction

In proposed rule document 87-1980 beginning on page 3121 in the issue of Monday, February 2, 1987, make the following corrections:

1. On page 3125, in the first column, in the third line, insert "under" between "order" and "its".

2. On the same page, in the same column, in the fifth line, "license" should read "licensee".

3. On the same page, in the same column, in the first complete paragraph, in the 11th line from the bottom, the CFR citation should read "10 CFR 50.54(f)".

4. On the same page, in the second column, in the third line from the bottom, "standards" was misspelled.

5. On the same page, in the third column, in the third complete paragraph, in the second line, the last word should read "dampened".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135

[Docket No. 23799; Amdt. Nos. 43-26, 91-198, 121-190, 127-41, 135-22]

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System

Correction

In rule document 87-2033 beginning on page 3380 in the issue of Tuesday, February 3, 1987, make the following corrections:

1. On page 3382, in the third column, after paragraph numbered (4), in the first paragraph, insert a period at the end of the last line.

2. On the same page, in the same column, in the third line from the bottom of the column, insert "a" between "for" and "major".

3. On page 3383, in the third column, in the fourth line, "than" should read "then".

4. On page 3385, in the second column,

in the second line, "the" should read "that".

PART 43, APPENDIX F—[CORRECTED]

5. On page 3390, in the third column, in Appendix F, in paragraph (b)(2), in the sixth line, "rates" should read "rate".

6. On page 3391, in the first column, in Appendix F, in paragraph (g), in the ninth line, "identify" should read "identity".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Serianthes nelsonii Merr. (Hayun Lagu or Tronkon Guafi)

Correction

In rule document 87-3312 beginning on page 4907 in the issue of Wednesday, February 18, 1987, make the following corrections:

§ 17.12 [Corrected]

On page 4910, in § 17.12(h), the table is corrected to read as set forth below:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
FABACEAE—PEA FAMILY						
*	*	*	*	*	*	*
Serianthes nelsonii	Hayun Lagu (Guam), Tronkon guafi (Rota)	Western Pacific Ocean: U.S.A. (Guam, Rota)	E	257	NA	NA
*	*	*	*	*	*	*

BILLING CODE 1505-01-D

federal register

Wednesday
March 4, 1987

Part II

Department of State

Gifts to Federal Employees From Foreign Governments; Notice

DEPARTMENT OF STATE

[Public Notice 1005]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1986

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1986 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by section 7342(f) of Title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: February 18, 1987.

Ronald I. Spiers,

Under Secretary for Management.

Executive Office of the President All Gifts Received From Foreign Officials Over Minimum Dollars

REPORT OF TANGIBLE GIFTS

[Jan. 1 through Dec. 31, 1986]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Consumables: 72 bottles of Algerian wine and 6 small crates of dates on vine. Perishable. Recd: Mar. 17, 1986. Est. value: $276.	His Excellency Chadli Bendjedid, President of the Democratic and Popular Republic of Algeria, Algeria.	Non-acceptance would have caused donor embarrassment.
Do	Flowers: Four dozen long-stemmed red roses. Residence: For official use/display.	His Excellency and Mrs. Ghazi Algosaibi, Ambassador of the State of Bahrain, Bahrain.	Do.
Do	Household: Lacquerware Soon-Ouk (table-style bowl on pedestal) designed as a temple and overlaid with gold; 33" tall. Archives, foreign. Recd: Sep. 13, 1985. Est. value: $200.	His Excellency U Myo Aung, Ambassador of Burma, Burma.	Do.
Do	Photograph: Color photograph of President Biya, inscribed; in a brown leather folio with gold-tooled cover; 10½" × 14" ($480): Archives, foreign. Stamps: Packet of first day covers and sheets of commemorative stamps on the 25th anniversary of the "Corps De La Paix Americain Au Cameroun"; Enclosed in a brown leather folio; 10½" × 14" ($480). Archives, foreign. Recd: Feb. 27, 1986, Est. value: $960.	His Excellency Paul Biya, President of the Republic of Cameroon, Cameroon.	Do.
Do	Medallions: "Centenaire de La Statue De La Liberte" No. 464 of 486 in silver, 3¾" in diameter; "Union Franco-Americaine" No. 950 of 1000 in silver, 2¾" in diameter; and a set of three "Republique Francaise" and "100 F" (2 silver and 1 gold), each 1½" in diameter. All are enclosed in navy blue leather cases. Archives, foreign. Recd: Aug. 12, 1986. Est. value: $620.	His Excellency Francois Mitterrand President of the French Republic, France.	Do.
Do	Artwork: Mother-of-pearl Great Seal of the United States displayed under glass in black wood frame; 17" × 21" image, 23½" × 28" overall. Archives, foreign. Recd: May 01, 1986. Est. value: $250.	His Excellency and Mrs. Soeharto, President of the Republic of Indonesia, Indonesia.	Do.
Do	Household: Wajima Lacquerware box with drawer and decorated gold floral design top, 8½" × 11½"; and a set of six Demitasse cups and saucers in white and colbalt blue with gold decoration (the inauguration pattern from the diamond collection by Noritake). Archives, foreign. Recd: May 04, 1986. Est. value: $975.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan, Japan.	Do.
Do	Household: Desk set consisting of blotter pad, letter holder, pencil cup, box, and folio; black leather with gold stamping. Archives, foreign. Recd: Dec. 23, 1986. Est. value: $650.	His Excellency and Mrs. M'Hamed Bargach, Ambassador of Morocco, Morocco.	Do.
Do	Table linens: A handwovern beige pina tablecloth (126" long × 70" wide), four placemats, and twelve napkins; all in floral motif; contained in a wood box with an engraved presentation plaque attached. Archives, foreign. Recd: Sep. 17, 1986. Est. value: $700.	Her Excellency Corazon Aquino, President of the Republic of the Philippines, Philippines.	Do.
Do	Flowers: Large arrangement of tulips, daisies, and spring flowers in a clay container. Residence; for official use/display. Recd: Mar. 04, 1986. Est. value: $250.	His Royal Highness Bandar Bin Sultan, Prince, Saudi Arabia.	Do.
Do	Household: Electric samovar with lacquered floral design over gold-colored metal; 10" in diameter, 14" tall ($125); Archives, foreign. Artwork; set of nine blue and white glazed china figurines depicting various daily tasks; sizes average 3" × 4" ($69). Archives, foreign. Recd: Apr. 07, 1986. Est. value: $194.	His Excellency and Mrs. Anatoliy F. Dobrynin, Ambassador of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Do.
Do	Consumables: Three pounds of Russian black caviar in a wood cask. Perishable. Recd: Oct. 10, 1986. Est. value: $1200.	His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, Union of Soviet Socialist Republics.	Do.
Do	Book: "Pedro Figari" by Samuel Oliver and "Joaquin Torres Garicia" by Mario H. Gradowczyk; copies 2426 and 2163 of a first edition of 3000 copies; both from the collection "Artistas De America," published by Ediciones De Arte Gaglianone, 1984 and 1985; enclosed in a red suede-like covered slipcase. Archives. foreign. Recd: Jun. 17, 1986. Est. value: $240.	His Excellency Julio Maria Sanquinetti, President of the Oriental Republic of Uruguay, Uruguay.	Do.
President	Household: Crystal block bookends with silver horse motif by Cristaleria Los Angeles; 5½" × 3¾" × 2½". Archives, foreign. Recd: Nov. 17, 1986. Est. value: $800.	His Excellency Raul Alfonsin, President of the Argentine Nation, Argentina.	Do.

Executive Office of the President, All Gifts Received From Foreign Officials Over Minimum Dollars—Continued

[Jan. 1 through Dec. 31, 1986]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Household: Porcelain vase with floral motif on a deep blue background with brass-edged top and bottom; included is an ebony stand; 12" tall, 4" in diameter; enclosed in fabric-covered box. Archives, foreign.	His Excellency Yilin Yao, Vice-Premier of the State Council of the People's Republic of China, People's Republic of China.	Do.
Do	Artwork: Watercolor of a street scene of peasant houses and mountainous background,unititled, by Francisco Amighetti, signed, 1986; matted under glass in golden wood frame; image: 17" × 23"; overall: 24" × 30" ($900); Archives, foreign. Photograph: An 8" × 10" color photograph of President Arias, inscribed; matted under glass in a silver-colored metal frame; overall, 13¾" × 15¾" ($80). Archives, foreign. Recd: Dec. 04, 1986. Est. value: $980.	His Excellency Oscar Arias Sanchez, President of the Republic of Costa Rica, Costa Rica.	Do.
Do	Artwork: Collage, "Sol Y Sombra" (Sun and Shadows), by Osvaldo Viteri, signed, 1985; (depicts approximately 220 miniature human figures dressed in native attire, displayed in dark to light tones from top to bottom on a wood frame; 54¾" square. Archives, foreign. Recd: Jan. 14, 1986. Est. value: $18000.	His Excellency Leon Febres-Cordero, President of the Republic of Ecuador, Ecuador.	Do.
Do	Artwork: Crystal statuette of the statute of liberty, by Verreris Brosse, signed; 14¼" tall. Archives, foreign. Recd: Feb. 06, 1986. Est. value: $350	His Excellency Emmanual de Margerie, Ambassador of France, France.	Do.
Do	Artwork: "Alger, 4 July 1943," acrylics on paper, depicts the first large disembarkment of American naval vessels from Alger into Europe (Sicily) during World War II; By Andre Hambourg, signed; matted under glass in gold wood frame; written on reverse with names of galleries and dates of exhibitions of painting; image: 12" × 19"; overall: 19" × 26"; included is a copy of the painting in blue folio and an assortment of materials on the artist and his works. Archives, foreign. Recd: Jul. 04, 1986, Est. value: $500.	His Excellency Francois Mitterrand, President of the French Republic, France.	Do.
Do	Artwork: Original hand-colored map of the Eastern portion of the United States taken from "Atlas Novus" with a cartouche in lower righthand corner; by Matthaeus Seutter, C. 1745; 20½" × 23½" × 23½"; matted under glass in brown wood frame; 33¼" × 29¾" overall. Archives, foreign. Recd: Oct, 21, 1986. Est. value: $1200.	His Excellency Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Do.
Do	Artwork: Two Color engravings, "Streetscene of New York" and "harborscene of New York," each approximately 3¼" × 2½" under glass in plain black and gold distressed-wood frame; Inscribed in calligraphy on reverse; overall 10¾" × 8" ($150); Archives, foreign. Artwork: China plate, "Frozen Tears," by Tom Wesselmann from the "Artist's Plates" series by Rosenthal; No, 1820 of 3000 limited edition; inscribed on reverse; 10¼" in Diameter ($75). Archives, foreign. Recd: Feb. 05, 1986, Est. value: $225.	The Honorable Johannes Rau, Minister-president, Federal Republic of Germany.	Do.
Do	Artwork; Painting of a countryside scene in the Southern Province of Choluteca, Honduras, by Cesar A. Ordonez, signed, 1986; in plain brown wood frame; 30" × 45" image, 38" × 53" overall. Archives, foreign. Recd: May 27, 1986. Est. value: $500.	His Excellency Jose Azcona Del Hoyo, President of the Republic of Honduras, Honduras.	Do.
Do	Book: "Dyrarika Islands," published by Bokautgafan Orn Og Orlygur HF., 1975, with Icelandic and English text by Benedikt Grondal; No. 8 of 1500 copies; Inscribed by President Finnbogadottir; commercially bound with matching slipcase. Archives, foreign. Recd: Oct. 10, 1986, Est. value: $350.	Her Excellency, Vigois Finnbogadottir, President of the Republic of Iceland, Iceland.	Do.
Do	Book: "Skardsbok," a reproduction of an Icelandic legal manuscript from the 14th century, published by Sverrir Kristinsson, Reykjavik, 1981: inscribed; covered in French cloth with vellum binding, done in the 14th century manner ($750); Archives, foreign. Clothing and accessories: Full-length gray sheepskin coat, size 56, and a blue, black and brown pullover wool sweater, X-large; both made by Gudjon B. Olafsson, owner of Samband Company ($560). Archives, foreign. Recd: Oct. 11, 1986. Est. value: $1310.	His Excellency and Mrs. Steingrimur Hermannsson, Prime Minister of the Republic of Iceland, Iceland.	Do.
Do	Artwork: Wood carving of a Komodo dragon (lizard) with two baby lizards, of Kayu Waru wood, by Nyoman Mawi; 45" Long × 14" tall × 22" wide; included is a photograph of the living species, 12" × 15" in a gold metal frame, 18" × 22"; and a batik covered folio with Indonesian crest containing Historical information on the Komodo dragon ($3,575); Archives, foreign. Artwork: Folding screen, elaborately carved in three sections, with lift-off hinges; center section is 6 feet tall, 33 inches wide, and approximately 2 inches thick; each side section is 5 feet tall, 27 inches wide; handcarved in Borneo ($800). Archives, foreign. Recd: May 01, 1986. Est. value: $4375.	His Excellency and Mrs. Soeharto, President of the Republic of Indonesia, Indonesia.	Do.
Do	Clothing and Accessories: A specially created hand-batiked coat-style shirt, depicting an overall design of the great seal of the United States. (Single presentation with additional items listed elsewhere on report). Archives, foreign. Recd: May 01, 1986. Est. value: $75.	Madame Tien Soeharto, wife of the President of the Republic of Indonesia, Indonesia.	Do.
Do	Household: A Waterford crystal punch bowl with scalloped edge, etched "St. Patrick's day 1986" and mounted on pedestal base: 12" tall, 12" in diameter. Archives. foreign. Recd: Mar. 17, 1986. Est. value: $4500.	His Excellency Dr. Garret Fitzgerald Prime Minister of Ireland, Ireland.	Do.
Do	Artwork: Bronze figure of a cat (modernistic rendering of a puma, tiger, or other similar animal); 14" long, 5½" tall, 3½" wide; included is a separate white marble base. Archives, foreign. Recd: Jan. 13, 1986. Est. value: $675.	His Excellency Shintaro Abe, Minister of Foreign Affairs of Japan, Japan.	Do.
Do	Artwork: Copper picture depicting the likenesses of the crew of the space shuttle challenger with a cross superimposed over a world globe; by Kensuke Fukuda; displayed under plexiglass with beige linen matting in an aluminum frame; 15" x 18" image, 22¾" x 25½" overall. Archives, foreign. Recd: Apr. 14, 1986. Est. value $450.	The Honorable Mutsuo Kimura, President of the House of Coucillors, Japan.	Do.
Do	Artwork: Modernistic watercolor rendering in black and white by Prime Minister Nakasone, inscribed; matted under glass in gold-colored wood frame; image: 20" x 27", overall: 26½" x 34½". ($250); Archives, foreign. Photograph: Color photograph of Prime Minister Nakasone at work painting the rendering given to the President for his 75th birthday, autographed; matted under glass in black wood frame; 5" x 7" image, 11¾" x 13¾" overall ($50). Archives, foreign. Recd: Feb. 06, 1986. Est. value: $300.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan, Japan.	Do.
Do	Household: A TFT pocket color television, LVD-202; includes back light unit (TF-04) and AC adapter (TD07); by Seiko. Archives., foreign. Recd: Apr. 13, 1986. Est. value: $349.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan, Japan.	Do.

Executive Office of the President, All Gifts Received From Foreign Officials Over Minimum Dollars—Continued

[Jan. 1 through Dec. 31, 1986]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Photograph: Album of 38 color photographs of President Reagan at the Tokyo Economic Summit and 6 photographs of Mrs. Reagan during visit. In a gold Lurex covered album. Archives, foreign. Recd: July 29, 1986. Est. value: $275.	do	Do.
Do	Consumables: "Special Presidential Reserve" wine; 12 bottles of Fume Blanc and 12 bottles of Cabernet Sauvignon; each label depicts the flag of the United States and Mexico, "Reunion De Amistad" (reunion of friendship), and "Presidente Miguel de la Madrid Hurtado, Presidente Ronald Reagan" ($120); perishable.	His Excellency Miguel de la Madrid Hurtado President of the United Mexican States, Mexico.	Do.
	Books: "La Pintura Mural De La Revolucion Mexicana" and "La Plastica Del Siglo De La Independencia; "both published by Fondo Editorial De La Plastica Mexicana. 1985; 14" x 19" and 14½" x 18" respectively; Spanish Tests ($850); Archives, foreign.		
	Photograph: Two black leather albums of color and black and white photographs of President Reagan and President de la Madrid; 8" x 9¾" photographs; cover lettered "Reunion De Los Presidentes Lic. Miguel de la Madrid H. Y Ronald Reagan" ($514); Archives, foreign.		
	Audio/visual recording; videotape entitled "entrevista De Los Presidentes De Mexico Y Estados Unidos" ($75). Archives, foreign. Recd: Jan. 3, 1986. Est. value: $1559.		
Do	Household: 100% virgin wool carpet (new) in geometrical motifs on beige center background with geometric border designs; fringed on two ends; handmade by tapetes Mexicanas in Temoaya; No. 16786 on label; 60" x 86" ($2,000); Archives, foreign.	His Excellency Miguel de la Madrid, Hurtado, President of the United Mexican States, Mexico.	Do.
	Photograph: Color photograph of President de la Madrid, inscribed; in black leather easel frame with Mexican seal at top; 6½" x 8¾" photograph, 11" x 14½" overall ($70). Archives, foreign. Recd: Aug. 15, 1986. Est. value: $2070.		
Do	Athletic equipment: Brown cowhide saddle with black wrought iron stirrups. Archives, foreign. Recd: Oct. 15, 1986. Est. value: $350.	His serene Highness Rainier III, Sovereign Prince of Monaco, Monaco.	Do.
Do	Consumables: Assorted candies in a large wicker basket ($247); Perishable	His Majesty Hassan II, King of Morocco, Morocco.	Do.
	Household: Waterford crystal candy jar with pitted lid; 6" tall, 5" in diameter ($141) Archives, foreign. Recd: Feb. 07, 1986. Est. Value: $388.		
Do	Artwork: Sculpted crystal polar bear on crystal base, simulating nice; etched with King Olav's crown and seal insignia on top of base and signed on underside "Haddeland;" 11" long × 6½" tall × 8" wide. Archives, foreign. Recd: Feb. 04, 1986. Est. value: $575.	His Majesty Olav V, King of Norway, Norway.	Do.
Do	Clothing and accessories: A Khanjar (curved ceremonial knife) in a gold sheath for attaching to a belt; 12" long; displayed in a velvet-covered case bearing royal crest inside lid. Archives, foreign. Recd: Jul. 18, 1986. Est. value: $2000.	His Majesty Sultan Qaboos Bin Said, Sultan of Oman, Oman.	Do.
Do	Household: New Persian handknotted wool carpet of multi-colored block designs inside a bordered pattern; fringed on two ends; 92" × 55½". Archives, foreign. Recd: Jul. 16, 1986. Est. value: $600.	His Excellency Mohammed Khan June JO, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Do.
Do	Photograph: Color profile photograph of President Aquino, inscribed; in mother-of-pearl frame with oval opening; overall 10" × 12". (single presentation with additional items listed elsewhere on report). Archives, foreign. Recd: Sep. 17, 1986. Est. value: $60.	Her Excellency Corazon Aquino President of the Republic of the Philippines Philippines.	Do.
Do	Consumables: Bottle of port wine by "Guimaraens" and a bottle of Madeira "special reserve" wine; both vintage 1911 Perishable. Recd: Sep. 09, 1986. Est. value: indeterminable.	His Excellency Anibal Cavaco Silva, Prime Minister of Portugal, Portugal.	Do.
Do	Household: Electric samovar with lacquered floral design over metal; included is a set of two glasses, a small teaport, a covered sugar bowl, and electric cord; samovar is 17" tall, 4" in diameter; and a matching serving tray, 20" in diameter. Archives, foreign. Recd: Oct. 10, 1986. Est. value: $275.	His excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, Union of Soviet Socialist Republics.	Do.
Do	Household: Porcelain plate depicting a peacock surrounded by floral motifs, multi-colored design outlined in gold; scalloped edge; signed by the artist and dated 1985; titled in Russian; 14" in diameter. Archives, foreign. Recd: Sep. 19, 1986. Est. value: $450.	His Excellency Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Do.
Do	Clothing and accessories: a tirador (belt) of beaver-like skin with several pockets and a rastra (closure) of silver with gold work; handcrafted around 1900 and used for carrying personal effects; 4" wide; enclosed in a navy blue box. Archives, foreign. Recd: Jun. 17, 1986. Est. value: $1500.	His Excellency Julio Maria Sanguinetti President of the Oriental Republic of Uruguay, Uruguay.	Do.
Do	Clothing and Accessories: A jambiya (ceremonial dagger) with gold-dipped handle with steel blade; enclosed in a gold-dipped sheath attached to a black and tan belt with a gold threaded design; enclosed in a black velvet case bearing the Yemen crest. Archives, foreign. Recd: Apr. 23, 1986. Est. value: $400.	His Excellency Ali Abdallah Salih, President of the Yemen Arab Republic, Yemen.	Do.
First Lady	Clothing and accessories: Ostrich leather envelope style purse with brass closure by "Casa Lopez" of Buenos Aires; 7" × 9 ½" × 2". Archives, foreign. Recd: Nov. 17, 1986. Est. value: $550.	Mrs. Maria Lorenza Barreneche de Alfonsin, wife of the President of the Argentine Nation, Argentina.	Do.
Do	Jewelry: 18 kt. gold pendant of a bird-shaped figure; 1¾" high × 1½" wide (used during pre-Columbian times by warriors as a ceremonial ornament). Archives, foreign. Recd: Dec. 04, 1986. Est. value: $450.	His Excellency Oscar Arias Sanchez, President of the Republic of Costa Rica, Costa Rica.	Do.
Do	Clothing and accessories: A blouse with dolman sleeves, front and back panels in black suede and red wool; and a red wool cape with narrow black trim, both by "Gogo" for Olga Fisch; contained in a woven basket with handles. Archives, foreign. Recd: Jan. 14, 1986. Est. value: $500.	Mrs. Eugenia Cordovez de Febres-Cordero, wife of the President of Ecuador, Ecuador.	Do.
Do	Artwork: White Porcelain sculpture of woman in floor length gown holding a large scarf above her head; by Sevres, dated 1923; 21" tall × 15" in diameter. Archives, foreign. Recd: Jul. 04, 1986. Est. value: $5000.	Madame Danielle Mitterrand, wife of the President of France, France.	Do.
Do	Artwork: Three original colored floral copper-engraved prints from the "European Insect" series by Maria Sibylla Merian, Amsterdam; Gerard Valck, 1713; each image: 6¾" × 5"; matted under glass in narrow goldleaf frame; overall: 13¾" × 11"; labeled on reverse. Archives, foreign. Recd: Oct. 21, 1986. Est. value: $225.	Mrs. Hannelore Kohl, wife of the Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Do.

Executive Office of the President, All Gifts Received From Foreign Officials Over Minimum Dollars—Continued

[Jan. 1 through Dec. 31, 1986]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do.	Clothing and accessories: Full-length tan sheepskin coat, size 36; and a rose and white pullover wool sweater, size small; both made by Gudjon B. Olpasson, owner of samband company. Archives, foreign. Recd: Oct. 11, 1986. Est. value: $550.	His Excellency and Mrs. Steingrimur Hermannsson, Prime Minister of the Republic of Iceland, Iceland.	Do.
Do.	Flowers: Orchid plants, 100 specially bred plants, titled "Dendrobium Nancy Reagan" ($3,500); residence; for official use/display. Clothing and accessories: Two specially created outfits in hand-batiked silk: a two-piece red floral dress and a three-piece suit with skirt, braided jacket, and a plain gray blouse ($400); Archives, foreign. Household: 90% pure silver service of flatware for twelve contained in trayed compartments in a red velvet-covered chest ($4,000). Archives, foreign. Recd: May 01, 1986. Est. value: $7900.	Madame Tien Soeharto, wife of the President of the Republic of Indonesia, Indonesia.	Do.
Do.	Clothing and accessories: Brown leather satchel style shoulder bag by Trussardi; 9" × 12". Archives, foreign. Recd: Mar. 20, 1986. Est. value: $225.	Mrs. Anna Maria Craxi, wife of the President of the Council of Ministers of the Italian Republic, Italy.	Do
Do.	Household: A glazed ceramic bowl depicting a design of white flowers with yellow centers on one side of the interior and exterior and green leaves on the other side; handpainted over a beige-colored crackled surface; the bottom has a small V-shaped cut for ease of holding or displaying the bowl; 8" in diameter × 4½" tall. Archives, foreign. Recd: Apr. 13, 1986. Est. value: $450.	Mrs. Tsutako Nakasone, wife of the Prime Minister of Japan, Japan.	Do
Do.	Clothing and accessories: Silver with gold-plate belt in a basketweave style with diamond-shaped design overall and a separate oyster-shaped buckle ($500). Archives, foreign.	Her Majesty Seri Baginda Raja Permaisuri Agong, the Queen of Malaysia, Malaysia.	Do.
Do.	Fabric: A length of rose silk in a traditional batik orchid design; 43 inches wide x 4 yards long; contained in a red velvet-covered box ($140). Archives, Foreign. Recd: May 1, 1986. Est. value: $640.		
Do	Artwork: Sougket (a traditional Malay handwovern fabric) in gold-threaded design in golden wood frame; 30" x 32" Archives, foreign. Recd: May 3, 1986. Est. value: $250.	Datuk Dr. Sulaiman Bin Haji Daud, Minister of Culture, Youth and Sports for the Republic of Malaysia, Malaysia.	Do.
Do	Coins: Limited Edition #9286 proof set of two sterling silver coins, $5 and $1 denominations, commemorating the 1986 Pacific Area Travel Association's meeting in Kuala Lumpur; contained in a blue velvet box ($20); Archives, foreign. Fabric: Two Lengths of silk; one in blue and pink and one in a mauve triangular design on pink background; 45 inches wide, 11 feet long and 45 inches wide, 13 feet long., respectively; contained in a woven basket ($280). Archives, foreign. Recd: May 2, 1986, Est. value: $300.	Datin Seri Dr. Siti Hasmah, wife of the Prime Minister of Malaysia, Malysia.	Do.
Do	Photograph: An album of 70 color photographs of Mrs. Reagan, et al., on the occasion of her visit to Malaysia, Archives. Foreign. Recd: May 3, 1986, Est. value: $250.	Staff of the Prime Minister's Department, Malaysia.	Do.
Do	Household: A vermeil compote, oval footed style with convaluted motif and lion head handles with rings; bears seal of Mexico on top edge; 11½ x 6" x 4½"; displayed in a fitted leather-covered case. Archives, foreign. Recd: Jan. 3, 1986. Est. value: $1450.	Mrs. Paloma C. de la Madrid Hurtado, wife of the President of Mexico, Mexico.	Do.
Do	Flowers: A large arrangement of orchids and orchid stems with teddy bears throughout, set in a wicker basket ($150); residence; for official use/display. Consumables: a Wicker basket of assorted candies, jelly beans, and other delicacies ($100). Perishable. Recd: Jul. 7, 1986. Est. value: $250.	His Excellency Hassan II, King of Morocco, Morocco.	Do.
Do	Household: A pair of porcelain cachepots commemorating the 600th anniversary of Portugal; overall floral design with coat-of-arms centered on one side on white background; by Vista Alegre; No. 2 of 500; 7½" tall x 4" deep x 7¼" wide. Archives, foreign. Recd: Sep. 9, 1986. Est. value: $500.	Mrs. Maria Alves da Silva Cavaco Silva, wife of the Prime Minister of Portugal, Portugal.	Do.
Do	Fabric: A bolt of red mudmee silk with an overall diamond design; 38 inches wide x 19 feet long. Archives, foreign. Recd: May 1, 1986. Est. Value: $190.	Her Majesty, the Queen of Thailand, Thailand.	Do.
Do	Artwork: Lacquered oval plaque, depicting a circle of eight Russian women, in native dress, holding hands, titled "A Round Dance;" 11½" x 16½". Archives, foreign. Recd: Oct. 10, 1986. Est. value: $3000.	His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, Union of Soviet Socialist Republics.	Do.
Do	Artwork: Lacquered painting depicting a scene from Alexander Pushkin's fairytale, "Little Golden Cockerel," created by Fedoskino Craftsmen; 8½" x 4". Archives, foreign. Recd: Sep. 19, 1986. Est. value: $1500.	His Excellency Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Do.
Do	Jewelry: A rectangular shaped amethyst, ½" x ⅝"; displayed in a black case. Archives, foreign. Recd: Jun. 17, 1986. Est. Value: $220.	His Excellency Julio Maria Sanguinetti, President of the Oriental Republic of Uruguay, Uruguay.	Do.
Do	Jewelry: Necklace, earrings, bracelet, and ring of coin silver embellished with coral; enclosed in a blue velvet case bearing the crest of Yemen. Archives, foreign. Recd: Apr. 23, 1986. Est. value: $800.	His Excellency Ali Abdallah Salih, President of the Yemen Arab Republic, Yemen.	Do.
Patrick J. Buchanan, Assistant to the President and Director of Communications.	Household: A set of four wooden nesting tables with brass inlaid design; largest size is 13" × 21" × 21" tall to smallest size of 10" × 14½" × 19" tall. Presidential staff; for official use/display. Recd: Jul. 16, 1986. Est. value: $200.	His Excellency Muhammad Khan June Jo, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Do.
Elaine D. Crispen, Press Secretary of the First Lady.	Household: A round silver-plated flower bowl; 8" in diameter, 3" tall, GSA. Recd: May 02, 1986. Est. value: $350.	Her Majesty Seri Baginda Raja Permaisuri Agong, Queen of Malaysia, Malayesia.	Do.
Jane I. Erkenbeck, Special Assistant to the First Lady.	Household: A round silver-plated flower bowl; 8" in diameter, 3" tall, GSA. Recd: May 2, 1986. Est. value: $350.	Her Majesty Seri Baginda Rafa Permaisuri Agong, Queen of Malaysia, Malaysia.	Do
Richard G. Johnson, Assistant Director for Space Science and Technology, OSTP.	Household: A cloisonne vase, black background with green, yellow, blue, and pink floral (mums) pattern; brass trim; 8" tall 3½" in diameter, presidential staff; for official use/display. Recd: Jan. 15, 1986. Est. value: $175.	The Honorable Wu Jiazing, Deputy Director, Department of High Technology, the State Science People's Republic of China.	Do.
Jonathan E. Miller, Deputy Assistant to the President for Administration.	Household: A six-piece demitasse set. Presidential staff; for official use/display. Recd: May 22, 1986. Est. value: $210.	The Government of Japan, Japan	Do.

Executive Office of the President All Gifts Received From Foreign Officials Over Minimum Dollars—Continued

[Jan. 1 through Dec. 31, 1986]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John M. Poindexter, Assistant to the President for National Security Affairs.	Artwork: An ivory sculpture depicting an ancient Egyptian barge with ten standing figures: 10 ½" long, 4" high, and 1 ¾" deep overall; mounted on a black base, 3" tall. GSA. Recd: Nov. 18, 1986. Est. value: $900.	His Excellency Abu Ghazala, Deputy Prime Minister of Egypt, Egypt.	Do.
Do	Historic Artifacts: A Herodian type oil lamp and a Jewish Bronze coin from the Massada Revolt; oil lamp is 1st century C.E. and the coin was struck on the second year of the revolt (67 C.E.). Mounted together inside a clear lucite case bearing a brass presentation plaque. GSA. Recd: Sep. 11, 1986. Est. value: indeterminable.	His Excellency Yitzhak Rabin Defense Minister of Israel, Israel.	Do.
Do	Household: An oriental carpet in shades of navy blue, rust, and tan; 37½" x 61½" with two fringed ends. GSA. Recd: Jul. 16, 1986. Est. value: $300.	His Excellency Muhammed Khan Junie Jo, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Do.
Donald T. Regan, Chief of Staff to the President.	Household: Silver-plated tray (6½" x 9"), cigarette box (4" x 3" x 1½"), ashtry (3¼" x 2½" x 1½"), and a letterholder (2¼" x 1¼" x 3¼"), marked "835 delux SK". GSA Recd: May 19, 1986. Est. value: $400.	His Excellency Soeharto, President of the Republic of Indonesia, Indonesia.	Do.
Do	Household: A six-piece set of Demitasse cups and Saucers in the Inauguration Pattern from the diamond collection by Noritake; white and cobalt blue with gold decorations. GSA Recd: May 20, 1986. Est. value: $900.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan, Japan.	Do.
Do	Book: Two books, "La Plastica Del Siglo de la Independencia" and "La Pintura Mural de la Revolucion Mexicana;" both published by Fondo Editorial Dela Plastica Mexicana 1985. GSA. Recd: Jan. 22, 1986. Est. value: $850.	His Excellency, Miguel de la Madrid Hurtado, President of the United Mexican States, Mexico.	Do.
Do	Household: An oriental carpet in shades of navy blue, light blue, and light gray; 37 ½" x 61½" with fringe on two ends. GSA. Recd: Jul. 16, 1986. Est. value: $300.	His Excellency Muhammad Khan Junejo, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Do.
Shirin Tahir-Kheli, Director of Political-Military Affairs, NSC.	Jewelry: A gold Omega Seamaster ladies watch. GSA. Recd: Apr. 9, 1986. Est. value $400.	The Government of the State of Bahrain, Bahrain.	Do.
Do	Coins: Two commemorative gold coins. GSA. Recd: Apr. 9, 1986. Est. value: $570.	The Government of the State of Bahrain, Bahrain.	Do.
Do	Jewelry: A yellow gold lady's Longines watch. GSA. Recd: Apr. 6, 1986. Est. value: $675.	The Government of Saudi Arabia, Saudi Arabia.	Do.
Do	Jewelry: A coin-silver necklace and matching earrings. GSA. Recd: Apr. 8, 1986. Est. value: $650.	The Government of the Yemen, Arab Republic, Yemen.	Do.

Vice President & Mrs. George Bush

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. George Bush, wife of the Vice President.	Coin silver pendant with small coral bead in center. Recd.—April 10, 1986. Est. Value—$200.00. Delivered to GSA for disposition, October 2, 1986.	Mrs. 'Abd al-Karim Al-'Arashi, wife of the Vice President of the Yemen Arab Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President George Bush	12 gauge shotgun. Recd.—August 1986. Est. Value:—$4000.00. Transferred to U.S. Secret Museum for Official Use.	Mohamed Abdel Halem Abu Ghazala, Deputy Prime Minister of Egypt.	Do.
Mrs. George Bush, wife of the Vice President.	Necklace: gold cartouce in filigree obelisk on gold chain. Recd.—August 1986. Est. Value—$225.00. Being held in Old Executive Offie Building pending transfer to GSA for disposition.	Mrs. Ashgan Abu Ghazala wife of the Deputy Prime Minister of Egypt.	Do.
Vice President and Mrs. George Bush.	Six mother of pearl plates, approx. 7" in diameter. Recd.—Sept. 17, 1986. Est. Value—$180.00. Transferred to Vice President's Residence for Official Use.	Corazon C. Aquino, President, Philippines	Do.
Vice President George Bush	Sterling silver cigarette box with Jordanian military seal on lid. Recd.—Aug. 1, 1986. Est. Value—$275.00. Being held in Old Executive Office Building pending transfer to GSA for disposition.	General Bin Shaker, Jordan	Do.
Vice President and Mrs. George Bush.	Linen tablecloth with 12 linen napkins. Recd.—March 8, 1986. Est. Value—$450.00. Transferred to Vice President's Residence for Official Use.	Mrs. Habib Bourguiba, wife of the President of Tunisia.	Do.
Vice President Bush	Framed collection of ceramic spoons representing each Olympiad from Athens to Seoul. Recd.—April 1986. Est. Value—$372.00. Transferred to Vice President's Residence for Official Use.	Chai Hung Lee, Speaker, National Assembly of Korea.	Do.
Mrs. George Bush, wife of the Vice President.	Red caftan with gold colored embroidery. Recd.—April 8, 1986. Est. Value—$600.00. Delivered to GSA for disposition, October 2, 1986.	Hope House Institute, Manama, Bahrain	Do.
Vice President George Bush	Smith & Wesson .357 Magnum pistol. Recd.—July 1986. Est. Value—$1482.00. Transferred to U.S. Secret Service Museum for Official Use.	King Husseln I of Jordan	Do.
Do	Silver jambia. Recd.—April 8, 1986. Est. Value—$875.00. Transferred to Vice President's Old Executive Building Office for Official Use.	Hamed Bin Isa Al Khalifa, Crown Prince of Bahrain.	Do.
Mrs. George Bush, wife of the Vice President.	21K gold shield and coin design 24" necklace with turquoise and pearls. Recd.—April 1986. Est. Value—$9500.00. Delivered to GSA for disposition, October 2, 1986.	Hamed Bin Isa Al Khalifa, Shiek of Bahrain.	Do.
Vice President George Bush	18K Rolex Presidential diamond dial watch; 18K yellow gold & diamond ball point pens; 18K yellow gold and diamond cuff links. Recd.—April 1986. Est. Value—$15150.00. Delivered to GSA for disposition, October 2, 1986.	Amir Isa Bin Sulman, Khalifa of Bahrain	Do.
Mrs. George Bush, wife of the Vice President.	18K gold diamond choker; 18K gold diamond ring; 18K gold earrings; 18K Gold bracelet. Recd.—April 1986. Est. Value—$22200.00. Delivered to GSA for disposition, October 2, 1986.	....do	Do.
Do	18K yellow gold lady's audemars Piquedt diamond watch. Recd.—April 1986. Est. Value—$40000.00. Delivered to GSA for disposition, October 2, 1986.	....do	Do.
Do	18K yellow gold and stainless steel Vacheron Constatine watch with lady's two tone bracelet. Recd.—April 1986. Est. Value—$2500.00. Delivered to GSA for disposition, October 2, 1986.	....do	Do.
Vice President George Bush	Silver and 18K yellow gold floral motif box. Recd.—April 1986. Est. Value—$3000.00. Transferred to Vice President's Residence for Official Use.	....do	Do.
Mrs. George Bush, wife of the Vice President.	Coin silver necklace with various colored stones. Recd.—April 1986. Est. Value—$300.00. Delivered to GSA for disposition, October 2, 1986.	Jamila Mubarack, Egypt	Do.
Vice President and Mrs. George Bush.	Wool rag rug, approx. 51" x 73". Recd.—August 1986. Est. Value—$475.00. Transferred to Vice President's Residence for Official Use.	Mohammed Hosni Mubarak, President of Egypt.	Do.
Mrs. George Bush, wife of the Vice President.	Coin silver necklace with black enamel type stone. Recd.—April 11, 1986. Est. Value—$475.00. Delivered to GSA for disposition, October 2, 1986.	Old City Souq, Yemen Arab Republic	Do.

Vice President & Mrs. George Bush—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President George Bush	HC-61 model of Cadillac Eldorado in Daum crystal. Recd.—Oct. 20, 1986. Est. Value—$1000.00. Transferred to Vice President's Dirksen Senate Office for Official Use.	Robert Pandraud, Minister of Public Security, France.	Do.
Vice President and Mrs. George Bush.	Small vase of ancient glass. Recd.—May 1986. Est. Value—$500.00. Transferred to Vice President's Residence for Official Use.	Shimon Peres, Prime Minister of Israel	Do.
Vice President George Bush	Herodian Oil lamp and bronze coin. Recd.—July 1986. Est. Value—$300.00. Delivered to GSA for disposition, October 2, 1986.	Yitzhak Rabin, Minister of Defense, Israel	Do.
Do	Arabic coin cufflinks, 18K yellow gold with rope frames. Recd.—April 1986. Est. Value—$875.00. Delivered to GSA for disposition, October 2, 1986.	King Fahd Bin 'Abd Al-'Aziz Al Sa'ud of Saudi Arabia.	Do.
Vice President and Mrs. George Bush.	Jaeger LeCoultre Brass Clock. Recd.—April 1986. Est. Value—$1500.00. Transferred to Vice President's Residence for Official Use.	do	Do.
Vice President George Bush	Four foot sword with stainless steel blade and 24K gold and silver handle. Recd.—April 1986. Est. Value—$4000.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Do	One 42mm silver proof coin; one 38.61mm silver proof coin; one gold coin, 1 oz. Recd.—April 1986. Est. Value—$412.00. Delivered to GSA for disposition, October 2, 1986.	Sultan Qaboos Bin Said, of Oman	Do.
Mrs. George Bush, wife of the Vice President.	Coin silver coral & beaded necklace, earrings & bracelet. Recd.—April 1986. Est. Value—$850.00. Delivered to GSA for disposition, October 2, 1986.	Col. 'Ali 'Abdallah Salih, President of Yemen Arab Republic.	Do.
Vice President and Mrs. George Bush.	Pakistani brass & copper inlaid rosewood slant-front desk. Recd.—September 1986. Est. Value—$1250.00. Transferred to Vice President's Residence for Official Use.	Donor unknown, Pakistan	Do.
Mrs. George Bush, wife of the Vice President.	Pin containing 14 pearls mounted on silver in the shape of a cluster of grapes. Recd.—April 14, 1986. Est. Value—$375.00. Delivered to GSA for disposition, October 2, 1986.	Mrs. Toshiro Yamaguchi, wife of the Secretary General of the New Liberal Club, Japan.	Do.
Vice President George Bush	Silver trivet with writing in gold. Recd.—April 1986. Est. Value—$700.00. Delivered to GSA for disposition, October 2, 1986.	Yemen Hunt Oil Refinery, Yemen Arab Republic.	Do.
Do	Silver and gold jambia. Recd.—April 1986. Est. Value—$300.00. Being held in Old Executive Office Building pending transfer to GSA for disposition.	Yemen Personnel, U.S. Embassy, Yemen Arab Republic.	Do.

Office of the Vice President

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Douglas A. Brooks, Member of Advance Team.	Man's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$425.00. Delivered to GSA for disposition, October 2, 1986.	Isa Bin Sulman Khalifa, Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James Brulte, Member of Advance Team.	do	do	Do.
Erlinda E. Casey, Staff Assistant to the Vice President.	Lady's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$400.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Thomas J. Collamore, Deputy Assistant to the Vice President & Staff Secretary.	Waterman pen and pencil set. Recd.—August 1986. Est. Value—$255.00. Awaiting transfer to GSA for disposition.	King Hussein of Jordan	Do.
Gayle R. Fisher, Special Assistant to the Vice President and Assistant Press Secretary.	Lady's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$400.00. Delivered to GSA for disposition, October 2, 1986.	Isa Bin Sulman Khalifa, Amir of Bahrain	Do.
Jennifer A. Fitzgerald, Executive Assistant to the Vice President and Assistant to the Vice President for Legislative Affairs.	do	do	Do.
Do	½ oz. 23k yellow gold 50 dinar coin, 16 grams; one 1 oz. 23k yellow gold 150 dinar coin, 32 grams, encased. Recd.—April 1986. Est. Value—$545.00. Delivered to GSA for disposition, October 2, 1986.	King Fahd bin 'Abd al-'Aziz al Sa'ud of Saudi Arabia.	Do.
Do	Lady's 18k white gold Baume & Mercier watch with black strap. Recd.—April 7, 1986. Est. Value—$850.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Do	Multi-strand fake coral necklace separated by round coin silver ornaments. Recd.—April 12, 1986. Est. Value—$400.00. Delivered to GSA for disposition, October 2, 1986.	'Ali 'Abdallah Salih, President of Yemen, Arab Republic.	Do.
Do	Waterman pen and pencil set. Recd.—August 1986. Est. Value—$255.00. Awaiting transfer to GSA for disposition.	King Hussein of Jordan	Do.
M. Marlin Fitzwater, Assistant to the Vice President and Press Secretary.	Man's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$425.00. Delivered to GSA for disposition, October 2, 1986.	Isa Bin Sulman Khalifa Amir of Bahrain	Do.
Do	½ oz. 23k yellow gold 50 dinar coin, 16 grams; one 1 oz. 23k yellow gold 150 dinar coin, 32 grams, encased. Recd.—April 1986. Est. Value—$545.00. Delivered to GSA for disposition, October 2, 1986.	King Fahd bin 'Abd al-'Aziz al Sa'ud of Saudi Arabia.	Do.
Do	Man's 18k white gold Jaeger-LeCoultre quartz watch with brown leather strap. Recd.—April 1986. Est. Value—$1,000.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Do	Multi-strand coin silver necklace with coin silver ornaments. Recd.—April 1986. Est. Value—$250.00. Delivered to GSA for disposition, October 2, 1986.	'Ali 'Abdallah Salih, President of Yemen, Arab Republic.	Do.
Do	Waterman pen and pencil set. Recd.—August 1986. Est. Value—$255.00. Awaiting transfer to GSA for disposition.	King Hussein of Jordan	Do.
Craig L. Fuller, Chief of Staff	Man's gold Omega Seamaster quartz watch with gold filled band. Rec.—April 1986. Est Value—$425.00. Delivered to GSA for disposition, October 2, 1986.	Isa Bin Sulman Khalifa, Amir of Bahrain	Do.
Do	½ oz. 23k yellow gold 50 dinar coin, 16 grams; one 1 oz. 23k yellow gold 150 dinar coin, 32 grams, encased. Rec.—April 1986. Est. Value—$545.00. Delivered to GSA for disposition, October 2, 1986.	King Fahd bin 'Abd al 'Aziz al Sa'ud of Saudi Arabia.	Do.
Do	Silver serving tray. Recd.—January 1986. Est. Value—$800.00. Awaiting transfer to GSA for disposition.	Abdelkader Braik Al-Ameri, Ambassador from Qatar.	Do.

Office of the Vice President—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Man's 18k white gold Jaeger-LeCoultre quartz watch with brown leather strap. Recd.—April 1986. Est. Value—$1000.00. Delivered to GSA for disposition, October 2, 1986.	King Fahd bin 'Abd al 'Aziz al Sa'ud of Saudi Arabia.	Do.
Dr. Robert A. Gasser, Jr., Physician to the Vice President.	Man's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$425.00. Delivered to GSA for disposition, October 2, 1986.	Isa Bin Sulman Khalifa, Amir of Bahrain	Do.
Donald P. Gregg, Assistant to the Vice President for National Security Affairs.	do	do	Do.
Do	½ oz. 23k yellow gold 50 dinar coin, 16 grams; one 1 oz. 23k yellow gold 150 dinar coin, 32 grams, encased. Recd.—April 1986. Est. Value—$545.00. Delivered to GSA for disposition, October 2, 1986.	King Fahd bin 'Abd al 'Aziz al Sa'ud of Saudi Arabia.	Do.
Do	Man's 18k white gold Jaeger-LeCoultre quartz watch with brown leather strap. Recd.—April 1986. Est. Value—$1000.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Do	Waterman pen and pencil set. Recd.—August 1986. Est. Value—$255.00. Awaiting transfer to GSA for disposition.	King Hussein of Jordan	Do.
Diane N. Guglielmino, Special Assistant to the Vice President and Executive Assistant to Chief of Staff.	Lady's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$400.00. Delivered to GSA for disposition, October 2, 1986.	Isa Bin Sulman Khalifa, Amir of Bahrain	Do.
David H. Gwinn, Member of Advance Team.	Man's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$425.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Stephen T. Hart, Special Assistant to the Vice President & Assistant Press Secretary.	do	do	Do.
Clark Judge, Special Assistant to the Vice President & Director of Speechwriting.	do	do	Do.
Frederick N. Khedouri, Assistant to the Vice President & Deputy Chief of Staff.	do	do	Do.
Do	½ oz. 23k yellow gold 50 dinar coin, 16 grams; one 1 oz. 23k yellow gold 150 dinar coin, 32 grams, encased. Recd.—April 1986. Est. Value—$545.00. Delivered to GSA for disposition, October 2, 1986.	King Fahd bin 'Abd al 'Aziz al Sa'ud of Saudi Arabia.	Do.
Do	Man's 18k white gold Jaeger-LeCoultre quartz watch with brown leather strap. Recd.—April 1986. Est. Value—$1,000.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Do	Waterman pen and pencil set. Recd.—August 1986. Est. Value—$255.00. Awaiting transfer to GSA for disposition.	King Hussein of Jordan	Do.
Rocky D. Kuonen, Member of Advance Team.	Man's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$425.00. Delivered to GSA for disposition, October 2, 1986.	Isa Bin Sulman Khalifa, Amir of Bahrain	Do.
Timothy J. McBride, Personal Aide to the Vice President.	do	do	Do.
LTC E. Douglas Menarchik, U.S.A.F., Military Assistant to the Vice President.	do	do	Do.
John H. Owens, Staff Assistant to the Vice President.	do	do	Do.
David J. Ryder, Deputy Assistant to the Vice President for Advance.	do	do	Do.
Do	½ oz. 23k yellow gold 50 dinar coin, 16 grams; one 1 oz. 23k yellow gold 150 dinar coin, 32 grams, encased. Recd.—April 1986. Est. Value—$545.00. Delivered to GSA for disposition, October 2, 1986.	King Fahd bin 'Abd al 'Aziz al Sa'ud of Saudi Arabia.	Do.
Do	Man's 18k white gold Jaeger-LeCoultre quartz watch with brown leather strap. Recd.—April 1986. Est. Value—$1,000.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Do	Waterman pen and pencil set. Recd.—August 1986. Est. Value—$255.00. Awaiting transfer to GSA for disposition.	King Hussein of Jordan	Do.
Kathleen M. Shanahan, Staff Assistant to the Vice President.	Lady's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$400.00. Delivered to GSA for disposition, October 2, 1986.	Isa Bin Sulman Khalifa Amir of Bahrain	Do.
David Valdez, Photographer to the Vice President.	Man's gold Omega Seamaster quarty watch with gold filled band. Recd.—April 1986. Est. Value—$425.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Elizabeth D. Wise, Personal Aide to Mrs. Bush.	Lady's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$400.00. Delivered to GSA for disposition, October 2, 1986.	do	Do.
Do	Coin silver and fake coral bead necklace. Recd.—April 1986. Est. Value—$300.00. Delivered to GSA for disposition, October 2, 1986.	'Adi 'Abdallah Salih, President of Yeman, Arab Republic.	Do.
Patty Presock, Personal Secretary to the Vice President.	Man's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$425.00. Being held in Old Executive Office Building pending transfer to GSA for disposition.	Isa Bin Sulman Khalifa, Amir of Bahrain	Do.
Natalie Woznaik, Staff Assistant to the Vice President.	Lady's gold Omega Seamaster quartz watch with gold filled band. Recd.—April 1986. Est. Value—$400.00. Being held in Old Executive Office Building pending transfer to GSA for disposition.	do	Do.

U.S. Senate

SENATE SELECT COMMITTEE ON ETHICS

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rudy Boschwitz, U.S. Senator	4x6 foot Pakistani rug. Recd July 18, 1986. Est. Value: $500–$1,000. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Mohammad Khan Junejo, Prime Minister of the Islam Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Bob Dole, U.S. Senator	Ivory standing cup with lid/wood base. Recd March 13, 1986. Est. Value: $250. Requested and received approval from the Select Committee on Ethics for official use of item during tenure in the Senate.	Jerry Chitunda, Nominal Minister of Angola.	Do.
Do	Jade Stone Tiger Eye Chi'l lin. Recd October 28, 1986. Est. Value: $250. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Prime Minister of South Korea, Shinyong Lho.	Do.
Richard C. Lugar, U.S. Senator	4x6 foot Pakistani rug. Recd July 18, 1986. Est. Value: $500–$1,000. Requested and received approval from the Select Committee on Ethics for official use of item during tenure in the Senate, 8/4/86.	Prime Minister of Pakistan	Do.
Claiborne Pell, U.S. Senator	4x6 foot Pakistani rug. Recd August 22, 1986. Est. Value: $500–$1,000. Requested and received approval from the Select Committee on Ethics for official use of item during tenure in the Senate, 11/18/86.	Mohammad Khan Junejo, Prime Minister of the Islam Republic of Pakistan.	Do.
Ted Stevens, U.S. Senator	Japanese wood carving by Nubri Toko. Recd mid-May 1986. Est. Value: $300. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Toshiyuki Wanibuchi, mayor of the city of Kushiro, Hokkaido, Japan.	Do.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
R. Brent Erickson, Legislative Assistant to Senator Alan Simpson.	Transportation and lodging from Hong Kong to Canton, PRC Jan. 1986	People's Republic of China	Extension of Fact-finding trip.
Edward M. Kennedy, U.S. Senator.	Lodging, local transportation and meals, Moscow, USSR: February 4–7, 1986	Academy of Sciences USSR	5 U.S.C. sec. 7342(c)(1)(B)(ii).
Thomas K. Longstreth, Legislative Assistant to Senator Edward Kennedy.	Lodging, local transportation and meals, Moscow, USSR: February 4–7, 1986	Academy of Sciences USSR	Do.

U.S. House of Representatives

REPORT OF TANGIBLE GIFTS.

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William S. Broomfield, Member of Congress.	3 x 5 rug. Recd July 22, 1986. Est. Value—$180. Approved for official display	Prime Minister Junejo, Pakistan	Non-acceptance would have caused embarrassment to donor.
Dick Cheney, Member of Congress.	Two rugs. Recd July 1986. Est. Value—$165. Delivered to Clerk of House for disposition September 17, 1986.	Unknown	Do.
Dan Daniel, Member of Congress.	Two rugs. Recd July 9, 1986. Est. Value—$525. Approved for official display	do	Do.
Dante B. Fascell, Member of Congress.	37" x 6" rug. Recd July 17, 1986. Est. Value—$180. Approved for official display.	Prime minister Junejo, Pakistan	Do.
Henry J. Hyde, Member of Congress.	Two rugs. Recd July 1986. Est. Value—$600. Approved for official display	Unknown	Do.
Bob Stump, Member of Congress.	Two rugs. Recd July 1986. Est. Value—$500. Approved for official display	do	Do.
Stanley O. Roth, Sub. on Asian and Pacific Affairs.	Pair of lamps. Recd July 1986. Est. Value—$200. Delivered to Clerk of House for disposition September 25, 1986.	Pakistan	Do.

Department of the Air Force

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lt. Col. Henry H. Godbee, Deputy Senior DOD, Representative, United Arab Emirates.	Rolex watch, gold and silver. Recd—March 17, 1986. Est. Value—$2,750. Being held at Headquarters Air Force Military Personnel Center, Recognition and Special Programs Division, Randolph Air Force Base, Texas 78150–6001, pending transfer to GSA for disposition.	Maj. Gen. Mohd Saeed Al-Badi, Chief of Staff, United Arab Emirates Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gen. Larry D. Welch, Chief of Staff, U.S. Air Force.	Pistol, semi-automatic, Caliber 7.65MM, Model 70, Serial number 155734. Recd—December 6, 1986. Est. Value—$300. Being held in the Office of the Chief of Staff, United States Air Force, Room 4E924, Pentagon, Washington, D.C. 20330, for official display.	Lt. Gen. Anton Tus, Commander, Yugoslav Air and Air Defense Forces.	Do.

United States Army

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
BG George H. Akin, Assistant Chief of Staff, U.S. Forces Korea, Republic of Korea.	Saber, Scabbard with belt/buckle and case. Recd: December 17, 1986. Est. value: $1,000. U.S. Army Communications/Electronic Command, Fort Monmouth, NJ for official use.	Lee Ki Baek, Minister of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government
LTG Arthur Brown, Jr., Director, Army Staff, Washington.	3'3" by 5'3" rug. Recd: November 19, 1986. Est. value: $200. U.S. Army Military Personnel Center, Alexandria, VA.	LTG Safber, Director, Pakistan Army	Do.
MG Charles W. Brown, Assistant Deputy Chief of Staff, Logistics, Washington.	Man's Gold Omega Watch. Recd: December 1, 1986. Est. value: $350. U.S. Army Military Personnel Center, Alexandria, VA.	General Bin Skaker, Commander in Chief, Jordanian Armed Forces.	Do.
MG James H. Ellis, Chief of Staff, U.S. Forces Korea, Republic of Korea.	Sam Jung Do Saber. Recd: June 6, 1986. Est. value: $300. U.S. Army Engineer Museum, Fort Belvoir, VA for official use.	Chun Doo Hwan, President, Republic of Korea.	Do.
Mrs. John O. Marsh, Jr., Wife, Secretary of Army, Washington.	Four amethyst stones, total weight 12 carats. Recd: December 2, 1986. Est. value: $216. U.S. Army Military Personnel Center, Alexandria, VA.	General Leonidas, Minister of Defense, Brazil.	Do.
COL Don A. Schwab, Deputy Director for Operations, MacDill AFB, Florida.	Rolex Oyster Perpetual Watch. Recd: February 3, 1986. Est. value: $2,000. U.S. Army Military Personnel Center, Alexandria, VA.	Hammad Bin Isa AL Khalifa, Deputy to the Amir, State of Bahrain.	Do.
BG James W. Wurman, Chief of Staff, Combined Field Army, Republic of Korea.	Sam Jung Do Saber. Recd: May 28, 1988. Est. value: $300. U.S. Army Museum, Fort Jackson, SC for official use.	Chun Doo Hwan, President, Republic of Korea.	Do.

Central Intelligence Agency

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William J. Casey, Director, CIA	Egyptian ceremonial sword with engraved gold scabbard and carved bone pommel. Together with two Farsi gold coins. Encased. Recd January 1986. Est. Value—$1000.00. To be reported to GSA for disposition.	Public Law 95-105 A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Do	Unique 7.655 mm automatic pistol. Serial number 445534. Together with a magazine clip. In carrying case. Recd October 1986. Est. Value—$185.00. To be reported to GSA for disposition.	do	Do.
Do	(a) Oriental needlework two-fold floor screen. Red ground with crane family. Approximately 68 x 56. (b) Oriental carved amber amulet-pendant. 14 Karat yellow gold mount and chain. Chain L: 16. (c) Korean miniature gong. Within a square shadowbox housing. Recd August 1986. Est. Value—$360.00. To be reported to GSA for disposition.	do	Do.
Do	(a) African bronze sculpture, "Flutes te assi." Signed Liyolo, 1985 Zaire. Gold patina. H: 11. (b) African carved ivory figural group of two monkeys. Signed with initials. On a round wood base. Ivory. H: 8. Recd March 1986. Est. Value—$300.00. To be reported to GSA for disposition.	do	Do.
Do	(a) Pakistan Bokhara rug. 5.7 x 4.3. Camel hair ground with two rows of six guls, with seven guard borders. Retained for official display. (b) Pakistan shield shaped plaque. With easel-back. Overall 18 x 14. In a hinged green velvet carrying case. (c) Iqbal. *Poet of the East.* Bound volume with illuminated manuscript tip-ins in Farsi, etc. Recd January 1986. Est. Value—$310.00. To be reported to GSA for disposition (plaque and book).	do	Do.
Do	Indo-Keshan rug. 8.2 x 5.2. Beige ground with pulled lobed medallion on rust-to-ivory ground, palmette and trellising vine guard border on rust ground. Recd January 1986. Est. Value—$450.00. Retained for official display.	do	Do.
Do	(a) Pair Middle East repousse silver vases. H: 6½: Wt. approximately 14 oz. In a green velvet hinged case. (b) Pair mottled green onyx vases H: 8. In a green velvet hinged case. (c) Sapphire ensemble. Consisting of a necklace and a pair of pendant earrings. Unmarked yellow gold mounts. The necklace set with approximately 201 round faceted blue sapphires; each pendant earring set with 33 round faceted blue sapphires. Total wt. of sapphires approximately 14 karats. (d) Onyx seven-piece desk set. Consisting of a double pen stand, pencil holder, pen holder, paperweight, ash receiver, hinged box, and a letter opener. (e) Mottled green onyx dial telephone. In green velvet carrying case. (f) Carved hardwood pier table and wall mirror. Recd January 1986. Est. Value—$2300.00. To be reported to GSA for disposition.	do	Do.
Robert M. Gates, Deputy Director, CIA.	Gentlemen's Breguet watch. 14 Karat yellow gold case and two side-by-side dials; one with Roman numerals, the other with Arabic numerals, with blue cabochon sapphire crowns. Brown reptile band. Serial number 2654. Recd October 1986. Est. Value—$250.00. To be reported to GSA for disposition.	do	Do
Do	(a) Indo-Keshan rug. 6.2 x 4.1. Ivory ground with lobed medallion on blue-to-ivory ground, rust spandrels, palmette and trellising vine guard border on blue ground. Retained for official display. (b) Indo-Sarouk rug. 6.5 x 4. Oval red ground with a star medallion on ivory-to-pink ground, beige spandrels, palmette and trellising vine guard border on blue ground. Recd October 1986. Est. Value—$625.00. Retained for official display.	do	Do.
John N. McMahon, Former Deputy Director, CIA.	Turquoise ensemble. Consisting of a necklace and a pair of pendant earrings. Unmarked yellow gold necklace set with one oval cabochon turquoise and 23 round cabochon turquoise. Each pendant earring set with two oval cabochon turquoise and five round cabochon turquoise. Recd February 1986. Est. Value—$800.00. To be reported to GSA for disposition.	do	Do.

Central Intelligence Agency—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency Employee	(a) Diamond cross pendant. 750 (18 Karat) white gold mount set with fifteen round diamonds weighing approximately .25 carats. (b) Diamond cross pendant. Unmarked white gold mount set with eleven round single cut diamonds weighing approximately .15 carats. (c) Diamond cross pendant. Unmarked white gold mount set with 21 round single cut diamonds weighing approximately .30 carats. (d) Ladies' Eterna wristwatch. 585 (14 Karat) yellow gold bracelet attachment. Serial number 6207512. Recd Summer of 1979. Est. Value—$1350.00. To be reported to GSA for disposition.	do	Do.
Do	South African gold kugerrand. Dated 1974. One ounce fine. Recd May 1986. Est. Value—$400.00. To be reported to GSA for disposition.	do	Do.
Do	(a) Gentlemen's quartz date watch, Dunhill. Roman numeral dial and stainless steel and gold filled case and attachment. Serial number 16-11227/JQ. (b) Ladies' Dunhill date watch en suite with preceding. Serial number 12-14120-JQ. Recd April 1985. Est. Value—$250.00. To be reported to GSA for disposition.	do	Do.
Do	Indo-Isphahan rug. 6.1 x 4.2. Ivory ground with pulled star medallion on blue-to-gold ground, rust spandrels, palmette and trellising vine guard border on blue ground. Recd October 1985. Est. Value—$400.00. Retained for official display.	do	Do.
Do	Turquoise, sapphire and diamond ring. 18 Karat yellow gold mount centering an oval cabochon turquoise surrounded by four marquise diamonds weighing approximately .80 carats, eight round diamonds weighing approximately .30 carats, and four marquise blue sapphires weighing approximately .80 carats. Recd November 1985. Est. Value—$1,600.00. To be reported to GSA for disposition.	do	Do.
Do	(a) Gentlemen's S.C. Dupont wristwatch with tortoise dial with Egyptian Great Seal; brown reptile band. (b) French gilt metal and crystal traveling alarm. Maker L'Epee. H: 3¼. Recd June 1986. Est. Value—$325.00. To be reported to GSA for disposition.	do	Do.
Do	(a) Gentlemen's Omega date-day Seamaster watch with stainless steel case. Bearing paper label serial number 453. (b) Ladies' Cartier quartz watch with Roman numeral dial and brown reptile band. Identification number 17-085807. Recd May 1986. Est. Value—$525.00. To be reported to GSA for disposition.	do	Do.
Do	Two round brillant cut loose diamonds. One approximately .35 carats, the other approximately .30 carats. Recd December 1985. Est. Value—$550.00. To be reported to GSA for disposition.	do	Do.
Do	Kilim-type rug. 8.7 x 5. Geometric vertical striped design. Recd December 1984. Est. Value—$300.00. Retained for official display.	do	Do.

Department of Commerce

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donna Tuttle, Under Secretary for Travel and Tourism.	Music box of inlaid rosewood, size 8½" x 4¾", made by the Reuge Music Company. Recd—January 22, 1986. Est. Value: $425. Retained for display in the office of the Under Secretary and later disposition to GSA.	Jean-Jacques Cevey, president of National Tourist Office, Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

Department of Defense

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	Round, inlaid coffee table, 36" diameter. Recd April 24, 1986. Est. Value: $250. Deliversed to GSA for disposition November 21, 1986.	Defense Secretary, Zaidi of Pakistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	Set of stack tables. Recd July 17, 1986. Est. Value: $350. Delivered to GSA for disposition November 21, 1986.	Muhammad Khan Junejo, Prime Minister of Pakistan.	Do.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	Men's Piaget 18K gold watch, with diamonds, and matching cuff links. Recd October 18, 1986. Est. Value: $15,500. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	Isa Bin Salman Al Khalifa, Amir of the State of Bahrain.	Do.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	Ladies' Piaget 18K gold watch, with diamonds. Recd October 18, 1986. Est. Value: $7,500. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	21K gold bracelet, with diamond-like stones and turquoise stone in the center. Recd October 18, 1986. Est. Value: $4,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	Set of small, 24K goldplated, matching jars, with decorative lids and tray, in maroon velveteen box. Recd December 1, 1986. Est. Value: $200. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	Hwang Kwan Young, Assistant Minister for Plans and Management, Government of Korea.	Do.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	Silverplated teapot with tray, approximately 16" in diameter. Recd December 4, 1986. Est. Value: $200. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	General Mohamed Achahbar, Morocco	Do.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs)	Sterling silver box, with embossed top and wooden interior, 4½" x 8", in blue velveteen box. Recd date unknown. Est. Value: $250. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	Donor unknown	Do.

Department of Defense—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ms. Caroline J. Cooke, Secretary to the Assistant Secretary of Defense (International Security Affairs).	Ladies' Omega 18K gold watch Recd October 18, 1986. Est. Value: $2,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	Isa Bin Salman Al Khalifa, Amir of the State of Bahrain.	Do.
Do	14K gold bracelet, with seed pearls and red and green enamel design. Recd October 18, 1986. Est. Value: $1,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Lt. Gen. Philip C. Gast, USAF Director, Defense Security Assistance Agency.	Set of onyx lamps (non-functional with U.S. electric light bulbs), in green velour box. Recd—March 22, 1986. Est. Value: $180. Delivered to GSA for disposition October 22, 1986.	General Mohammad Zia-Ul-Haq, President of Pakistan.	Do.
Do	Onyx plate inlaid with mother-of-pearl, 14" in diameter. Recd October 16, 1986. Est. Value: $180. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	do	Do.
Do	Brass tray, approximately 23" in diameter. Recd October 16, 1986. Est. Value: $250. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	Muhammand Khan Junejo, Prime Minister of Pakistan.	Do.
Do	Men's 2-piece, gray pin-stripped suit. Recd November 15, 1986. Est. Value: $250. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	General C.K. Lee, Commanding General, Defense Procurement Agency, Republic of Korea.	Do.
Do	Men's Omega 18K gold watch, with matching cuff links. Recd October 17, 1986. Est. Value: $5,750. Reported to GSA and stored in ODASD (Admin) pending disposition of GSA.	Isa Bin Salman Al Khalifa, Amir of the State of Bahrain.	Do.
Do	Ladies' Omega 18K gold watch. Recd October 17, 1986. Est. Value: $2,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Mrs. Philip C. Gast, Wife of Director, Defense Security Assistance Agency.	Ladies' Omega 18K gold watch. Recd October 17, 1986. Est. Value: $2,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Do	14K gold bracelet with seed pearls and red and green enamel design. Recd October 17, 1986. Est. Value: $1,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Lt. Gen. Philip C. Gast, USAF Director, Defense Security Assistance Agency.	Men's Omegal gold watch, with black leather strap. Recd December 1, 1986. Est. Value: $325. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	General bin-Shaker, Commander in Chief, Jordanian Armed Forces.	Do.
Do	Ladies' Omega gold watch, with tan leather strap. Recd December 1, 1986. Est. Value: $250. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Do	Silverplated teapot with large round tray, approximately 16" in diameter. Recd December 5, 1986. Est. Value: $200. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	General Faqir, Inspector General, Moroccan Armed Forces.	Do.
Brig. Gen. John S. Grinalds, USMC, Assistant Deputy Director, Force Development and Strategic Plans, J-5, OJCS.	Men's Omega goldtone watch, Seamaster, with link bracelet, stainless steel back. Recd November 1986. Est. Value: $187.50. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	Government of Bahrain	Do.
Do	Ladies' Omega goldtone watch, De Ville, with link bracelet, stainless steel back. Recd November 1986. Est. Value: $187.50. Reported to GSA and stored in ODASD (Admin) pending dispostion by GSA.	do	Do.
Lt. Col. Fred C. Hof, USA Military Assistant to the Assistant Secretary of Defense (International Security Affairs).	Men's Omega 18K gold watch, with matching cuff links. Recd October 18, 1986. Est. Value: $5,750. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	Isa Bin Salman Al Khalifa, Amir of the State of Bahrain.	Do.
Do	Ladies' Omega 18K gold watch. Recd October 18, 1986. Est. Value: $2,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Dr. Fred C. Ikle, Under Secretary of Defense for Policy.	Set of onyx lamps (non-functional with U.S. electric light bulbs), in green velour box. Recd July 17, 1986. Est. Value: $180. Delivered to GSA for disposition October 22, 1986.	Muhammad Khan Junejo, Prime Minister of Pakistan.	Do.
Do	Rug, blue/beige, approximately 50" x 32". Recd September 13, 1986. Est. Value: $250. Approved for official display in office of donee.	Gen. Mohammad Zia-Ul-Haq, President of Pakistan.	Do.
Lt. Col. Robert Kirkpatrick, USMC, Country Director for Bahrain, Office of the Assistant Secretary of Defense (International Security Affairs).	Men's 18K gold Rolex watch. Recd September 19, 1986. Est. Value: $8,800.50. Delivered to GSA for disposition October 22, 1986.	Isa Bin Salman Al Khalifa, Amir of the State of Bahrain.	Do.
Do	Ladies' 18K gold Rolex watch. Recd September 19, 1986. Est. Value: $6,250. Delivered to GSA for disposition October 22, 1986.	do	Do.
Do	Men's Omega 18K gold watch, with matching cuff links. Recd October 18, 1986. Est. Value: $5,750. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Do	Ladies' Omega 18K gold watch. Recd October 18, 1986. Est. Value: $2,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Rear Adm. Anthony A. Less, USN, Deputy Director, Politico-Military Affairs, J-5, OJCS.	Men's Omega 18K gold watch, with matching cuff links. Recd October 1986. Est. Value: $5,750. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	Government of Bahrain	Do.
Do	Ladies' Omega 18K gold watch. Recd October 1986. Est. Value: $2,000. Reportd to GSA and stored in ODSAD (Admin) pending disposition by GSA.	do	Do.
Mrs. Carole A. Manlove, Secretary to Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Ladies' Omega 18K gold watch. Recd October 18 , 1986. Est. Value: $2,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	Isa Bin Salman Al Khalifa, Amir of the State of Bahrain.	Do.
Do	14K gold bracket, with seed pearls and red and green enamel design. Recd October 18, 1986. Est. Value: $1,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Amb. Robert H. Pelletreau, Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Men's Jaeger-Le Coultre 18K gold watch, Geneve, with snakeskin straps. Recd. April 8, 1986. Est. Value: $1,000. Delivered to GSA for disposition October 22, 1986.	King Fahd of Saudi Arabia	Do.
Do	Men's Omega gold watch. Recd April 9, 1986. Est. Value: $525. Delivered to GSA for disposition October 22, 1986.	Sultan Qaboos of Oman	Do.

Department of Defense—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Two gold coins, 99 percent pure gold (DINARS); one is one ounce, the other is one-half ounce, Recd April 11, 1986. Est. Value: $645. Delivered to GSA for disposition October 22, 1986.	Isa Bin Salman Al Khalifa, Amir of the State of Bahrain.	Do.
Do	Men's Rolex 18K gold watch. Recd May 29, 1986. Est. Value: $8,800.50. Delivered to GSA for disposition October 22, 1986.	do	Do.
Do	Ladies' Rolex 18K gold watch. Recd May 29, 1986. Est. Value: $6,250. Delivered to GSA for disposition October 22, 1986.	do	Do.
Do	Men's Chopard 18K gold watch, with diamonds, and matching cuff links. Recd October 18, 1986. Est. Value: $11,500. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Do	Ladies' Chopard 18K gold watch, with diamonds. Recd October 18, 1986. Est. Value: $8,000. Reported to GSA and stored in ODSAD (Admin) pending disposiiton by GSA.	do	Do.
Do	14K gold-plated bracelet, with diamond-like stones, a small ruby in the center, and a turquoise stone on each end. Recd October 18, 1986. Est. Value: $900. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	do	Do.
Do	Men's Omega gold watch, Seamaster, Quartz, with black leather strap. Recd. December 9, 1986. Est. Value: $325. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	His Highness, Jabir al-Ahmad al-Jabir Al Sabah, Amir of Kuwait.	Do.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency.	Decorative wall plaque. Recd April 23, 1986. Est. Value: $500. Approved for official display in office of donee.	Pakistan	Do.
William H. Taft IV, Deputy Secretary of Defense.	Large box with 36 miniature replicas of huge stone sculptures standing on either side of the Sacred Way of the Ming Tombs in China. Recd October 14, 1986. Est. Value: $180. Delivered to GSA for disposition October 22, 1986.	People's Republic of China Delegation and Gen, Hong, head of People's Liberation Army of China.	Do.
Do	Miquelet-type flintlock pistol,. 61-caliber, Ripoll belt model. Recd November 3, 1986. Est, Value: $180. Approved for official display in office of donee.	CASA, Spanish National Aircraft Industries.	Do.
Caspar W. Weinberger, Secretqry of Defense.	Sceptre-like symbol (Staff), ivory, in leopard cloth case. Recd January 29, 1986. Est. Value: $300. Approved for official display in office of donee.	Dr. Jones Savimbi, President of Unita, Angola.	Do.
Do	The Emillie Bell (Bell of King Songdok, A.D 771), 99 percent silver, in small glass case. Recd April 1986. Est. Value: $200. Approved for official display in office of donee.	Change Se Dong, Director, Agency for National Security Planning, Republic of Korea.	Do.
Do	Ivory gondola. Recd June 1986. Est. Value: $200. Approved for offical display in office of donee.	Deputy Prime Minister/MOD, Mohamed Abdel Halim Abu Ghazala, Egypt.	Do.
Mrs. Caspar W. Weinberger, Wife of the Secretary of Defense.	Silver necklace, bracelet, earrings, and pin. Recd June 1986. Est. Value: $250. Approved for official display in office of donee.	Deputy Prime Minister/MOD, Mrs, Mohamed Abdel Halim Abu Ghazala, Egypt.	Do
Caspar W. Weinberger, Secreatary of Defense.	Two round tables on pedestal, with gold inlay top. Recd July 16, 1986. Est. Value: $215. Approved for official display in office of donee.	Prime Minister Junejo of Pakistan	Do.
Do	Large celadon vase. Recd August 5, 1986. Est. Value: $175. Approved for official display in office of donee.	Chang Se Dong, Director, Agency for National Security Planning, Republic of Korea.	Do.
Do	Porcelain bowl, shaped like a basket with handle. Recd October 1986. Est. Value: $300. Approved for official display in office of donee.	Romanian President, General-Colonel Vasile Milea.	Do.
Do	18K gold Breguet pocket watch with chain. Recd December 7, 1986. Est. Value: $4,000. Reported to GSA and stored in ODASD (Admin) pending disposition by GSA.	King Hassan of Morocco	Do.

Defense Intelligence Agency

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Col. Paul A. Forster, Defense and Army Attache, USDAO Tel Aviv.	UZI pistol, 9MM semi-automatic. Recd: June 5, 1986. Est. Value: $420. Being held in the USDAO Tel Aviv property book to supplement current stock of 38 special revolvers.	Lt. Gen. Moshe Levy, chief of the general staff, Israel Defense Forces.	Non-acceptance would have embarrassed and offended General Levy.

Federal Communications Commission

Report of Travel or Expenses of Travel

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Mark S. Fowler, Chairman	In-country expenses (lodging and meals) for trip to Vancouver, Canada, to participate in meeting of senior communications decision-makers from countries participating at the World Exposition (Expo '86): (a) hotel accommodations from June 8-11, 1986; (b) meals during period of meeting participation, June 8-11, 1986; and (c) Estimated Value: $600.	Hon. Marcel Masse, Minister of Communications, Canadian Government.	This gift of expenses of travel was accepted to avoid international embarrassment while in a foreign country
Peter K. Pitsch, chief, Office of Plans & Policy.	Travel expenses for a one day trip to Petra was provided for all the conferees attending the Arab Telecommunications Conference in Amman, Jordan: (a) The trip was furnished by the Arab Telecommunications Union on November 18, 1986; and (b) Estimated Value: $179.	A/J H. Khalaf, Secretary General, Arab Telecommunications Union, an international/multinational organization.	The gift of travel expenses provided an additional opportunity to meet with attendees from other countries, non-acceptance would have caused embarrassment for all parties concerned.

General Services Administration

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Terence C. Golden, Administrator.	Robe, tan color, large, approximately 56" long with gold stitching around neck, shoulders and front area. Enclosed in a wooden box approximately 20"x12¾"x4". Recd: November 1986. Est. Value $550. Being held by GSA pending disposition.	Imrahim Al-Tassan, Deputy Minister, Administrative Services, Minister of Finance and National Economy, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

Agency for International Development

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Joseph C. Wheeler, Chairman, OECD Development Assistance Committee—Paris, France.	February 21–24, 1986. Hotel, food expenses and transportation in Kuwait. Estimated cost $500.	Kuwait Fund	Mr. Wheeler was co-chairman in joint meeting of Arab/OPEC and DAC donors hosted by Kuwait Fund.
Do	March 13–14, 1986. Hotel, food, local transportation expenses. Estimated cost $400.	Government of Japan	Made official call on Japanese Government.
Do	September 6–9, 1986. Portion of hotel expense. Estimated cost $600	UNDP	Attended UNDP-North/South Roundtable meeting in Salzburg, Austria. Wife accompanied, but hotel expenses reimbursed for only one.
Do	October 9–10, 1986. Hotel, food and local transportation for Mr. Wheeler and wife. Estimated cost $500.	Government of Sweden	Attended North/South Roundtable meeting near Stockholm which was sponsored by the Government of Sweden.
Do	October 12–13, 1986. Hotel, food and local transportation. Estimated cost $300.	Paid by Government of Norway	Mr. Wheeler and wife invited by Government of Norway to make official visit to Oslo.
Do	October 16–18, 1986. Hotel, food and local transportation. Estimated cost $600.	Paid by Government of Switzerland	Government of Switzerland hosted Mr. Wheeler and wife for an official visit. All of Mr. Wheeler's travel was in invitations to activities where the expenses are normally paid for by the sponsoring activity.
Bernard Wilder, Associated Director, Human Resources and Mahmoud Elden, Project Officer, Cairo, Egypt.	Round trip air travel, Cairo/Kharga/Cairo via Egypt Air	Governorate of The New Valley	Mr. Wilder and Mr. Elden were to attend an important meeting to discuss project implementation but could not get air reservations. Governorate of New Valley has, on annual basis, reserved two seats on flights between Kharga and Cairo and pays for them whether used or not. Governorate authorized use of these seats, which were not needed by Governorate on days used, so conference could be on schedule.

Department of Justice

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James W. Greenleaf, Asst. Director, Training Division, Federal Bureau of Investigation.	Replica of first iron-clad ship of Korea, gold-plated, 12" long and 15" tall. Recd December 9, 1986. Est. Value—$1,000. Retained for official display at FBI Academy.	Min-Chang Kang, Director General of National Police, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and US Government.
Edwin Meese III, Attorney General of the United States.	Print of Canadian geese as rendered by artist Robert Bateman. Recd July 28, 1986. Est. Value—$307. Retained for official display in the Office of the Attorney General..	Ian Scott, Attorney General of the Province of Ontario, Canada.	Do.
Dan Radcliff, Acting District Director, Chicago, Immigration and Naturalization Service.	Ring, broach, and bracelet, coral and gold. Recd December 30, 1986. Est. Value—$800. Being held by INS until reported to GSA for disposition instructions.	Major General Jun-Hwa Liu, Deputy Commissioner for Criminal Investigation Bureau, National Police Administration, Taiwan.	Do.
William H. Webster, Director, Federal Bureau of Investigation.	Replica of royal barge, wood, hull sheathed in gold, 36" long & 14" tall. Recd January 23, 1986. Est. Value—$2,000. Retained for official display at FBI Academy, Quantico, Virginia.	General Narong Mahanonda, Director General of Police Forces, Thailand.	Do.
Do	Two (2) matching vases with stands, china. Recd May 10, 1986. Est. Value—$210. Retained for official display in Office of the Director.	General Hsin-Lien Sung, Director General, National Security Bureau, Taiwan.	Do.
Michael S. Williams, Chief Patrol Agent, El Paso Sector, Immigration and Naturalization Service.	Coffee set, gold-plated. Recd September 10, 1986. Est. Value—$300. Being held by INS until reported to GSA for disposition instructions.	Lt. General Mohammed Bin Elwaw, Immigration and Border Affairs, Saudi Arabia.	Do.

National Aeronautics and Space Administration

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Capt. Dan Brandenstein, Commander, Space Shuttle flight 51-G.	Man's Rolex watch, leather band, serial #4359887, Recd. January 1986 $575.00. Being held in security office pending transfer to G.S.A. for disposition.	King Faud, Saudi Arabia	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mr. Michael Collins, Johnson Space Center employee.	Man's Rolex watch, leather band, serial #4355357, Recd. January 1986 $575.00. Being held in security office pending transfer to G.S.A. for disposition.	King Faud, Saudi Arabia	Do.
Capt. John Creighton, pilot, Space Shuttle flight 51-G.	Man's Rolex watch, leather band, serial #6910590, Recd. January 1986 $575.00. Being held in security office pending transfer to G.S.A. for disposition.	King Faud, Saudi Arabia	Do.
Col. John Fabian, mission specialist, Space Shuttle flight 51-G.	Man's Rolex watch, leather band, serial #6910417, Recd. January 1986 $575.00. Being held in security office pending transfer to G.S.A. for disposition.	King Faud, Saudi Arabia	Do.
Capt. Chester Lee, director, Customer Services, NASA HQ's.	Man's Rolex watch, leather band, serial #4359852, Recd. January 1986 $575.00. Being held in security office pending transfer to G.S.A. for disposition.	King Faud, Saudi Arabia	Do.
Lt. Col. Steven Nagel, mission specialist, Space Shuttle flight 51-G.	Man's Rolex watch, leather band, serial #4350088, Recd. January 1986 $575.00. Being held in security office pending transfer to G.S.A. for disposition.	King Faud, Saudi Arabia	Do.
Concetta P. Thibideau (spouse of P. Thibideau, manager of International Scientific and Technical Information Activities, Scientific and Technical Information Branch, NASA Headquarters) Mrs. Thibideau is an Italian citizen.	Educational scholarship and return airfare totalling $3,360.00 Scholarship began January 1986 extended to June 1986.	Italian Ministry of Foreign Affairs, University of Rome.	Acceptance of scholarship is in accordance with NASA regulations.

National Archives and Records Administration (NARA)

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Frank G. Burke, Acting Archivist of the United States.	Nov. 29-December 6, 1986, Washington, DC to Moscow and return. Hotel and subsistence expenses were paid for by the USSR as hosts. The International Research and Exchanges Board (IREX), sponsors of the trip, paid airfare. Purpose of the trip was to discuss areas of cooperation and exchanges between the Soviet Archives and American archival institutions. Airfare: $1,009. Estimated hotel and subsistence expenses: approx. $700.	Soviet Main Archival Administration/ USSR.	Committee was under the auspices of the American Council of Learned Societies, working as an agent to implement the Soviet-American cultural exchanges called for in the Geneva Accord of 1985.
Milton O. Gustafson, Chief, Diplomatic Branch.	Travel expenses to attend the 4th meeting of the Council of CIBAL. Est. Value: $2,094. Oct. 26-Nov. 2, 1986. Washington, DC to Sofia, Bulgaria and return.	CIBAL (International Information Center for Balkan Studies), Bulgaria.	Recipient is a member of the Council of CIBAL; CIBAL has paid for participation by representative from NARA at previous meetings of Council.

Department of the Navy

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rear Admiral John F. Addams, USN, Commander Middle East Force.	Arab Konjar (Dagger), Recd: October 30, 1984. Est. value: $350. Approved for official display on board USS *Stark* (FFG 31).	Shaikh Saqr Bin Mohamed Al Quasimi, Ruler of Ras Al Khaimah, Uae.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Do	Sword: Recd: December 17, 1984. Est. value: $350. Approved for official display on board USS *McInerney* (FFG-8).	Shaikh Ahmad Bin Sultan Al Quasimi, Deputy Ruler of Sharjah, Uae.	Do.
Do	Arab Konjar (Dagger): Recd: February 5, 1986. Est. value: $350. Approved for official display on board USS *Boone* (FFG-28).	Sayyid Sultan Bin Hamed Al Busaidi, Governor of the Capital District, Muscat, Oman.	Do.
Do	Arab Konjar (Dagger): Recd: February 10, 1986. Est. value: $350. Approved for official display on board USS *Conolly* (DD-979).	Shaikh Hamad Bin Mohamed Al Sharqi, Ruler of Fujarah, Uae.	Do.
Do	Arab Konjar (Dagger): Recd: April 22, 1986. Est. value: $350. Approved for official display on board USS *LaSalle*, (AGF-3).	Prince Mohammed Bin Abdul Aziz, Amir of the Eastern Province of Saudi Arabia.	Do.
Rear Admiral Harold J. Bernsen, USN, Commander Middle East Force.	Rolex Oyster Perpetual Datejust Watch: Recd: February 3, 1986. Est. value: $2,000. Approved for retention during tour as Commander Middle East Force.	Hammad Bin Isa Al Khalifa, Deputy to the Amir of the State of Bahrain.	Do.
Colonel Gene A. Brown, USMC, Director, Command and Staff College.	Hand carved sculptured sterling silver falcon, 10" tall. Recd: June 6, 1986. Est. value: $850. Transferred to Director, C&SC for official use.	Major Bander Bin Abdullah bin Mohammed Al-Saud, Saudi Arabia.	Do.
Rear Admiral Brady M. Cole, USN, Commanding Officer, Naval Supply Center, San Diego.	Cobalt blue Fukagawa porcelain vase, with gold design 10" high 7 inches in diameter: Recd: October 22, 1984. Est. value: $500. Approved for official display at Naval Supply Center, San Diego.	Vice Admiral Minoru Inagi, Director, Finance and Supply, Japan Defense Forces.	Do.
General George B. Crist, USMC CINC USCENTCOM.	One 9ft. 6in. x 5ft. 6in. Oriental rug, blue and tan with fringe around the border. Recd: October 6, 1986. Est. value: $1,000. Held in Headquarters, U.S. Central Command for official use.	Brigadier General Mohammed Al Attiyah, Deputy CINC Qatar Defense Forces.	Do.
Do	One 3½ft. x 2in. Arabic Sword, gold plated sheath and hilt with rough-forged blade. Recd: October 12, 1986. Est. value: $400. Held in Headquarters, U.S. Central Command for official use.	Sheikh Hamad, Ruler of Fujairah, United Arab Emirates.	Do.

Department of the Navy—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	One 3¾ft. x 2in. Arabic Sword, gold plated sheath, ivory hilt with solid gold chain attached, smoothly polished blade, registration #334 carved on blade near hilt. Recd: July 6, 1986. Est. value: $800 Held in Headquarters, U.S. Central Command for official use.	H.H. Mohammed Bin Fahd, Governor of Eastern Province of Saudi Arabia.	Do.
Major General Donald J. Fulham, USMC, Commanding General, Marine Corps Recruiting District, San Diego.	San Jung Do Saber: Recd; June 2, 1986. Est. value: $300. Approved for official display upon opening of the Marine Corps Recruiting District Museum, San Diego.	Chun Do Hwon, President of Republic of Korea.	Do.
John Lehman, Jr., Secretary of the Navy.	Water color painting depicting "Korean Spring Story". Recd: September 30, 1986. Est. value: $250. Held in General Counsel pending transfer to GSA.	Liuhu Quing, CNO, Peoples Republic of China.	Do.
Lieutenant Commander John C. Terry, USN, U.S. Naval Hospital, Subic Bay.	Set of wooden stacking tables: Recd: December 1985. Est. value: $179.47. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Mrs. Amelia J. Gordon, former Mayor of Olongapo City.	Do.
Rear Admiral Richard C. Ustick, USN, Commander South Atlantic Force, U.S. Atlantic Fleet.	Silver mounted shamshir, Arabian Ceremonial Sword with coin counted chain guard and silver sheathed scabbard. Recd: November 21, 1985. Est. value: $325. Approved for official display at COMSOLANT Headquarters.	Lieutenant Colonel Djibril Ould Abdallahi, Chief of Staff of the Armed Forces of the Islamic Republic of ?.	Do.
Admiral James D. Watkins, USN, Chief of Naval Operations.	Pakistani Cashmire rug 36" by 63". Recd: January 5, 1983. Est. value: $400. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	President Zia of Pakistan	Do.
Do	Footed 900 silver mate vessel with embossed design and two pheasants on rim and sterling bamilla. Recd: September 1984. Est. value: $225. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Vice Admiral Patrico Carvajel, Minister of Defense, Chile.	Do.
Do	900 silver cigarette box with enamel signature, flag and engraved legend, 7" by 4" by ½". Recd: September 1984. Est. value: $200. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Vice Admiral Patrico Carvajal, Minister of Defense, Chile.	Do.
Do	Ship's model 10½" silver sailing vessel mounted on marble base with silver presentation box. Recd: September 1984. Est. value: $750. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Vice Admiral Jorge Du Bois Gervasi, Minister of the Peruvian Navy.	Do.
Do	10½" round sterling presentation tray with gadroon border, Argentina Department of Defense seal in center. Recd: September 1984. Est. value: $400. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	D. Raul Antonio Borres, Minister of Defense, Argentina.	Do.
Do	Decorated ceremonial sword with molded plastic handle and wine red velvet sheath. Rec'd: September 1984. Est. value: $250. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Crown Prince H.H. Shaikh Hamad Bin Issa Al-Khalifa of Bahrain.	Do.
Captain Robert M. Zentmyer, USN, Commanding Officer, U.S. Naval Hospital, Subic Bay.	Set of wooden stacking tables. Rec'd: December 1985. Est. value: $179.47. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Mrs. Amelia J. Gordon, former Mayor of Olongapo City.	Do.
Charles Hirsch, Special Assistant to the Secretary of the Navy—White House Fellow.	Gentlemen's Rolex watch, Oyster perpetual movement, datejust with stainless steel and 18k yellow gold jubilee bracelet. Recd: August 24, 1985. Est. value: $1,490. Held in office of the General Counsel awaiting instructions from GSA.	Amir of the State of Bahrain	Do.
John Lehman, Jr., Secretary of the Navy.	Gentlemen's 18k yellow gold Rolex watch, Oyster perpetual movement, datejust, with 18k yellow gold "President" Bracelet, Model No. 8205875. Recd: August 24, 1985. Est. value: $4,920. Held in office of the General Counsel awaiting instructions from GSA.	do	Do.
Mrs. John Lehman, Jr., wife of the Secretary of the Navy.	Lady President Rolex watch with red face and diamond dial. Recd: August 24, 1985. Est. value: $5,000. Held in office of the General Counsel awaiting instructions from GSA.	do	Do.
Do	Double strand pearl necklace 19 and 20 inches contain 130 and 144 pearls. Associated with an 18k yellow gold barrel clasp. Recd: August 24, 1985. Est. value: $450. Held in office of the General Counsel awaiting instructions from GSA.	do	Do.
Colonel Michael P. Mulqueen, USMC, Special Assistant and Marine Corps Aid to the Secretary of the Navy.	Gentlemen's Rolex watch, Oyster perpetual movement, datejust, with stainless steel and 18K yellow gold jubilee bracelet. Recd: August 24, 1985. Est. value: $1,490. Held in office of the General Counsel awaiting instructions from GSA.	do	Do.
Hugh O'Neill, Principal Deputy General Counsel, Department of the Navy.	Gentlemen's Rolex watch, Oyster perpetual movement, datejust, with stainless steel and 18K yellow gold jubilee bracelet. Recd: August 24, 1985. Est. value: $1,490. Held in office of the General Counsel awaiting instructions from GSA.	do	Do.
Lieutenant Commander Lawrence G. Traynor, Jr., USN, Personal Aide to the Secretary of the Navy.	Gentlemen's Rolex watch, Oyster perpetual movement, datejust, with stainless steel and 18K yellow gold jubilee bracelet. Recd: August 24, 1985. Est. value: $1,490. Held in office of the General Counsel awaiting instructions from GSA.	do	Do.
Admiral James D. Watkins, USN, Chief of Naval Operations.	Ceremonial sword gilted metal decorated with molded plastic handle and wine red velvet sheath. Recd: January 1985. Est. value: $250. Approved for official display in Tingey House.	Crown Prince H.H. Shaikh Hamad Bin Issa Al-Khalifa of Bahrain.	Do.

Overseas Private Investment Corporation

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Bruce N. Hatton, Vice President, Corporate Communications.	Ivory statue of a hunter approx. 15" H. Recd—March 21, 1986. Est. Value—$500. On display in main reception area of Agency.	Government of Cameroon	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gerald T. West, Vice President, Development.	Ivory carvings approx. 12" H. Recd—March 21, 1986. Est. Value—$500. On display in main reception area of Agency.	do	Do.

Department of State

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James K. Bishop, Deputy Assistant Secretary of African Affairs.	Encased in wooden frame (15⅛" × 11¼") 21 African silver crosses. Recd—October 9, 1986. Est. Value—$180. Approved for official display in the Bureau of African Affairs, Department of State.	Foreign Minister of Niger, Sani Bako	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gahl Hodges Burt, Spouse of U.S. Ambassador to Federal Republic of Germany.	Amethyst bowl, 5" in diameter. Recd—August 11, 1986. Est. Value—$175. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	Bernhard Vogel, Minister-President of Rhineland Pfaltz, Federal Republic of Germany.	Do.
John B. Craig, Director, Office of Arabian Peninsula Affairs.	Omega man's wrist watch—18K—showing day of month on face with gold band. Recd—October 18, 1986. Est. Value—$500. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	Shaika Isa Bin Sulman Al-Khalifa, The Amir of the State of Bahrain.	Do.
Marion V. Creekmore, Jr., Deputy Assistant Secretary of State, NEA.	(a) Man's Omega gold plated watch with gold plated band; day of month on face. 46658446. (b) Two gold coins: (1) 1⅜" diameter 100 dinars Baherain; (2) 1" diameter 50 dinars Bahrain—both coins have face of Amir on one side and seal on the other side. Recd—April 8, 1986. Est. Value—(a) $525, (b) $645. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	Amir of the State of Bahrain	Do.
Walter L. Cutler U.S. Ambassador to Saudi Arabia.	Jaeger-LeCoultre 18K gold watch with diamond chips surrounding face of watch; with Saudi insignia on face. Recd—April 1986. Est. Value—$5,000. Delivered to GSA for disposition July 28, 1986.	Member of the Royal Family of Saudi Arabia.	Do.
Mrs. Walter L. Cutler, Wife of the U.S., Ambassador to Saudi Arabia.	Vacheron Constantin stainless steel watch with gold plate inserts on watch band; with Saudi insignia on face. Recd—April 1986. Est. Value—$5,000. Delivered to GSA for disposition July 28, 1986.	do	Do.
Walter Cutler, U.S. Ambassador to Saudi Arabia.	One Gazelle. Recd—September 24, 1985. Est. Value—$165. Deceased	Village Chief in Farsan Island, Saudi Arabia.	Do.
Do	Two Gazelles. Recd—November 28, 1985. Est. Value—$230. Deceased	Governor of Asir Province, Saudi Arabia	Do.
John J. Eddy, Consul General, Dhahran, Saudi Arabia.	Ceremonial sword: 4' long, 5 lbs, with gold plated scabbard inlaid with several semi precious stones of rubies, emeralds, and diamond chips; small gold chain and gold coin hang on the sword's white plastic handle. Recd—May 1986. Est. Value—$2,700. Approved for official display at the Consulate General, Dhahran, Saudi Arabia.	HRH Prince Mohammed Bin Fahd, Governor of Eastern Province of Saudi Arabia.	Do.
Ronald L. Gain, FBO Operations Officer, Department of State.	Omega man's gold plated quartz date and digital wristwatch with metal band. Recd—April 9, 1986. Est. Value—$250. Delivered to GSA for disposition July 28, 1986.	The Amir of the State of Bahrain	Do.
Beverly Leidel, Spouse of U.S. Ambassador to Saudi Arabia.	(a) Gold necklace with 14 large gold balls and 15 small gold balls—38" long. (b) Decorative round gold bracelet 1½" wide band. Recd—October 2, 1986. Est. Value—(a) $2,000, (b) $1,000. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	Shaika Isa Bin Sulman Al-Khalifa, The Amir of the State of Bahrain.	Do.
Sally B. Lilley, Spouse of James R. Lilley, AIT/T Director.	Coral necklace (color: coral) 27" long. Recd—October 1983. Est. Value—$1,080. Delivered to GSA for dispositon July 28, 1986.	Member of Taiwan Armed Forces	Do.
Deane Hinton, U.S. Ambassador, Pakistan.	Pair (2) Blue Peacocks, one year old. Recd—May 28, 1986. Est. Value—$240 (pair). Approved for official display at the American Embassy Islamabad.	Makhdoom Sajjad Hussain Qureshi, Governor of Punjab.	Do.
Richard K. McKee, Political Counselor, U.S. Embassy Saudi Arabia.	Baume and Mercier man's gold watch with gold band, engraved "Richard McKee" on back of face—1095463-87089. Recd—May 3, 1986. Est. Value—$900. Delivered to GSA for disposition August 19, 1986.	HRH Prince Bandar ibn Abdallah ibn Abd al-Ragman Al Saud, Assistant Deputy, Minister for Interior Saudi Arabia.	Do.
Myrna A. McKee, Wife of the Political Counselor, U.S. Embassy, Saudi Arabia.	Ladies Chopard gold watch with diamond chips and small rubies surrounding face of watch; link band of gold. Engraved M.A.M. on back of watch—493466-5452. Recd—May 3, 1986. Est. Value—$1,000. Delivered to GSA for disposition August 19, 1986.	HRH Bandar ibn Abdallah ibn Abd al-Ragman Al Saud, Assistant Deputy, Minister for Interior Saudi Arabia.	Do.
Robert H. Miller, U.S. Ambassador to the Republic of Cote d'Ivoire.	Ivory block with 18K baoule mask replica, 5½" × 4¾". Recd—July 31, 1986. Est. Value—$500. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	H.E. Felix Houphouet-Boigny, President of the Republic of Cote d'Ivoire.	Do.
Do	Carved ivory tusk 32" curved long. Recd—July 28, 1986. Est. Value—$400. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	Philppe Yace, President of the Economic and Social Council of Cote d'Ivoire.	Do.
Mrs. Robert H. Miller, Spouse of U.S. Ambassador to Republic of Cote d'Ivoire.	18K gold filagree necklace 33" long and 18K gold filagree bracelet 7" long. Recd—July 31, 1986. Est. Value—$2,700. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	H.E. Felix Houphouet-Boigny, President of the Republic of Cote d'Ivoire.	Do.
Robert H. Miller, U.S. Ambassador to Republic of Cote d'Ivoire.	Pair of Ivory Tusks, each with sculpted head. Recd—August 1, 1986. Est. Value—$2,000. Approved for official display at the American Embassy and residence, Cote d'Ivoire.	N'Golo Coulibaly, Director of the Public Debt, Cote d'Ivoire.	Do.
Catherine C. Murdock, Assistant Chief of Protocol for Visits.	(a) Solid gold Longines watch with Saudi insignia on face (18792775). (b) Black and Gold Concord quartz watch with diamond numbers and diamonds circling the face. (15 61 145 Maringer SG). Recd—February 15, 1985, Est. Value—(a) $2,500, (b) $1,500. Delivered to GSA for disposition July 28, 1986.	King Fahd of Saudi Arabia	Do.
Richard W. Murphy, Assistant Secretary for Near Eastern and South Asian Affairs.	Jaeger LeCoultre gold man's wristwatch with alligator band; Saudi insignia on face. Recd—April 8, 1986. Est. Value—$500. Delivered to GSA for disposition July 28, 1986.	do	Do.
Do.	Metal figure of oryx, gold washed, on onyx base; 6" tall by 5" long. Recd—July 18, 1986. Est. Value—$200. Approved for official display in the office of the donee.	H.E. Abdelkader B. Al-Ameri, Qatar, Ambassador to U.S.	Do.
Thomas Nassif, U.S. Ambassador to Morocco.	Set of golf clubs. Recd—September 1986. Est. Value—$1,000. Approved for official use at the American Embassy Morocco.	H.E. Driss Basri, Minister of Interior, Morocco.	Do.
David Patterson, Political Officer, American Embassy Riyadh, Saudi Arabia.	Watch—Chopard of Geneva—w/name "Fahd" in Arabic on face; black alligator strap (on back of watch: 159171-1039). Recd—December 10, 1985. Est. Value—$500. Delivered to GSA for disposition July 28, 1986.	King Saud of Saudi Arabia	Do.
Do.	Watch with seal of King Saud University on face, with 13 diamond chips; stainless steel strap; presented in brown case with Saudi seal. Recd—December 11, 1985. Est. Value—$700. Delivered to GSA for disposition July 28, 1986.	King Saud, University, Riyadh	Do.
Do.	One gold medal 1¾" x 2⅜" Saudi seal, w/wording "M. Institute of the Capital" and Arabic wording; presented in black box. Recd—December 12, 1985. Est. Value—$165. Delivered to GSA for disposition July 28, 1986.	Institute of City of Riyadh	Do.
Do.	One gold medallion (2¾" in diameter w/Saudi seal and Arabic wording; presented in blue velvet case. Recd—December 11, 1985. Est. Value—$165. Delivered to GSA for disposition July 28, 1986.	King Adb al-Aiz Military Academy, Saudi Arabia.	Do.

Department of State—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	One metal medallion 5⅛" in diameter wording: "Dedication from Citizens of Eastern Province Astronauts of Discrovery 51 on Occasion of Honorary Visit to the Province"; reverse side: Saudi design; presented in green velvet box. Recd—December 14, 1985. Est. Value—$165. Delivered to GSA for disposition July 28, 1986.	Eastern Province, Emirate, Saudi Arabia	Do.
Arnold Raphel, Principal Deputy Assistant Secretary, NEA, Department of State.	Chapard (Geneva) man's gold wrist watch with gold band. Recd January 6, 1986. Est. Value—$200. Delivered to GSA for disposition January 31, 1986.	Emir of Bahrain	Do.
George P. Shultz, Secretary of State.	Bronze tiger, approx. 9" by 8¼"; with separate black lacquer base; presented in wooden box. Recd—January 10, 1986. Est. Value—$600. Delivered to GSA for disposition July 28, 1986.	H.E. Shintaro Abe, Foreign Minister of Japan.	Do.
George P. Shultz, Secretary of State.	Four volume set of books: "Picturesque Palestine: Sinai and Egypt" (each book: 12-¾" × 10-¼") presented in olive wood jacket (14" × 7-⅛" × 10). Recd—April 2, 1986. Est. Value—$500. Approved for official display in the office of the donee.	H.E. Shimon Peres, Prime Minister of Israel.	Do.
George P. Shultz, Secretary of State and Mrs. Shultz.	(a) Book in decorative cardboard jacket; "L'Oro Degli Etruschi" 9½" × 12½". (b) Gucci ladies leather wallet grey and black with silver fittings. (c) 7th Century BC Etruscan black cup; 14cm × 7.4cm × 13.5cm; with certificate of authenticity by Fallani of Rome; in brown suede case 9½" × 6¾" × 6½". Recd—March 29, 1986. Est. Value—Total $500. (a) & (b): Delivered to GSA for disposition, July 28, 1986. (c) Approved for official display in the office of the donee.	H.E. Giullo Andreotti, Foreign Minister of the Italian Republic.	Do.
Do	(a) Amethyst and gold pendant on 17" gold chain—stone approx. ½" × ¾"; matching amethyst and gold earrings—stone approx. ⅜" × ¼". (b) Three commemorative coins proof set for Seoul Olympic Games. Denominations: 20,000 Won; 10,000 Won; 1,000 Won. Recd—May 7, 1986. Est. Value—(a) $150; (b) $40. Delivered to GSA for disposition July 28, 1986.	Foreign Minister of Korea and Mrs. Lee	Do.
George P. Shultz, Secretary of State.	Longines Pocket Watch 18K gold covered face, approx. 1½" rd, Case No. 37, with 17" detachable gold chain. Engraved from Minister Scalfar to George P. Shultz 29-3-86. Recd—May 21, 1986. Est. Value—$2000. Reported to GSA for disposition. Disposed of by GSA.	H.E. Dr. Oscar Luigi, Minister of Interior, Italy.	Do.
George P. Shultz, Secretary of State and Mrs. Shultz.	(a) Brown sealskin & leather men's carryall, approx. 11¼" wide × 14" high, handle on top, with detachable shoulder strap, gold tone metal fittings, with sidewise swing fastener on the front. (b) Brown sealskin & leather women's purse, approx. 11¼" wide × 7½" high, with shoulder strap, gold tone metal fittings, and hinged clasp on front. Recd—June 16, 1986. Est. Value—(a) $200, (b) $150. Delivered to GSA for disposition August 19, 1986.	H.E. Enrique Inglesias, Minister of Foreign Affairs of the Republic of Uruguay.	Do.
George P. Shultz, Secretary of State.	Two (2) three-legged tables with round tops; bases approx. 21" high of polished brown wood; tops approx. 21¼" across, with floral motif in middle and in band at outer edge of top. Recd—July 17, 1986. Est. Value—$500. Approved for official display in the Office of the Chief of Protocol.	H.E. Mohammed Khan Junejo, Prime Minister of Pakistan.	Do.
Do	Oil painting on canvas—Haitian market scene; approx. 11¼" × 15¾", in gold frame approx. 20¼" × 24½". Recd—August 15, 1986. Est. Value—$200. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	H.E. Jean-Baptiste Hilaire, Minister of Foreign Affairs of the Republic of Haiti.	Do.
Do	Oil painting on canvas; approx. 22¼" × 35", in gold frame approx. 26¼" × 38½": Haitian style landscape with waterfall and a crash of rhinoceri in foreground; done in muted tones. Recd—August 15, 1986. Est. Value—$400. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	H.E. Henri Namphy, President of the National Council of the Republic of Haiti.	Do.
Do	Herodian oil lamp, approx. 2½" × 3⅛", terra cotta, 1st Century C.E., and bronze coin (chipped), approx. ¾" across, 67 C.E., housed in lucite box approx. 4" × 6" × 6", certificate of antiquity accompanies gift Recd—September 10, 1986. Est. Value—$200. Reported to GAS for disposition. Being held in the Office of Protocol pending delivery to GSA.	H.E. Yitzhak Rabin, Minister of Defense of Israel.	Do.
Do	Lehmann-Gross-Bahn: one locomotive #2018D; one personenwagen #3080; one Personenwagen mit Gepackabteil #3081. Recd—December 12, 1986. Est. Value—$1000. Reported to GSA for disposition. Disposed of by GSA.	H.E. Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany.	Do.
Jon R. Thomas, Assistant Secretary for International Narcotic Matters.	Carpet: 3'×5' beige background multicolor wool. Recd—July 1985. Est. Value—$175. Reported to GAS for disposition. Disposed of by GSA.	Mrs. Zia, wife of the President of Pakistan.	Do.
John R. Thomson, Counselor for Commercial Affairs, U.S. Embassy, Saudi Arabia.	Pink coral tree 10" high in presentation case 13½" × 8". Rec.—April 1986. Est. Value—$200. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	Mubarak Al-Khafra, Deputy Minister of Industrial Affairs, Ministry of Industry and Electricity, Saudi Arabia.	Do.
John R. Thomson, Counselor for Commercial Affairs, U.S. Embassy Saudi Arabia.	3' round clock inserted in crystal base 8" ×5⅝" with blue and green crystal decoration by Daum of France. Rec.—May 1986. Est. Value—$500. Reported to GSA for disposition. Being held in the Office of Protocol pending delivery to GSA.	Suleiman Salah, official of Saudi Arabia	Do.
Vernon A. Walters, U.S. Permanent Representative to the United Nations.	Malachite coffee table mearsuring 36 × 36. Rec.—May 1986. Est. Value—$10,000. Approved for official use at the residence of the U.S. Permanent Representative to the United Nations.	President Mobuto of Zaire	Do.
Edward S. Walker, Jr., DCM, American Embassy, Riyadh, Saudi Arabia.	Jaeger-LeCoultre gold man's watch with numerical day; with Saudi insignia on face (4592041); light brown skin strap. Rec.—May 4, 1986. Est. Value—$1,700. Delivered to GSA for disposition August 19, 1986.	General Muhammand Abd al-Rahman Al al-Sheikh of Saudi Arabia.	Do.
Mrs. Wendy Walker, Wife of the DMC, American Embassy, Riyadh, Saudi Arabia.	Longines gold plated ladies watch with Saudi insignia on face; brown skin strap. Rec.—May 4, 1986. Est. Value—$200. Delivered to GSA for disposition August 19, 1986.	....do	Do.

Treasury Department (DO)

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker, III, Secretary of the Treasury.	Oriental rug. Recd—July 16, 1986. Est. Value—$300. Currently in the DO Gift Unit.	Muhammad Khan Junejo, Prime Minister of the Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

Treasury Department (DO)—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	1673 coin from Mainz. Recd—October 21, 1986. Est. Value—$250. Currently in the DO Gift Unit.	Dr. Helmut Kohl, Federal Chancellor, Federal Republic of Germany.	Do.

United States Information Agency

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John M. Reid, Country Affairs Officer, Korea.	Gold Star Hitek Stereo TV. Recd December, 1986. $562.42. PAO Residence, Seoul, Korea.	Korean Ministry of Foreign Affairs	Received as door prize at annual Diplomatic Dinner. Great embarrassment to return. Will be retained in USIS program equipment inventory.
Mrs. Charles Z. Wick	Gold and jeweled bracelet. March 2, 1985. $4,000 estimated value. Delivered to GSA Vault for disposition 4/25/85.	Government of Morocco	Non-acceptance would have caused embarrassment to the donors.

Veterans Administration

Report of Travel or Expenses of Travel

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Robert Efron, M.D., Associate Chief of Staff for Research and Education.	Recd: March, 1986. Est. Value.—$2,000. Expended for airfare, hotel and meals.	Faculty of Medicine and Pharmacy, University DeFrance, Comte Besancon, France.	To allow Dr. Efron to present a lecture at a scientific conference.
Andrew V. Schally, Ph.D., senior medical investigator and chief, Endocrine Polypeptide and Cancer Institute.	Recd: June, 1986. Est. Value.—(1) $700; (2) $1,275; (3) $300; (4) $600. Expended for airfare, hotel and meals.	(1) Organization of 2nd International Workshop on Neuroimmodulation, Dubroznic, Yugoslavia; (2) Organizers of International Symposium, Rotterdam, Netherlands; (3) University of Konstanz, Konstanz, West Germany; (4) Organizers of 2nd International Symposium on Prostatic Carcinoma, Paris, France.	To attend national conventions and participate in medical and scientific meetings for the purpose of delivering a paper and addressing questions concerning his medical research.

District of Columbia

Report of Tangible Gifts

Name of title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Effi Barry, First Lady of the District of Columbia.	Single strand of 77 pearls, approximately 6.5mm. Rec'd: August 21, 1986. Est. Value: $1,000. Being held in the 5th floor vault in the District Building.	H. Ogawa, Managing Director, Japan Pearl Exporters Association.	Non-acceptance would have caused embrassment to the donor.
David A. Clarke, Chairman, Council of the District of Columbia.	Hotel Accommodations Royal Windsor Hotel. Brussels, Belgium. Est. Value: $426.92.	Brussels Region, Brussels Belgium, J. Thys, Secretary of State.	Implementation of Brussels Washington Accord.

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Wednesday
March 4, 1987

Part III

Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training

41 CFR Ch. 61

Annual Report From Federal Contractors; Final Rule

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

41 CFR Ch. 61

Annual Report From Federal Contractors

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Final rule.

SUMMARY: The Veterans' Compensation, Education, and Employment Amendments of 1982 established requirements for Federal contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans. This rule implements those requirements.

EFFECTIVE DATE: April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Carlon Johnson at Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, Telephone: (202) 523–9110.

SUPPLEMENTARY INFORMATION: On May 28, 1986, the Department of Labor published a Notice of Proposed Rulemaking (51 FR 19294–19298) to implement Section 310(a) of the Veterans' Compensation, Education and Employment Amendments of 1982, Pub. L. 97–306. Section 310(b) requires the Secretary of Labor to promulgate regulations to implement a new subsection (d) to 38 U.S.C. 2012 which requires Federal contractors to submit a report at least annually to the Secretary of Labor. Specifically, section 310(a) of the amendments adds a new subsection which provides:

(d)(1) Each contractor to whom subsection (a) of this section applies shall, in accordance with the regulations which the Secretary shall prescribe, report at least annually to the Secretary on—

(A) The number of employees in the work force of such contractor, by job category and hiring location, who are veterans of the Vietnam era or special disabled veterans; and

(B) The total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are veterans of the Vietnam era or special disabled veterans.

(2) The Secretary shall ensure that the administration of the reporting requirement under paragraph (1) of this subsection is coordinated with respect to any requirement for the contractor to make any other report to the Secretary.

The Secretary has delegated responsibility for administering the report requirements to the Assistant Secretary for Veterans' Employment and Training.

The reports required by this legislation are intended to assist the Department of Labor to determine whether special disabled and Vietnam-era veterans benefit from affirmative action in obtaining and advancing in employment and to carry out its responsibilities for ensuring Federal contractor compliance with the statute. The implementing regulations also serve to strengthen the governmental network available to inform and assist Federal contractors in meeting their veterans' affirmative action obligations.

The statute and legislative history indicate that the report should be coordinated with other reporting requirements for Federal contractors to minimize paperwork and other burdens. With this in mind, the VETS–100 reporting format has been developed along the lines of the Equal Employment Opportunity Employer Information Report EEO–1 (Standard Form 100) filed by more than 15,000 Federal contractors incorporating, for example, the same March 31st reporting cutoff date and suggested job categories. In addition, the Department has decided to pursue full use of the capability and experience that the Equal Employment Opportunity Commission (EEOC) has gained in collecting information from Federal contractors via the EEO–1 report. Contractual arrangements will be made with EEOC to distribute, receive and process the veterans' report form VETS–100 using procedures and definitions virtually identical to those used for the EEO–1. However, EEOC does not have responsibility for implementation of the reporting requirement nor is there any direct association of the veterans' report requirements with those of the EEO–1. We have determined that the other options, including "contracting out" of the processing of the veterans' employment report or, alternatively, development and implementation of a processing system by the Department would be more costly and would take longer to implement.

The Notice of Proposed Rulemaking requested comments regarding the adequacy, coverage and effectiveness of the contents and scope of the proposed rule. The Department received responses from 21 commentors representing Federal contractors, veterans' organizations, State employment security agencies, Federal agencies, and other interested parties. The rule adopted today has been modified to take into account the comments received.

Section-by-Section Analysis

1. Section 61–250.1 Purpose and Scope

This section describes the purpose and scope of the regulations. These regulations implement the statutory provision at 38 U.S.C. 2012(d) which requires Federal contractors and subcontractors to report on their workforces and hiring activities with respect to special disabled veterans and veterans of the Vietnam era. The reporting requirement applies to all Federal contractors and subcontractors covered by 38 U.S.C. 2012(a) and implementing regulations promulgated by OFCCP, at 41 CFR Part 60–250.

No comments were received on this section; however, one commentor recommended that the proposed regulations be revised to provide for waiver of the reporting requirement in instances where OFCCP has granted a waiver for establishments which are not involved in Government contract work. OASVET is aware of no instances in which OFCCP has granted such a waiver, although OFCCP's regulations (41 CFR 60–250.3(a)(5)) permit such waivers by the Director of OFCCP. It is OASVET's understanding that OFCCP's policy is to grant such waivers only upon a finding that to do so will not interfere with or impede the effectuation of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. In light of this narrow application of the waiver authority, OASVET does not believe that a waiver granted in these limited circumstances will compromise the integrity of the reporting program or undermine Congressional intent. Accordingly, a new paragraph (c) has been added to provide that the veterans' reporting requirements will be deemed waived only in those instances where OFCCP has granted a waiver, pursuant to 41 CFR 60–250.3(a)(5), or concurred in granting a waiver under 41 CFR 60–250.3(b), from compliance with all of the terms of the affirmative action clause. Where OFCCP grants only a partial waiver, veterans' reporting will be required.

2. Section 61–250.2 Definitions

This section defines terms used in these regulations. Three comments were received on this section. Two commentors recommended revisions of the definition of "employee." One suggested that OASVET clarify whether contractors were required to include casual employees in the data reported on the VETS–100. The other commentor, a professional society, recommended that OASVET revise the definitions of

"professionals" and "technicians" to reclassify "surveyors" as professionals. (See proposed § 61–250.2(b)(iii).) Section 61–250.2(b) has been modified in response to these comments. At paragraph (b)(2), the definition of "employee" from the EEO–1 instructions is adopted. This definition expressly excludes persons who "are hired on a casual basis for a specified time, or for the duration of a specified job." At paragraph (b)(3)(ii) OASVET has added "surveyors" to the listing in the "professional" job category. Since these definitions are also employed in the EEO–1 instructions, the matter has been discussed with the EEOC. OASVET understands that a corresponding change will be made for purposes of the EEO–1 by that agency.

In 1984, Congress expanded the definition of "special disabled veteran" to include veterans with disability ratings of 10 or 20 percent who have been determined by the Veterans Administration to have a serious employment handicap. (See section 206 of Pub.L. 98–223 (98 Stat. 43, March 2, 1984)). This veteran category was inadvertently omitted from the regulatory definition in the proposal. Proposed Section 61–250.2 has been revised to include this veteran category.

3. Section 61–250.10 Reporting Requirements Contract Clause

This section sets forth the reporting requirements clause to be included in each covered Government contract or subcontract (and modifications, renewals, or extensions thereof, if not included in the original contract). The clause describes the specific reporting obligations of the contractor or subcontractor. Two changes have been made to paragraph (d) of the clause to clarify selection of an appropriate reporting date.

This section received the most comments. One commentor recommended revision of paragraph (a)(1) of the clause and the VETS–100 Form, to add a category for "total employees" in order to provide "a more complete picture of the employer," "a more adequate assessment of veterans' employment," and "a more adequate basis for assessing efforts in employing covered veterans." OASVET agrees that such information would be helpful but must consider the burden any addition will impose on the contractor and the availability of the information elsewhere. In this particular instance, OASVET has determined that imposition of an additional, albeit minor, burden on the contractor community is not justified because the information is available from other sources. Therefore, in keeping with this Administration's policy of reducing and/or minimizing burdens, OASVET has not adopted this recommendation.

Two commentors found the language of paragraphs (d)(1) and (2) of the clause unclear. These paragraphs are concerned with, respectively, the contractor's "employment profile" and "new hires activity" over a 12-month period. The employment profile is a "snapshot" of the contractor's workforce at a specific point in time, whereas the "new hires" data reflect a cumulative total of these employment actions over the 12 months immediately prior to that same point in time. Paragraph (d) has been revised to expressly state that the date selected for the snapshot picture of the numbers of special disabled and Vietnam-era veterans in the contractor's workforce by job category and hiring location (*i.e.*, the employment profile) should be the same date selected for the end of the 12-month period for reporting all veteran new hires. In other words, the data required by these paragraphs should be reported as of the same date.

Another commentor recommended that the regulation be revised to provide for a flexible due date for the veterans' report, VETS–100, to coincide with any changes in the due date of the EEO–1 report. OASVET has not adopted this recommendation because we believe that the veterans' reporting requirements should not be so intertwined with the EEO–1 that possible changes in EEO–1 scheduling will affect the VETS–100 reporting. This comment served to alert OASVET to a potential reporting problem with respect to the March 31st deadline. As proposed, paragraph (d)(2) of the clause would have permitted a contractor to select a pay period ending date on any day during the period January through the entire month of March. A contractor selecting a pay period ending date close to the March 31 final due date might experience difficulty in meeting the deadline. To eliminate the potential problem, paragraph (d)(2) of the clause has been revised to provide that contractors must select a pay period ending date which falls during the period from January through March 1 of the year the report is due.

The first reports are due March 31, 1988, a date which provides ample time for contractors to develop procedures necessary to capture the required veterans' data. That date is reflected in paragraph (c) of the clause.

The same commentor also suggested modification of the proposal (1) to permit an exemption from the reporting requirement for any establishment of a multi-establishment contractor which has less than 50 employees and is not engaged in Federal government contract work and, (2) to permit a multi-establishment contractor to file a consolidated report for all establishments with less than 50 employees which are involved in Federal government contract work.

We have not adopted the exemption suggestion. To do so would, in our opinion, defeat the statutory language which expressly provides that contractors shall report, at least annually, by *"hiring location."* (Emphasis added.). The language of the statute is the best and most reliable index of its meaning and legislative intent. The plain meaning of the hiring location language is that data must be reported for each of the contractor's establishments; none are exempt from the reporting requirement. Moreover, nothing in the statute or the legislative history suggests that the size of a particular establishment and/or whether it is specifically involved in the company's Federal contract work should operate to exempt any of the contractor's establishments from the reporting requirement.

To address the second part of the suggestion, we have modified the instructions for completing the VETS–100 form to permit a multi-establishment contractor the option to prepare a consolidated report for each State in which it has hiring locations. Each consolidated report must cover all hiring locations within the State having fewer than 50 employees and must be accompanied by a list showing the name and address of each hiring location included in the report. The consolidated reports will ease the reporting burden for contractors. The State-by-State basis will ensure that the data obtained from the contractor is useful to both the Department in its efforts to monitor veterans' affirmative action needs, and to the State Employment Security Agencies (SESAs) which have a statutory responsibility for priority referrals of special disabled and Vietnam-era veterans to the job openings within each State listed by Federal contractors. Of course, multi-establishment contractors may elect to file a VETS–100 form for each of their hiring locations in lieu of the consolidated report discussed immediately above.

Finally, one commentor noted that the proposal did not discuss the interface of this contract clause with the Federal Acquisition Regulation (FAR) at 48 CFR Chapter 1. Notwithstanding the absence of any discussion in the preamble to the

proposal, the Department is consulting with the councils described at 48 CFR 1.201–1 to conform the FAR with this final rule. It is anticipated that the FAR amendment will add a new paragraph for the veterans' reporting requirement clause at the end of the existing veterans' affirmative action clause set forth at 48 CFR 52.222–35.

4. Section 61–250.11 Reporting format.

This section contains the data collection instrument, the VETS–100 form, to be used for collecting the veterans' employment profile and hiring information. The VETS–100 is a three-page form; the first page is a matrix for information identifying the establishment and the veterans' employment data; the second page contains instructions for completing the form, and the third page is comprised of a list of the job categories defined in § 61–250(b)(2).

The Department adopted the suggestion from one commentor to add the list of job categories to the form so that contractors have readily available as much information as possible in order to complete the form.

Another commentor requested clarification of the statement in the proposed rule that it was not feasible to incorporate the veterans' data entries into the EEO–1 at this time, given the "coordination" goal of the statute. The Department is fully cognizant of the goal of coordination, and has made a sincere effort to achieve it by making the terms and format compatible with the EEO–1. However, because the legislative and regulatory bases for the reports are different, and currently there is discussion of modifying the schedule of the EEO–1, OASVET believes the more prudent approach is to ensure that the veterans' report is able to stand alone.

One commentor suggested that the Department permit contractors to supply the veterans' reporting data through computer-generated forms, an option which is currently available to them in complying with the EEO–1 reporting requirement. Recognizing the convenience this would be for some contractors, the final rule includes a new paragraph (b) providing for submission of computer-generated forms which conform to the approved format at § 61–250.11. Proposed paragraphs (b) and (c) have been redesignated (c) and (d) respectively.

Finally, a clarifying change has been made on the instrument to the heading above columns N through P and now reads "Number of New Hires (Previous 12 Months)."

5. Section 61–250.12 Voluntary disclosure.

This section prohibits contractors from taking adverse action against a veteran because that veteran discloses or refuses to disclose information in connection with the invitation to self identify for purposes of this part. It also requires contractors who obtain such information to maintain its confidentiality and to use it only in accordance with meeting the requirements and obligations of 38 U.S.C. 2012.

Only two comments were received on this section. Both, concerned with the possibility that veterans will be reluctant to participate in providing the information and with the implications this might have for the reliability of the contractor's reports, supported inclusion of such a provision in the regulations. One of these commentors also suggested expanding the section to include specific language which contractors could use to invite participation from their veteran employees. In OASVET's opinion a standard statement of this type is unnecessary; moreover, it may be viewed by some contractors as an unwarranted governmental intrusion. The regulatory language provides sufficient guidance to enable contractors to effectively obtain the required information while maintaining a healthy respect for the safeguards available to veterans. Contractors desiring a more concrete example may refer to Appendix A of OFCCP's regulations at 41 CFR Part 60–250, provided, however, that the term "special disabled veterans" is substituted for "disabled veterans".

6. Section 61–250.20 Monitoring of compliance.

This section provides notice to contractors that compliance with the reporting obligations of this Part will be assessed by OFCCP whenever it conducts a review of the contractor's compliance with the affirmative action obligations of 38 U.S.C. 2012(a) and 41 CFR Part 60–250.

Five comments were received on this section. Two comments were concerned with OFCCP's involvement in the monitoring process. One commenter supported a role for OFCCP; the other commenter stated that the OFCCP monitoring would be of limited value because the compliance review process involved only a few contractors at any one time. This provision merely recognizes OFCCP's responsibilities in the area of contractor compliance with veterans' affirmative action and authorizes a monitoring role in the context of its compliance process; it does not vest final responsibility for administration of the reporting requirement with OFCCP. Primary responsibility has been delegated to the OASVET.

The remaining three comments were concerned with whether the State Employment Security Agencies would have a role in the compliance process and have access to the reporting information. The Department does not envision any involvement of these agencies in the compliance enforcement process. However, given their unique rule as referral agencies for special disabled and Vietnam-era veterans, we believe the data obtained from these reports will be valuable to them. The provision is adopted as proposed.

7. Section 61–250.99 OMB Control Number

This section displays the control number assigned to the information collection requirements of OASVET by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 et seq. and OMB's implementing regulations at 5 CFR Part 1320 *et seq.* This section fulfills the requirements of section 3507(f) of the PRA which requires agencies to display assigned control numbers. OMB has assigned control number 1293–0005 to this information collection requirement.

Classification—Executive Order 12291

This final rule is not a major rule within the meaning of Executive Order No. 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of limited States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required. In addition, this final rule does not affect any trade-sensitive activity or lessen any restraints because it does not apply in any way to any other rules or regulations governing international trade.

Paperwork Reduction Act

Section 61–250.10 of this final rule contains information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The

Office of Management and Budget has assigned OMB Control No. 1293–0005 to this information collection and the "Federal Contractor Veterans' Employment Report VETS–100" until May 31, 1989. It has been included in the Information Collection Budget for Fiscal Year 1987 as a new information collection.

Regulatory Flexibility Act

At the time the proposed rule was published, the Secretary of Labor certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have "significant economic impact upon a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This conclusion is reached because annual reporting requirements for Federal contractors results in little cost or economic impact expected with respect to small entities. Therefore, no regulatory flexibility analysis is required.

List of Subjects in 41 CFR Part 61–250

Government contracts, Equal employment opportunity, Reporting and recordkeeping requirements, Veterans.

This final rule implements the requirement at 38 U.S.C. 2012(d) by a new Chapter 61 to Title 41, Code of Federal Regulations (CFR). Chapter 61 of Title 41, CFR, has been assigned to the Office of the Assistant Secretary for Veterans' Employment and Training.

Accordingly, Title 41, Code of Federal Regulations, is amended by adding a new Chapter 61 to read as follows:

CHAPTER 61—OFFICE OF THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

PART 61–250—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.

Authority: 38 U.S.C. 2012(d).

§ 61–250.1 Purpose and scope.

(a) This Part 61–250 implements 38 U.S.C. 2012(d). Each contractor or subcontractor who enters into a contract in the amount of $10,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) to whom 38 U.S.C. 2012(a) and 41 CFR Part 60–250 apply, shall submit a report according to requirements of § 61–250.10 of this part.

(b) Except as noted in § 61–250.10 of this part, this part does not revise or replace the regulations in force at 41 CFR 60–250 which apply to veterans' affirmative action obligations of contractors and subcontractors administered by the Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, Department of Labor.

(c) Veterans' reporting requirements of this part will be deemed waived in those instances where the Director, OFCCP has granted a waiver under 41 CFR 60–250.3(a)(5), or concurred in granting a waiver under 41 CFR 60–250.3(b), from compliance with all of the terms of the affirmative action clause for those establishments not involved in government contract work. Where OFCCP grants only a partial waiver, compliance with veterans' reporting will be required.

§ 61–250.2 Definitions.

(a) For purposes of this part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this part shall have the same meaning as set forth in 41 CFR Part 60–250.

(b) For purposes of this part:

(1) "Hiring location" (identical to "establishment" as defined by the instructions for completing Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1) means an economic unit which produces goods or services, such as a factory, office, store, or mine. In most instances the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity (definition adapted from the 1972 Standard Industrial Classification Manual). Units at different physical locations, even though engaged in the same kind of business operation should be reported as separate establishments. For locations involving construction, transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities, however, it is not necessary to list separately each individual site, project, field, line, etc., unless it is treated by the contractor as a separate legal entity with a separate Employer Identification Number. For these types of activities, list as establishments only those relatively permanent main or branch offices, terminals, stations, etc., which are either (a) directly responsible for supervising such dispersed actvities, or (b) the base from which personnel and equipment operate to carry out these activities. (Where these dispersed activities cross State lines, at least one such "establishment" should be listed for each State involved.)

(2) "Employee" means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes except insurance salesmen who are considered to be employees for such purposes solely because of the provisions of section 3121(d)(3)(B) of the Internal Revenue Code. The term "employee" shall not include persons who are hired on a casual basis for a specified time, or for the duration of a specified job, and work on remote or scattered sites or locations where it is not practical or feasible for the employer to make a visual survey of the work force within the report period; for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employee's work at the site; persons temporarily employed in any industry other than construction, such as mariners, stevedores, waiters/waitresses, movie extras, agricultural laborers, lumber yard workers, etc., who are obtained through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement; or persons on the payroll of a temporary service agency who are referred by such agency for work to be performed on the premises of another employer under that employer's direction and control.

(3) "Job category" means any of the following: Officials and managers, professionals, technicians, sales workers, office and clerical, craft workers (skilled), operatives (semi-skilled), laborers (unskilled), service workers, as required by Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1, as defined below:

(i) "Officials and managers" means occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation. Includes: Officials, executives, middle management, plant managers, department managers, and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains and mates (except fishing boats), farm operators and managers, and kindred workers.

(ii) "Professional" means occupations requiring either college graduation or

experience of such kind and amount as to provide a comparable background. Includes: Accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, surveyors, teachers, and kindred workers.

(iii) "Technicians" means occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post-high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: Computer programmers and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

(iv) "Sales" means occupations engaging wholly or primarily in direct selling. Includes: Advertising agents and salesworkers, insurance agents and brokers, real estate agents and brokers, stock and bond salesworkers, demonstrators, salesworkers and sales clerks, grocery clerks and cashier-checkers and kindred workers.

(v) "Office and clerical" includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

(vi) "Craft Workers (skilled)" means manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Included are: The building trades, hourly paid supervisors and lead operators who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, arts occupations, handpainters, coaters, decorative and kindred workers.

(vii) "Operatives (semiskilled)" means workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: Apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryers, furnace workers, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painter (except construction and maintenance), photographic process workers, stationary firefighters, truck and tractor drivers, weavers (textile), welders and flamecutters, electrical and electronic equipment assemblers, butchers and meatcutters, inspectors, testers and graders, handpackers and packagers, and kindred workers.

(viii) "Laborers (unskilled)" means workers in manual occupations which generally require no special training to perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, gardeners (except farm) and groundskeepers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

(ix) "Service Workers" means workers in both protective and non-protective service occupations. Includes: Attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, charworkers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection, guards, doorkeepers, stewards, janitors, police officers and detectives, porters, servers, amusement and recreation facilities attendants, guides, ushers, public transportation attendants and kindred workers.

(4) "Special disabled veteran" means—

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans Administration for a disability

(A) Rated at 30 percent or more, or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under section 1506 of Title 38, U.S.C., to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of service-connected disability.

(5) "Veteran of the Vietnam era" means a person who served more than 180 days of active military, naval, or air service, any part of which was during the period August 5, 1964, through May 7, 1975, and who—

(i) Was discharged or released therefrom with other than a dishonorable discharge, or

(ii) Was discharged or released from active duty because of a service-connected disability.

No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

(6) "OFCCP" means the Office of Federal Contract Compliance Programs in the Employment Standards Administration of the U.S. Department of Labor.

(7) "OASVET" means the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor.

§ 61-250.10 Reporting requirements contract clause.

Each contractor or subcontractor described in § 61–250.1 of this part shall submit reports in accordance with the following reporting clause which shall be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). Such clause is considered as an addition to the affirmative action clause required by 41 CFR 60–250.4, the provisions of which continue in force until otherwise revised or amended by the OFCCP. The reporting requirements clause is as follows:

Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

(a) The contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS–100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this section shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this section. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) above shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012. Nothing in this paragraph (e) shall preclude an employee from informing a contractor at a future time of his or her desire to benefit from this program. Nothing in this paragraph (e) shall relieve a contractor from liability for discrimination under 38 U.S.C. 2012.

§ 61–250.11 Reporting format.

(a) Data items required in paragraph (a) of the contract clause set forth in § 61–250.10 are to be reported for each hiring location in the format (VETS–100) as set forth below:

BILLING CODE 4510–79–M

-30-

OMB NO. 1293-0005
Exp. 5/31/89

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT
VETS-100

PERIOD COVERED: _____ TO _____

CO=xxxxxx-x
SIC=xxx

Return Completed Report To:

xxxx
xxxx
xxxx
xxxx

x
x
Phone:

xxxx

Company Identification (Omit if same as above.)

Name of Parent Company
Address (Number and Street): City: County: State: Zip Code:

Name of Hiring Location
Address (Number and Street): City: County: State: Zip Code:

Information on Veterans

Report all permanent full-time or part-time employees and new hires who are veterans as defined on reverse. Also report total new hires. Blank spaces will be considered as zeros. Entries in Columns N through P, Lines 14 through 22, and Columns L and M, Line 23 are optional.

JOB CATEGORIES	NUMBER OF EMPLOYEES		NUMBER OF NEW HIRES (PREVIOUS 12 MONTHS)		
	SPECIAL DISABLED VETERANS L	VIETNAM ERA VETERANS M	SPECIAL DISABLED VETERANS N	VIETNAM ERA VETERANS O	TOTAL, BOTH VETERANS AND NON-VETERANS P
Officials and Managers 14					
Professionals 15					
Technicians 16					
Sales Workers 17					
Office and Clerical 18					
Craft Workers (Skilled) 19					
Operatives (Semi-Skilled) 20					
Laborers (Unskilled) 21					
Service Workers 22					
TOTAL 23					

Federal Contractor Veterans' Employment Report VETS-100

This supplemental report is to be completed by all nonexempt contractors and subcontractors with contracts (or subcontracts) for the furnishing of supplies and services or the use of real or personal property (including construction) for $10,000 or more. The report is to be completed for each "hiring location". Reports must be completed for establishments located in Hawaii.

All multi-establishment employers, i.e., those doing business at more than one hiring location, must file (1) a report covering the principal or headquarters office (2) a separate report for each hiring location employing 50 or more persons; and (3) either, (i) a separate report for each hiring location employing fewer than 50 persons, or (ii) consolidated reports, by State, covering the hiring locations within the State having fewer than 50 employees. Each consolidated report must also list the name and address of the hiring locations covered by the report.

How to Prepare Form

Company Identification

Parent Company. Please provide company name, receiving office, address and employer identification number of the headquarters office of multi-hiring location company which owns the hiring location for which this report is filed.

Hiring Location For Which This Report Is Filed. Please provide the name, address and employer identification number of each company's hiring location for which this report is filed.

Information on Veterans

Employment data must include all permanent full-time and part-time employees who were employed during the selected payroll period; except those employees specifically excluded as indicated at 41 CFR 61-250.2(b)(2). Employees must be counted by veteran status for each of the nine occupational categories (columns L and M). Entries in column L and M on line 23 are optional.

New Hires Data: Report on line 23, columns N through P, the total number of permanent full-time and part-time employees by veteran status (columns N and O) and total employees (column P) who were included in the payroll for the first time during the 12-month period ending either as of the end of the selected payroll period between January and March 1, or December 31, if approved. Entries in columns N through P, lines 14 through 22, are optional.

Definitions

"Hiring location means an establishment as defined at 41 CFR 61-250.2(b).

"Special Disabled Veteran" means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans Administration for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under Section 1506 of Title 38, U.S.C., to have a serious employment handicap or (B) a person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam-era" means a person who served more than 180 days of active military, naval, or air service, any part of which was during the period August 5, 1964, through May 7, 1975, and who (i) was discharged or released therefrom with other a dishonorable discharge, or (ii) was discharged or released from active duty because of a service-connected disability. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

Legal Basis for Reporting Requirements

Title 38, United States Code, Section 2012(d), requires that Federal contractors report at least annually the numbers of special disabled and Vietnam-era veterans in their workforce by job category and hiring location and the total number of employees and the number of special disabled and Vietnam-era veterans hired during the reporting period. Implementing regulations are found at 41 CFR 61-250.

DESCRIPTION OF JOB CATEGORIES

Officials and managers.- Occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation. Includes: officials, executives, middle management, plant managers, department managers, and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters ship captains and mates (except fishing boats), farm operators and managers, and kindred workers.

Professional.- Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dieticians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physicians, social scientists, surveyors, teachers, and kindred workers.

Technicians.- Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed practical or vocational nurses, photographers, radio operators scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

Sales.- Occupations engaged wholly or primarily in direct selling. Includes: advertising agents and salesworkers, insurance agents and brokers, real estate agents and brokers, stock and bond salesworkers, demonstrators, salesworkers and sales clerks, grocery clerks and cashier-checkers, and kindred workers.

Office and clerical.- Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

BILLING CODE 4510-79-C

Craft Workers (skilled).- Manual workers of relatively high skill level having a through and comprehansive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades, hourly paid supervisers and lead operators who are not members of management, mechanics, and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors and tailoresses, arts occupations, handpainters, coaters, decorative and kindred workers.

Operatives (semiskilled).- Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metal working trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryers, furnace workers, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, stationary firefighters, truck and tractor drivers, weavers (textile), welders and flamecutters, electrical and electronic equipment assemblers, butchers and meatcutters, inspectors, testers and graders, handpackers and packagers, and kindred workers.

Laborers (unskilled).- Workers in manual occupations which generally require no special training perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, gardeners (except farm) and groundskeepers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pullling operations, and kindred workers.

Service workers.- Workers in both protective and non-protective service occupations. Includes: attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, charworkers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection, guards, doorkeepers, stewards, janitors, police officers and detectives, porters, waiters and waitresses, guides, ushers, public transportation attendants and kindred workers.

(b) Computer-generated forms are acceptable, provided that all required information and data is presented in the same format as the VETS–100 Form set forth above.

(c) OASVET or its designee will use all available information to distribute the required forms to contractors identified as subject to the requirements of this part.

(d) It is the responsibility of each contractor to obtain necessary supplies of the VETS–100 reporting form prior to the filing date. Contractors who do not receive forms should request them in time to meet the annual March 31 deadline. Requests should be addressed to:

OASVET (VETS–100)
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

§ 61–250.12 Voluntary disclosure.

Each contractor subject to this part shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations implementing 38 U.S.C. 2012. Nothing in this section shall preclude an employee from informing a contractor at a future time of his or her desire to benefit from this program. Nothing in this section shall relieve a contractor from liability for discrimination under 38 U.S.C. 2012.

§ 61–250.20 Monitoring of compliance.

During the course of its compliance reviews, OFCCP will determine if the contractor is submitting reports as required by this Part.

§ 61–250.99 OMB control numbers

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and implementing regulations at 5 CFR Part 1320, (1985) the Office of Management and Budget has assigned Control No. 1293–0005 to the information collection requirements of this Part.

Signed at Washington, DC this 26th day of February 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 87–4378 Filed 3–3–87; 8:45 am]

BILLING CODE 4510–79–M

federal register

Wednesday
March 4, 1987

Part IV

Department of the Interior

National Park Service

National Registry of Natural Landmarks; Annual Supplemental Listing of Natural Landmarks; Notice

DEPARMENT OF THE INTERIOR

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: This notice lists all natural landmarks designated by the Secretary of the Interior between October 1, 1985, and September 30, 1986, and included on the National Registry of Natural Landmarks. The listing published in the **Federal Register** on March 1, 1983 (48 FR 8682) contains all natural landmarks designated prior to that date and should be retained for reference purposes. The listing published in the **Federal Register** on February 7, 1984 (49 FR 4605) contains all natural landmarks designated between March 1, 1983, and September 30, 1983. The listing published in the **Federal Register** on March 5, 1985 (50 FR 8846) contains all natural landmarks designated between October 1, 1983, and September 30, 1984. The listing published in the **Federal Register on** February 25, 1986 (51 FR 6622) contains all natural landmarks designated between October 1, 1984, and September 30, 1985. All listings provide information on each landmark's location, natural values, designation date, ownership, and the owner's voluntary commitment to protect the landmark's natural resources. Federal agencies should consider the existence and location of natural landmarks when assessing the impact of their actions on the environment under section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 42 U.S.C. 4321).

FOR FURTHER INFORMATION CONTACT: Mr. Hardy L. Pearce, Chief, Natural Landmarks Branch, Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127, (202) 343–9525.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the National Natural Landmarks program in 1962 to identify and encourage the preservation of nationally significant examples of the full array of ecological and geological features that represent the Nation's natural heritage. Potential natural landmarks are identified through studies conducted by the National Park Service, evaluated by natural scientists, and, if judged nationally significant, designated as National Natural Landmarks by the Secretary of the Interior. Areas so designated are included on the National Registry of Natural Landmarks. Through September 30, 1986 there were 573 sites listed on the National Registry of Natural Landmarks. The National Natural Landmarks program is administered by the National Park Service.

Natural landmark designation is not a land withdrawal and affects neither the ownership nor management and use of a site. Natural landmark preservation is often ensured through cooperative commitment of public and private owners toward protection of the area's nationally significant features. This commitment is voluntary and is exercised through a nonbinding agreement with the National Park Service to protect the National Natural Landmark. Owners who elect to enter into such an agreement are eligible to receive a certificate signed by the Secretary of the Interior which recognizes the special status of the area. A bronze plaque may also be presented for appropriate display on the site.

In addition, Federal agencies must consider the existence and location of National Natural Landmarks when they assess the effects of their actions on the environment under Section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321).

The Secretary of the Interior transmits annually to the Congress a report on those National Natural Landmarks with known damage or threats to the integrity of their nationally significant features (90 Stat. 1940; 16 U.S.C. 1a-5). This report is prepared for the Secretary by the National Park Service.

National Registry of Natural Landmarks

The National Registry of Natural Landmarks is the Nation's official list of those nationally significant natural areas representative of the ecological and geological heritage of this country. Of the 573 sites listed on the National Registry of Natural Landmarks, over one-half are administered solely by public agencies at the Federal, State, county, or municipal government levels. Almost one-third of the National Natural Landmarks are owned entirely by private parties. The remaining National Natural Landmarks are owned or administered by a mixture of public and private owners.

The following list contains all National Natural Landmarks added to the National Registry of Natural Landmarks between October 1, 1985, and September 30, 1986. The sites are arranged alphabetically by State and county. A description of each landmark's location, significance, designation date and ownership is provided. Designation dates are enclosed in parentheses. Ownership data are arranged in the following arbitrary order and do not reflect the relative amount of land owned by any party: Federal, State, County, Municipal, Private. An asterisk (*) indicates that the owner(s) of a landmark have voluntarily agreed to protect the nationally significant features.

Because many natural landmarks are privately owned and/or not managed for public access, landowner permission must first be obtained before visits are planned to those areas. The specific locations of certain landmarks are not provided because of owner requests for minimum publicity and/or because of the fragility of the natural features.

Dated: January 14, 1987.

Denis P. Galvin,

Acting Director, National Park Service.

Illinois

Monroe County

*Fults Hill Prairie Nature Preserve—This 498-acre site is located approximately 35 miles south of St. Louis, Missouri, and contains the largest complex (33 acres, or 34%) of the highest quality, essentially undisturbed loess hill prairies along the Mississippi River in Illinois, including the largest single prairie opening (11 acres). (May 1986) Owner: State

Indiana

Wabash County

Hanging Rock and Wabash Reef—This area consists of two one-acre sites located along the south bank of the Wabash River. Both contain natural exposures of limestone reef deposits characteristic of Silurian rocks of the midwestern U.S. most of which are exposed only in quarries. Hanging Rock, located about 6 miles northeast of Wabash, is an impressive natural exposure of an exhumed reef that rises 75 feet above the Wabash River. The Wabash Reef, a smaller exposure along the Wabash Railroad in the northeastern portion of Wabash, is one of the best known fossil reefs in the world, because it has been the subject of numerous studies responsible for the development of modern reef theory. (May 1986) Owner: Private

Iowa

Monona and Harrison Counties

Loess Hills—This dual site, Turin (7,740 acres) and Little Sioux/Smith Lake (2,980 acres), together represent the best examples of loess topography (wind-blown silt) in the Missouri River Bluffs region. It is in this region of the U.S. where the deepest loess has accumulated, presenting the best example of this unusual type of

landscape. Together, these sites express the representative landforms and native vegetation of classic loess deposits. The only known comparable area is located along the Yellow River in northern China. (May 1986) Owner: State and Private

Missouri

Mississippi County

*Big Oak Tree—This 80-acre site, located within Big Oak Tree State Park is approximately 12 miles southeast of East Prairie. It is the only sizable known tract of essentially virgin wet-mesic bottomland hardwood forest remaining in the northern part of the Mississippi Alluvial Plain section of the Gulf Coastal Plain natural region. (May 1986) Owner: State

South Carolina

Beaufort County

*St. Phillips Island—This 4,951-acre barrier island is approximately four miles in length and two miles wide. It is unique among the barrier islands of Georgia, South Carolina and northern Florida, because it exists in a nearly undisturbed state with minimal development and past consumptive use; it is also unique to the entire Atlantic Coast for the pronounced multiple vegetated beach dune ridges found there. (May 1986) Owner: Private

Washington

Adams and Grant Counties

Drumheller Channels—This 44,906-acre site, located 12 miles south of Moses Lake, is the most spectacular tract in the Columbia Plateau Natural Region of "butte-and-basin" scabland, an erosional landscape characterized by hundreds of isolated, steep-sided hills surrounded by a braided network of underfit channels. It represents and illustrates the dramatic modification of the Columbia Plateau volcanic terrain by late Pleistocene catastrophic glacial outburst floods that occurred at a scale remaining unparalleled on earth, either in the geologic record or in historical account. (May 1986) Owner: Federal, State and Private

Douglas County

Boulder Park and McNeil Canyon Haystack Rocks—This 4,368-acre area is composed of two adjacent sites located about 19 miles and 8.5 miles, respectively, from Chelan. Both sites together contain the greatest concentration and most illustrative examples of glacial erratics (large glacier-transported boulders) in the Columbia Plateau natural region. As the visible products of dynamic glacier processes, they provide important evidence for the direction of movement and location of glacier ice on the Columbia Plateau during the last glaciation. Due to the lack of vegetation in this area, these sites are also probably the most illustrative examples of glacial erratics in the U.S. (May 1986) Owner: State and Private

Sims Corner Esker and Kame Complex—This 31,120-acre site, located 17 miles north of Coulee City, contains the best examples in the Columbia Plateau natural region of landforms resulting from stagnation and rapid retreat of the ice sheet during the last glaciation. The ice stagnation features at the site, including eskers and kame deposits, are highly visible and well preserved owing to the arid climate and lack of vegetation, and so are perhaps the most illustrative of such features in the U.S. (May 1986) Owner: Federal, State and Private

The Great Gravel Bar of Moses Coulee—This 3,952-acre site, located 19 miles west of Coulee City, contains the largest and best example of a pendent river bar formed by catastrophic glacial outburst floods that swept across the Columbia Plateau prior to the last Pleistocene glaciation. The impressive scale of this feature, deposited in Moses Coulee, provides dramatic evidence for the violent flood waters that formed and once filled the coulee. As a constructional landform, it thus serves to complement Drumheller Channels which was eroded during the same flood events further downstream. (May 1986) Owner: State and Private

Withrow Moraine and Jameson Lake Drumlin Field—This 67,840-acre site, located immediately adjacent to Withrow, contains the best examples of drumlins and the most illustrative segment of the only Pleistocene terminal moraine in the Columbia Plateau natural region. Both features together provide readily observable evidence for the large-scale depositional and erosional processes that accompany continental glaciation; they are also the only such glacial features in the world to show a clear geological relationship to catastrophic flooding, which occurred prior to the last advance of the ice sheet. (May 1986) Owner: Private

Okanogan County

Davis Canyon—This 415-acre site, located 12 miles southwest of Okanogan, contains one of the largest and least disturbed examples of antelope bitterbrush/Idaho fescue shrub steppe remaining in the Columbia Plateau natural region. (May 1986) Owner: State and Private

[FR Doc. 87-2600 Filed 3-3-87; 8:45 am]
BILLING CODE 4310-70-T

federal register

Wednesday
March 4, 1987

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for October 1986

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53090; FRL-3154-5]

Permanufacture Notices Monthly Status Report for October 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for October 1986.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53090]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-613, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs and exemption requests received during October; (b) PMNs received previously and still under review at the end of October; (c) PMNs and exemption requests for which the notice review period has ended during October; (d) chemical substances for which EPA has received a notice of commencement to manufacture during October; and (e) PMNs for which the review period has been suspended. Therefore, the October 1986 PMN Status Report is being published.

Dated: February 3, 1987.

Denise Devoe,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report, October 1986

I. 167 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	Identity/generic name	FR citation	Expiration date
P 87-1	Generic name: Aliphatic poly carboxylic acid metal salt	51 FR 36598 (36601) (10-14-86)	Dec. 30, 1986.
P 87-2	Generic name: Substituted polyester of neopentyl glycol	51 FR 36598 (36601) (10-14-86)	Do.
P 87-3	Generic name: Polymer of styrene with substituted acrylate and methacrylate	51 FR 36598 (36601) (10-14-86)	Do.
P 87-4	Generic name: Bis (pethylbenzylidene) sorbitol	51 FR 36598 (36601) (10-14-86)	Do.
P 87-5	2-methyl-4-methoxydiphenylamine	51 FR 37647 (10-23-86)	Dec. 31, 1986.
P 87-6	Generic name: Substituted acrylate methacrylate polymer with styrene	51 FR 37647 (10-23-86)	Do.
P 87-7	Generic name: Styrenated acrylic methacrylic polymer	51 FR 37647 (10-23-86)	Do.
P 87-8	Generic name: Styrenated substituted acrylate methacrylate polymer	51 FR 37647 (10-23-86)	Do.
P 87-9	Generic name: Complex polyester with neopentyl glycol	51 FR 37647 (10-23-86)	Do.
P 87-10	Generic name: Aliphatic polyester	51 FR 37647 (10-23-86)	Do.
P 87-11	Generic name: Acrylic methacrylic polymer	51 FR 37647 (10-23-86)	Do.
P 87-12	Generic name: Complex alkylated polyether	51 FR 37647 (10-23-86)	Do.
P 87-13	Generic name: Alkylated hydroquinone	51 FR 37647 (37648) (10-23-86)	Do.
P 87-14	Generic name: Alkylated hydroquinone	51 FR 37647 (37648) (10-23-86)	Do.
P 87-15	Generic name: Alkylated hydroquinone	51 FR 37647 (37648) (10-23-86)	Do.
P 87-16	Generic name: Alkylated hydroquinone	51 FR 37647 (37648) (10-23-86)	Do.
P 87-17	Generic name: Alkylated hydroquinone	51 FR 37647 (37648) (10-23-86)	Do.
P 87-18	Generic name: Alkylated hydroquinone	51 FR 37647 (37648) (10-23-86)	Do.
P 87-19	Generic name: Substituted sulfocarbopolycyclyazosulfophenylamino heteromonocyclic amino carbomonocyclic disulfonic acid, sodium salt.	51 FR 37647 (37648) (10-23-86)	Do.
P 87-20	Generic name: Heteropolycycle substituted ethyl methacrylate	51 FR 37647 (37648) (10-23-86)	Jan. 3, 1987
P 87-21	Butyl 1,1,1,3,3,3-hexamethyl disilazanoto magnesium	51 FR 37647 (37648) (10-23-86)	Do.
P 87-22	Generic name: Aliphatic aromatic polyester	51 FR 37647 (37648) (10-23-86)	Do.
P 87-23	Generic name: Polyester urethane	51 FR 37647 (37648) (10-23-86)	Do.
P 87-24	Generic name: Substituted aromatic amine	51 FR 37647 (37648) (10-23-86)	Do.
P 87-25	Generic name: Substituted p-cresidine sulfonic acid salt	51 FR 37647 (37648) (10-23-86)	Do.
P 87-26	Ethanamine, 2,2'-[oxybis(2,1-ethanediyloxy)] bis-	51 FR 37647 (37648) (10-23-86)	Do.
P 87-27	Generic name: Alkenyl succinate, metal salt	51 FR 37647 (37649) (10-23-86)	Jan. 4, 1987
P 87-28	Generic name: Polyether polyurethane polymer	51 FR 37647 (37649) (10-23-86)	Do.
P 87-29	Generic name: Polyoxyalkylene alkyl silicone	51 FR 37647 (37649) (10-23-86)	Do.
P 87-30	Polymer of ethanol, 2,2'-thiobis; ethanol 2-mercapto; oxirane methyl; and methylene bis-(4-cyclohexyl isocyanate)	51 FR 37647 (37649) (10-23-86)	Do.
P 87-31	Polymer of ethanol, 2,2'-thiobis; ethanol 2-mercapto reaction product with propylene oxide; and 1,3-propanediol, 2-ethyl-2-(hydroxymethyl).	51 FR 37647 (37649) (10-23-86)	Do.
P 87-32	Sodium 5-sulfosalicylate	51 FR 37647 (37649) (10-23-86)	Do.
P 87-33	Generic name: Substituted benzoic acid	51 FR 37647 (37649) (10-23-86)	Do.
P 87-34	Generic name: Substituted alkyl cyanoacetate	51 FR 37647 (37649) (10-23-86)	Do.
P 87-35	Generic name: Tertiary aliphatic amine	51 FR 37647 (37649) (10-23-86)	Jan. 5, 1987.
P 87-36	Generic name: Alkenes, reaction products with triglycerides and sulfur	51 FR 37647 (37649) (10-23-86)	Do.
P 87-37	Generic name: Xanthogen polysulphides	51 FR 37647 (37649) (10-23-86)	Do.
P 87-38	Generic name: Poly alkyl diacid condensation product	51 FR 37647 (37649) (10-23-86)	Do.
P 87-39	Generic name: Bacillus sp. enzyme	51 FR 37647 (37649) (10-23-86)	Jan. 6, 1987.
P 87-40	Generic name: Polymer of alkanolamines, alkane-diols, aliphatic and aromatic acids	51 FR 37969 (10-27-86)	Jan. 7, 1987.
P 87-41	Generic name: Substituted heteromonocyclyl-carbomonocyclic thiobenzindol substituted herteromonocyclyl-bis carbomonocylic thiobenzindol.	51 FR 37969 (10-27-86)	Do.
P 87-42	Generic name: Substituted heteromonocyclyl-carbomonocyclic thiobenzindol	51 FR 37969 (10-27-86)	Do.
P 87-43	Generic name: ((Substituted)azo)-(substituted) toluene	51 FR 37969 (10-27-86)	Do.
P 87-44	Napthalene, 2-diazo-8-sulfo-6 ((2-sulfooxy)ethyl) sulfonyl), hydrogen sulfate	51 FR 37969 (10-27-86)	Do.
P 87-45	Generic name: Polypropoxylated silicone	51 FR 37969 (10-27-86)	Jan. 11, 1987.
P 87-46	Generic name: Partially neutralized reaction product of an amino functional silane and an arylalkenyl halide	51 FR 37969 (10-27-86)	Do.
P 87-47	Aluminum, (isooctadeconoato-0) oxo-	51 FR 37969 (10-27-86)	Do.
P 87-48	Generic name: Aluminum diisopropoxy alkoxide	51 FR 37969 (37970) (10-27-86)	Do.
P 87-49	Generic name: Modified acrylic polymer	51 FR 37969 (37970) (10-27-86)	Do.
P 87-50	Generic name: Epoxy diacrylate	51 FR 37969 (37970) (10-27-86)	Do.
P 87-51	Generic name: Hydroxylated substituted phenol	51 FR 37969 (37970) (10-27-86)	Do.
P 87-52	Generic name: Oil modified polyurethane	51 FR 37969 (37970) (10-27-86)	Do.
P 87-53	Generic name: Oil modified polyurethane	51 FR 37969 (37970) (10-27-86)	Do.

I. 167 Premanufacture Notices and Exemption Requests Received During the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 87-54	Generic name: Oil modified polyurethane	51 FR 37969 (37970) (10-27-86)	Do.
P 87-55	Generic name: Acrylic resin	51 FR 37969 (37970) (10-27-86)	Do.
P 87-56	Generic name: Blocked polyisocyanate	51 FR 37969 (37970) (10-27-86)	Do.
P 87-57	Generic name: Perfluoroalkylpolyoxyethylene	51 FR 37969 (37970) (10-27-86)	Do.
P 87-58	Generic name: Perfluoroalkylpolyoxyethylene	51 FR 37969 (37970) (10-27-86)	Do.
P 87-59	Generic name: Perfluoroalkylpolyoxyethylene	51 FR 37969 (37970) (10-27-86)	Do.
P 87-60	Generic name: Substituted pyridinedicarboxylic acid	51 FR 37969 (37970) (10-27-86)	Jan. 12, 1987.
P 87-61	Generic name: A mixture of dibasic acid ester of neopentyl glycol	51 FR 37969 (37970) (10-27-86)	Do.
P 87-62	Generic name: Blocked polyisocyanate	51 FR 37969 (37970) (10-27-86)	Do.
P 87-63	Generic name: Substituted-substituted-[(substituted)azo)naphthalenedisulfonic acid	51 FR 37969 (37971) (10-27-86)	Do.
P 87-64	Generic name: Polyamine	51 FR 37969 (37971) (10-27-86)	Do.
P 87-65	Generic name: Amino polyurethane	51 FR 37939 (37971) (10-27-86)	Do.
P 87-66	Generic name: Sulfurated polyformal	51 FR 37969 (37971) (10-27-86)	Do.
P 87-67	Generic name: Sulfurated polyformal	51 FR 37969 (37971) (10-27-86)	Do.
P 87-68	Generic name: Substituted cresol	51 FR 37969 (37971) (10-27-86)	Do.
P 87-69	Generic name: Alkanolamine zirconate	51 FR 37969 (37971) (10-27-86)	Do.
P 87-70	Generic name: Aryloxy-substituted arylalkyl diamine	51 FR 37969 (37971) (10-27-86)	Do.
P 87-71	Generic name: Moisture-cure polyurethane	51 FR 37969 (37971) (10-27-86)	Do.
P 87-72	Polyester of benzoic acid, sebacic acid, adipic acid, and 1,2-propanediol	51 FR 37969 (37971) (10-27-86)	Do.
P 87-73	Generic name: Bicyclo-[2,2,1]-heptenedimethyl (methylethenyl)-2-substituted	51 FR 37969 (37971) (10-27-86)	Do.
P 87-74	Generic name: Bicyclo-[2,2,1]-heptenedimethyl (methylethenyl)-2-substituted	51 FR 37969 (37971) (10-27-86)	Do.
P 87-75	Generic name: Mixed aldehyde novolacs	51 FR 37969 (37971) (10-27-86)	Do.
P 87-76	Generic name: Mixed aldehyde novolacs	51 FR 37969 (37971) (10-27-86)	Do.
P 87-77	Generic name: Blocked polyurethane prepolymer	51 FR 39795 (10-31-86)	Jan. 14, 1987.
P 87-78	Generic name: Substituted ethene polymer, with substituted acrylates, aliphatic acid and substituted oxirane	51 FR 39795 (10-31-86)	Do.
P 87-79	Generic name: Brominated alkylphenol	51 FR 39795 (39796) (10-31-86)	Jan. 17, 1987
P 87-80	Generic name: Cumene derivative	51 FR 39795 (39796) (10-31-86)	Do.
P 87-81	Generic name: Brominated alkylphenol	51 FR 39795 (39796) (10-31-86)	Do.
P 87-82	Generic name: Polymer from reactants including phenol and diethylenetriamine	51 FR 39795 (39796) (10-31-86)	Jan. 18, 1987.
P 87-83	Generic name: Modified acrylate methacrylate resin	51 FR 39795 (39796) (10-31-86)	Do.
P 87-84	Generic name: Polyurethane	51 FR 39795 (39796) (10-31-86)	Do.
P 87-85	Generic name: Aliphatic polyaminoacid, salt	51 FR 39795 (39796) (10-31-86)	Do.
P 87-86	Polymer of adiprene LW-520; polytetramethylene ether glycol; and hydroxy ethyl acrylate	51 FR 39795 (39796) (10-31-86)	Do.
P 87-87	Generic name: Polyamide resin	51 FR 39795 (39796) (10-31-86)	Do.
P 87-88	Generic name: Starch grafted sodium polyacrylate	51 FR 39795 (39796) (10-31-86)	Do.
P 87-89	Generic name: Potassium salt of anionic sulfonated coplymer	51 FR 39795 (39796) (10-31-86)	Do.
P 87-90	Generic name: Methylene-bis-trisubstituted aniline derivative	51 FR 39795 (39796) (10-31-86)	Do.
P 87-91	Generic name: Alkoxy polyol polymer	51 FR 39795 (39796) (10-31-86)	Do.
P 87-92	Benzenesulfonothioic acid, 4-methyl-, potassium salt	51 FR 39795 (39796) (10-31-86)	Jan. 19, 1987.
P 87-93	Generic name: Alkylene diol alkyl ether	51 FR 39795 (39797) (10-31-86)	Do.
P 87-94	Generic name: Alkylene diol alkyl ether ester	51 FR 39795 (39796) (10-31-86)	Do.
P 87-95	Generic name: Acrylonitrile copolymer	51 FR 39795 (39797) (10-31-86)	Jan. 20, 1987
P 87-96	Generic name: Blocked isocyanate polymer B	51 FR 39795 (39797) (10-31-86)	Do.
P 87-97	Generic name: Blocked isocyanate polymer A	51 FR 39795 (39797) (10-31-86)	Do.
P 87-98	1,1,3,5-Tetramethyl-3-(p-tolyl) indan	51 FR 39795 (39797) (10-31-86)	Do.
P 87-99	1H-Indene-5-carboxylic acid, 3-(4-carboxyphenyl)-2,3,dihydro-1,13-trimethyl-	51 FR 39795 (39797) (10-31-86)	Do.
P 87-100	Generic name: Siloxanes and siliconesm dimethyl, methyl vinyl polymers with methyl and phenyl silsesquiozanes	51 FR 39795 (39797) (10-31-86)	Do.
P 87-101	Generic name: Silicones and siloxanes, methyl-hydrogen, methylvinyl, polymer with silses-quioxanes	51 FR 39795 (39797) (10-31-86)	Do.
P 87-102	Generic name: Olefin-grafted styrene acrylonitrile copolymer	51 FR 39795 (39797) (10-31-86)	Do.
P 87-103	Bicyclo[2.2.1]hept-5-ene-2-methanol, 5-6-dimethyl-(1-methylethenyl)	51 FR 39795 (39797) (10-31-86)	Do.
P 87-104	2-n-Butoxyethyl 4-(dimethylamino) benzoate	51 FR 39795 (39797) (10-31-86)	Do.
P 87-105	N-2-Hydroxy-3-substituted-propyl-N, M-dimethyl-2-hydroxy-3-substituted-propanaminium chloride	51 FR 39795 (39797) (10-31-86)	Do.
P 87-106	A mixture of 2-(4-hydroxyphenyl)-2-(4-hydroxy-3-sulfophenyl) propane; 2,2-bis(4-hydroxy-3-sulfo-phenyl) propane; 2,2-bis (4-acetoxyphenyl) propane; 2-(4-acetoxyphenyl)-2-(4-acetoxy-3-sulfophenyl) propane; and 2,2-bis (4-acetoxy-3-sulfophenyl) propane.	51 FR 41012(41013) (11-12-86)	Jan. 21, 1987.
P 87-107	Generic name: Oxazine resin solution	51 FR 41012(41013) (11-12-86)	Do.
P 87-108	Generic name: Boehmite alumina	51 FR 41012(41013) (11-12-86)	Do.
P 87-109	Generic name: Perfluoroalkyl ester	51 FR 41012(41013) (11-12-86)	Jan. 24, 1987.
P 87-110	Generic name: Alicyclic derivative of a nitrogen heterocycle	51 FR 41012(41013) (11-12-86)	Do.
P 87-111	Generic name: Nitrogen heterocycle derivative	51 FR 41012(41013) (11-12-86)	Do.
P 87-112	Generic name: Substituted tartaric acids, sodium salt	51 FR 41012(41013) (11-12-86)	Do.
P 87-113	Generic name: Substituted tartaric acids, calcium-sodium salts	51 FR 41012(41013) (11-12-86)	Do.
P 87-114	Generic name: Substituted tertiary phosphine	51 FR 41012 (41013) (11-12-86)	Do.
P 87-115	Polymer of polypropylene glycol; diphenylmethane-diisocyanate; and polymethylene polyphenyl isocydnate	51 FR 41012 (41013) (11-12-86)	Do.
P 87-116	Generic name: Trialkanolamine zirconate	51 FR 41012 (41013) (11-12-86)	Do.
P 87-117	Generic name: Modified troxyaluminum alkanoate	51 FR 41012 (41013) (11-12-86)	Do.
P 87-118	Generic name: Saturated polyester resin	51 FR 41012 (41013) (11-12-86)	Do.
P 87-119	Generic name: Sulfophenyl azo naphthyl dye	51 FR 41012 (41014) (11-12-86)	Jan. 25, 1987.
P 87-120	Generic name: Sulfo substituted phenyl azo naphthyl dye	51 FR 41012 (41014) (11-12-86)	Do.
P 87-121	Generic name: Polyamide resin	51 FR 41012 (41014) (11-12-86)	Do.
P 87-122	Generic name: Polyamide resin	51 FR 41012 (41014) (11-12-86)	Do.
P 87-123	Generic name: Polyether modified carbodiimide	51 FR 41012 (41014) (11-12-86)	Do.
P 87-124	Bicyclo[2.2.1]heptane-2-methanol, 5,6-dimethyl-(1-methylethenyl)	51 FR 41012 (41014) (11-12-86)	Do.
P 87-125	Bicyclo[2.2.1]heptane-2-methanol, 5,6-dimethyl-(1-methylethenyl) acetate	51 FR 41012 (41014) (11-12-86)	Do.
P 87-126	Generic name: Methylmethyleneimidazole derivative of copper phthalocyanine, compound with substituted propionic acid.	51 FR 41012 (41014) (11-12-86)	Do.
P 87-127	Generic name: Sodium salt of a [(substituted heteromonocyclicaminosulfophenyl) azo]-[(substituted dissulfocarbomonocyclyl) azo]-Substituted carbopolycyclicpolysulfonic acid.	51 FR 41012 (41014) (11-12-86)	Do.
P 87-12.	Generic name: Polymer of styrene with mixed alkyl acrylates and methacrylates	51 FR 41012 (41014) (11-12-86)	Do.
P 87-129	Amines C_{12-14}-tert alkyl, ethoxylated, compound with dodecylbenzenesulfonic acid	51 FR 41012 (41014) (11-12-86)	Do.
P 87-130	Amines C_{12-14}-tert alkyl, ethoxylated, compound with isooctadecanoic acid	51 FR 41012 (41014) (11-12-86)	Do.
P 87-131	Generic name: Disubstituted anthraquinone	51 FR 41012 (41014) (11-12-86)	Do.
P 87-132	Generic name: o-Acetoacetanisidide, nitrophenyl-azo substituted	51 FR 41012 (41014) (11-12-86)	Do.
P 87-133	Generic name: Sulfurized hydrocarbon/acid	51 FR 41012 (41014) (11-12-86)	Do.
P 87-134	Generic name: Reaction product of an alkyl dicarboxylic acid/alkane diols, polyester with an acrylate prepolymer	51 FR 41012 (41015) (11-12-86)	Jan. 27, 1987.
P 87-135	Generic name: Reaction product of alkyl and aryl dicarboxylic acids/alane polyols polyester with an acrylate prepolymer.	51 FR 41012 (41015) (11-12-86)	Do.
P 87-136	Generic name: Reaction product of alkyl carboxylic acids/alkane polyols polyester with an acrylate prepolymer	51 FR 41012 (41015) (11-12-86)	Do.
P 87-137	Generic name: Reaction product of aryl and alkyl dicarboxylics/alkane diol/ester polyester with an acrylate prepolymer	51 FR 41012 (41015) (11-12-86)	Do.
P 87-138	Generic name: Reaction product of alkyl and aryl dicarboxylics/alkane diol/ester polyester with an acrylate prepolymer	51 FR 41012 (41015) (11-12-86)	Do.
P 87-139	Generic name: Reaction product of aryl and alkyl dicarboxylics/alkane polyols/ester polyester with an acrylate prepolymer.	51 FR 41012 (41015) (11-12-86)	Do.

I. 167 Premanufacture Notices and Exemption Requests Received During the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 87-140	Generic name: N,N-Bis (substituted imidazolino) alkyl stearamide	51 FR 41012 (41015) (11-12-86)	Do.
P 87-141	Generic name: Aminohydroxy substituted benzenesulfonamide	51 FR 41012 (41015) (11-12-86)	Do.
P 87-142	Generic name: Hydroxyamino substituted benzenesulfonamide	51 FR 41012 (41015) (11-12-86)	Do.
P 87-143	Generic name: Hydroxyamino substituted benzenesulfonic acid	51 FR 41012 (41015) (11-12-86)	Do.
P 87-144	Generic name: Hydroxyamino substituted benzenesulfonly chloride	51 FR 41012 (41015) (11-12-86)	Do.
P 87-145	3,4-Dihydro-3-methyl-2H-1, 4-benzoxazine	51 FR 41012 (41015) (11-12-86)	Do.
P 87-146	1-(2-Nitrophenoxy)-2-propanone	51 FR 41012 (41015) (11-12-86)	Do.
P 87-147	2-(2-Hydroxy-3-tert-butyl-5-methylbenzyl)-4-methyl-6-tert-butylphenyl methacrylate	51 FR 41012 (41016) (11-12-86)	Do.
Y 87-1	Generic name: Polyurethane	51 FR 37646 (10-23-86)	Oct. 23, 1986.
Y 87-2	Generic name: 2-propenoic acid, 2 methyl propenoic acid, oxy alkenyl stearyl ethoxylate polymer	51 FR 37646 (10-23-86)	Oct. 26, 1986.
Y 87-3	Generic name: Polyurethane	51 FR 37646 (37647) (10-23-86)	Oct. 29, 1986.
Y 87-4	Generic name: Solvent-thinned long oil alkyd resin	51 FR 37972 (10-27-86)	Oct. 30, 1986.
Y 87-5	Generic name: Polyester carbonate	51 FR 37872 (10-27-86)	Nov. 3, 1986.
Y 87-6	Generic name: Polyamide	51 FR 37972 (10-27-86)	Do.
Y 87-7	Generic name: Acrylic polymer	51 FR 37972 (10-27-86)	Do.
Y 87-8	Generic name: Modified tall oil fatty acid alkyd	51 FR 37972 (10-27-86)	Nov. 5, 1986.
Y 87-9	Generic name: Modified tall oil fatty acid alkyd	51 FR 37972 (10-27-86)	Do.
Y 87-10	Generic name: Rosin modified alkyd resin	51 FR 39798 (10-31-86)	Nov. 11, 1986.
Y 87-11	Generic name: Linseed alkyd resin	51 FR 39798 (10-31-86)	Do.
Y 87-12	Generic name: Polyester	51 FR 39798 (10-31-86)	Do.
Y 87-13	Generic name: Dicarboxylated aromatic alkyl polyester	51 FR 39798 (10-31-86)	Do.
Y 87-14	Generic name: Polyester resin	51 FR 41012 (11-12-86)	Nov. 13, 1986.
Y 87-15	Generic name: Polyester resin	51 FR 41012 (11-12-86)	Do.
Y 87-16	Generic name: Alkyd	51 FR 41012 (11-12-86)	Nov. 17, 1986.
Y 87-17	Generic name: Alkyd	51 FR 41012 (11-12-86)	Do.
Y 87-18	Generic name: Aromatic cycloaliphatic alkyl polyester	51 FR 41012 (11-12-86)	Do.
Y 87-19	Generic name: Acrylic polymer	51 FR 41828 (11-19-86)	Nov. 20, 1986.
Y 87-20	Generic name: Acrylic polymer	51 FR 41828 (11-19-86)	Do.

II. 163 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN

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P 86-1776

III. 248 Premanufacture Notices and Exemption Requests for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory)

PMN No.

P 84-796
P 84-1182
P 85-265
P 85-536
P 85-619
P 85-1053
P 85-1054
P 85-1184
P 85-1239
P 85-1240
P 85-1243
P 85-1316
P 86-78
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P 86-329
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P 86-334
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Y 86-259
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Y 87-2
Y 87-3
Y 87-4

IV. 79 Chemical Substances for Which Has Received Notices of Commencement to Manufacture

PMN No.	Identity/generic name	Date of commencement
P 83-407	Generic name: Unsaturated ester of a substituted aryl ether polymer	Sept. 19, 1986.
P 83-447	Generic name: Polyvinyl alcohol derivative	Oct. 2, 1986.
P 84-591	Generic name: Sodium salt of an alkylated, sulfonated aromatic	Oct. 13, 1986.
P 84-765	Generic name: Polymer of formaldehyde and substituted phenols	Oct. 22, 1986.
P 84-805	Generic name: Modified alkylphenol resin	Oct. 20, 1986.
P 85-574	Generic name: Substituted benzocyazolethylidine	Aug. 29, 1986.
P 85-722	Generic name: C_{16} and C_{18} unsaturated alkyl nitriles	Sept. 24, 1986.
P 85-902	Generic name: N-substituted lauroylamide	Oct. 6, 1986.
P 85-1050	Generic name: Modified tall oil fatty acids amidoamine	Sept. 16, 1986.
P 85-1174	Generic name: Modified urethane alkyd polymer from an anhydride with unsaturated oils, alkanediols, a carbomonocyclic acid and an alkanoic ester	Aug. 11, 1986.
P 86-12	Generic name: Reaction product of bismaleimide with amino aryl hydrazide	Feb. 3, 1986.
P 86-30	Generic name: Unsaturated polyester	Jan. 1, 1986.
P 86-37	Generic name: Cobalt-aluminum organometallic compound	May 28, 1986.
P 86-221	Generic name: Crotonate functional styrenated acrylic polymer	Oct. 14, 1986.
P 86-258	Generic name: Alkyl oligoglycoside	Oct. 21, 1986.
P 86-277	Generic name: 4-Substituted phenol, polymer with substituted bis-(chlorobenzene), substituted bisphenol and inorganic hydroxide	Sept. 29, 1986.
P 86-286	Polymer of 1,4-butanediol; adipic acid; and 1,12-dodecanedioic acid	Aug. 21, 1986.
P 86-337	Generic name: Aromatic polyether ketone	Oct. 9, 1986.
P 86-355	Generic name: Zirconium IV neoalkoxy, tris(dioctyl) pyrophosphato-O	Aug. 28, 1986.
P 86-360	Generic name: Alkenes reaction products with 2,5-furandione	June 30, 1986.
P 86-361	Generic name: Alkenes, reaction products with 2,5-furandione and substituted alkyl amines	Do.
P 86-363	Generic name: Mixture of aliphatic alcohols	Apr. 18, 1986.
P 86-367	Generic name: Poly-(alkoxycarbonyl) polysulfide	Sept. 21, 1986.
P 86-387	Generic name: Modified acrylic ester	Sept. 12, 1986.
P 86-405	Generic name: Mercaptan terminated polyether, polythioether, polysulfide	Sept. 2, 1986.
P 86-410	Reaction product of N,N'-ditallowalkylaminopropylethylene-diamine with propylene oxide and ethylene oxide	Sept. 24, 1986.
P 86-517	Magnesium 2-methyl-1-pentoxide	Oct. 3, 1986.
P 86-593	Generic name: Modified formal polymer	July 19, 1986.
P 86-597	Isooctadecanoic acid, compound with 1-amino-2-propanol (1:1)	July 18, 1986.
P 86-598	Isooctadeconic acid, compound with 1,1'-iminobis-2-propanol (1:1)	Do.
P 86-599	Isooctadecanoic acid, compound with 1,1',1"-nitrilotris-2-propanol (1:1)	Do.
P 86-602	Generic name: Monoalkylfluorane	Sept. 29, 1986.
P 86-654	Alkyl oligoglycoside	Oct. 21, 1986.
P 86-731	Generic name: Functionalized ethene copolymer	Sept. 24, 1986.
P 86-841	Generic name: Polyamide resin	Aug. 28, 1986.
P 86-856	Generic name: Functionalized acrylic polymer	Oct. 3, 1986.
P 86-877	Titanium complex of ethanol, isopropanol, monobutyl phosphate, and dibutyl phosphate	Sept. 1, 1986.
P 86-894	Generic name: Alkanoate metal complex	Sept. 29, 1986.
P 86-927	Generic name: Organo nickel complex	Sept. 26, 1986.
P 86-928	Generic name: Alkyl aryl phosphine	Aug. 25, 1986.
P 86-969	Generic name: Polymer benzenedicarboxylic acid, alkanetriol, vegetable oil and fatty acids, resinous polyol, and phenolic resin	Oct. 1, 1986.
P 86-984	Generic name: Alkyl ether capped urea compound	Sept. 12, 1986.
P 86-1024	Generic name: Acrylic polyelectrolyte	Sept. 25, 1986.
P 86-1025	Acrylic polyelectrolyte	Sept. 17, 1986.
P 86-1033	Generic name: Modified acrylic — vinyl aromatic copolymer	Sept. 24, 1986.
P 86-1047	Generic name: Polyaminoamide	Sept. 22, 1986.
P 86-1057	Generic name: Poly-(alkoxycarbonyl)alykl polysulfide	Sept. 21, 1986.
P 86-1058	Generic name: Poly-(alkyl) polysulfide	Do.
P 86-1059	Generic name: Acrylate capped brominated polyether ester of benzophenone tetracaryboxylic dianhydride	Oct. 21, 1986.
P 86-1067	Generic name: Saturated polyester	Sept. 11, 1986.
P 86-1091	Generic name: Mixed glycol and oligoesters of aromatic and aliphatic dicarbonylic acids	Sept. 3, 1986.
P 86-1111	Generic name: Dialkypyranol	Sept. 23, 1986.
P 86-1114	Generic name: Polyester polymers	Sept. 2, 1986.
P 86-1155	Generic name: Ester of Substituted cycloalkenoic acid	Sept. 19, 1986.
P 86-1156	Generic name: Substituted cycloalkenoic acid	Do.
P 86-1168	Generic name: Gelled castor oil	Oct. 4, 1986.
P 86-1170	Generic name: Polyamide/acrylic copolymer	Oct. 1 1986.

IV. 79 Chemical Substances for Which Has Received Notices of Commencement to Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 86-1181	1-Eicosens and isomers	Sept. 19, 1986.
P 86-1188	Generic name: Alkyl methacrylate ester	Sept. 16, 1986.
P 86-1202	Generic name: Poly(oxyalkylene)aniline, carboxylic acid ester	Sept. 22, 1986.
P 86-1203	Generic name: Substituted polyoxyethylene aniline diacetylester	Do.
P 86-1204	Generic name: Chromophore substituted polyoxyalkylene	Do.
P 86-1212	Generic name: Carbonylic acid salt of fatty acid polyamine amines	Sept. 26, 1986.
P 86-1222	Generic name: Isocyanate terminated urethane prepolymer	Sept. 24, 1986.
P 86-1234	Generic name: Poly(hydroxyether)thiol	Sept. 29, 1986.
P 86-1253	Generic name: Disubstituted alkenoate	Oct. 15, 1986.
P 86-1265	Generic name: Unsaturated isophtahalic polyester acrylate copolymer	Sept. 30, 1986.
P 86-1266	Generic name: Dehydrated castor isophthalic alkyd resin	Do.
P 86-1330	Generic name: Methylesters of a carboxylic acid in solution	Oct. 23, 1986.
P 86-1331	Generic name: Alkyl benzotriazole	Oct. 20, 1986.
P 86-1332	Generic name: Alkyl benzotriazole sodium salt solution	Do.
Y 85-144	Generic name: Polyester of carbomonocyclic ester, sulfonated carbomonocylic ester and alkylene glycol	Oct. 21, 1986.
Y 86-57	Generic name: Acrylate copolymer	Sept. 29, 1986.
Y 86-66	Polymer of: tall oil fatty acid; 1,2-benzenedicarboxylic acid; benzoic acid; and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol	Oct. 22, 1986.
Y 86-128	Generic name: Linear saturated polyester resin containing hydroxyl groups	Sept. 30, 1986.
Y 86-149	Generic name: Silicone polyester	Sept. 23, 1986.
Y 86-170	Generic name: Copolymer of polymethyloctyl siloxane, polymethyl vinylsiloxane and polydimethyl siloxane	Sept. 26, 1986.
Y 86-208	Generic name: Arcylic polymer	Sept. 4, 1986.
Y 86-209	Generic name: Fatty oil polyester	Aug. 21, 1986.
Y 86-211	4,4 isopropylidene epichlorohydrin dicyclohexanol bisphenol A linseed fatty acids conjugated tall oil fatty acids glacial acrylic acid methyl methacrylate styrene	Oct. 24, 1986.
Y 86-232	Generic name: Unsaturated polyester polymer	Sept. 17, 1986.

V. 27 Premanufacture Notices of Which the Period Has Been Suspended

PMN No.	Identity/generic name	FR citation	Date suspended
P 85-1307	Generic name: Aldenoic acid, trisubstituted-benzyl disubstituted phenyl ester	51 FR 33630 (33631) (8-20-86)	Oct. 4, 1986
P 86-1270	Generic name: Fatty acid modified alkyd resin	51 FR 26941 (26942) (7-28-86)	Oct. 1, 1986.
P 86-1285	2-Naphthalenecarboxamide, 3-hydroxy-N-(2,4-dimethoxyphenyl)-, potassium salt	51 FR 26941 (26943) (7-28-86)	Oct. 17, 1986
P 86-1286	2-Naphthalenecarboxamide, 3-hydroxy-7-methoxy-N-phenyl-, potasium salt	51 FR 26941 (26943) (7-28-86)	Do.
P 86-1287	2-Naphthalenecarboxamide,3-hydroxy-N-methoxy-7-(2-methylphenyl)-, potassium salt	51 FR 26941 (26943) (7-28-86)	Do.
P 86-1293	Generic name: Anionic polymer	51 FR 26941 (26943) (7-28-86)	Oct. 22, 1986.
P 86-1299	Generic name: Multi-functional urethane polymer	51 FR 27085 (7-29-86)	Oct. 10, 1986
P 86-1315	Generic name: Alkylolamide	51 FR 27085 (27087) (7-29-86)	Oct. 8, 1986.
P 86-1322	Generic name: Aromatic diamine, thiomethylated	51 FR 28875 (28876) (8-12-86)	Oct. 30, 1986
P 86-1325	Generic name: Functional acrylate methacrylate polymer	51 FR 28875 (28876) (8-12-86)	Do.
P 86-1333	Generic name: Mixed haloalkyl phosphates	51 FR 28875 (28876) (8-12-86)	Oct. 19, 1986.
P 86-1411	Generic name: Urethane additive for electrophoresis	51 FR 28875 (28882) (8-12-86)	Oct. 22, 1986.
P 86-1412	Generic name: Urethane additive for electrophoresis	51 FR 28875 (28882) (8-12-86)	Oct. 22, 1986
P 86-1419	Generic name: Modified epoxy diamine resin	51 FR 28882 (28883) (8-12-86)	Do.
P 86-1440	Generic name: Phthalane carboxylic acid ethoxy-esthylester	51 FR 28882 (28884) (8-12-86)	Oct. 21, 1986.
P 86-1452	Generic name: Alkanolamine adduct of acrylate oligomer	51 FR 28882 (28885) (8-12-86)	Oct. 17, 1986.
P 86-1481	Generic name: Polyoxalkenyldiene	51 FR 29695 (29697) (8-20-86)	Oct. 22, 1986
P 86-1489	Poly(oxy-1,2-ethanediyl), alpha-(nonylphenyl)-omega-[(2-amino-2-methylethoxy)-poly[oxy(methyl-1,2-ethanediyl)]]-	51 FR 29695 (29697) (8-20-86)	Oct. 29, 1986.
P 86-1516	Generic name: Alkyl quaternary ammonium salt	51 FR 30426 (30427) (8-26-86)	Oct. 28, 1986.
P 86-1600	Generic name: Alkyl naphthalene sulfonic acid, compound with amine	51 FR 32245 (32247) (9-10-86)	Oct. 23, 1986.
P 86-1701	Generic name: Hydroxylated, unsaturated natural ester	51 FR 35426 (10-3-86)	Oct. 16, 1986.
P 86-1702	Generic name: Polyalkoxylated, hydroxylated natural ester	51 FR 35426 (10-3-86)	Do.
P 86-1742	Polymer of epoxidized soya bean oil and acrylic acid	51 FR 355426 (35429) (10-3-86)	Oct. 17, 1986.
P 86-1759	Generic name: Epoxidized, hydroxylated natural ester	51 FR 36598 (36600) (10-14-86)	Oct. 16, 1986.
P 86-1760	Generic name: Polyalkoxylated, hydroxylated natural ester	51 FR 36598 (36600) (10-14-86)	Oct. 16, 1986.
P 86-1769	Generic name: Modified alkyd resin	51 FR 36598 (36600) (10-14-86)	Oct. 10, 1986.
P 87-21	Butyl 1,1,1,3,3,3-hexamethyl disilazanoto magnesium	51 FR 37647 (37648) (10-23-86)	Oct. 14, 1986.

[FR Doc. 87-2870 Filed 3-3-87; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
March 4, 1987

Part VI

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Unity of Invention and Patent Cooperation Treaty; Proposed Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 61231-6231]

Unity of Invention and Patent Cooperation Treaty

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend its regulations (1) to change the practice in handling unity of invention issues in international applications under the Patent Cooperation Treaty (PCT) and those entering the national stage under 35 U.S.C. 371 and (2) to establish procedures necessary for patent applicants to proceed under Chapter II of the Patent Cooperation Treaty. This proposal is being made because (1) the current practice in handling unity of invention issues in international applications is not consistent with the court decision in *Caterpillar Tractor Co.* v. *Commissioner of Patents and Trademarks*, 231 USPQ 590 (E.D. Va. 1986), and (2) legislation implementing Chapter II of the Patent Cooperation Treaty has recently been enacted. The proposal should result in (1) the treatment of unity of invention issues in international applications consistently with the court decision while retaining the current practice for national applications filed under 35 U.S.C. 111, and (2) implementation of Chapter II of the Patent Cooperation Treaty.

DATES: Comments must be submitted on or before April 6, 1987; a public hearing will be held on April 6, 1987 at 9:00 a.m. Requests to present oral testimony should be received on or before March 30, 1987.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Louis O. Maassel, Room CP3–11A13. The hearing will be held in Room 11C10, on the 11th floor of Building 3, located at Crystal Plaza, 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 11A13 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Louis O. Maassel by telephone at (703) 557–3070 or by mail to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change relates to (1) questions of unity of invention which may arise in international applications when searched as an International Searching Authority and when examined as an International Preliminary Examining Authority by the United States Patent and Trademark Office (USPTO) and during the national stage in the United States as a Designated Office after entry under 35 U.S.C. 371 pursuant to the Patent Cooperation Treaty (PCT) and (2) to procedures to be followed and fees to be paid under Chapter II of the Patent Cooperation Treaty. The proposed rule change would also increase the amount of the international search fees and national fees in view of increased average effort required by the USPTO in view of the proposed changes relating to unity of invention.

Unity of Invention

The May 28, 1986, decision in *Caterpillar Tractor Company* v. *Commissioner of Patents and Trademarks*, 231 USPQ 540 (E.D. Va., 1986) held that the Patent and Trademark Office interpretation of 37 CFR 1.141(b)(2) as applied to unity of invention determinations in international applications was not in accordance with the Patent Cooperation Treaty and its implementing rules. In the Caterpillar international application, the USPTO, acting as an International Searching Authority, had held lack of unity of invention between a set of claims directed to a process for forming a sprocket and a set of claims drawn to an apparatus (die) for forging a sprocket. The court stated that it was an unreasonable interpretation to say that the expression "specifically designed" as found in PCT Rule 13.2(ii) means that the process and apparatus have unity of invention if they can only be used with each other, as set forth in the Manual of Patent Examining Procedure (MPEP) section 806.05(e).

Therefore, it is proposed that when the Patent and Trademark Office considers international applications as an International Searching Authority, as an International Preliminary Examining Authority, and during the national stage as a Designated of Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 U.S.C. 111. No change is proposed in the current restriction practice in United States national applications filed under 35 U.S.C. 111 outside the PCT. No change in practice is being proposed in regard to claims of the same category of invention either in PCT international applications or in U.S. national applications. Any such change in U.S. national restriction practice would require a statutory change in the fee levels in order to cover the additional examining effort required in individual patent applications.

The proposed unity of invention procedures are already being substantially followed by the examiners in the USPTO as a result of the notice signed on August 15, 1986, published in the Official Gazette on September 9, 1986 at 1070 O.G. 11.

PCT Rules 13.1 and 13.2 are reproduced below for convenience:

PCT Rule 13—Unity of Invention

13.1 Requirement.

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

13.2 Claims of different categories.

Rule 13.1 shall be construed as permitting, in particular, one of the following three possibilities:

(i) In addition to an independent claim for a given product, the inclusion in the same international application of an independent claim for a process specially adapted for the manufacture of the said product, and the inclusion in the same international application of an independent claim for a use of a said product, or

(ii) In addition to an independent claim for a given process, the inclusion in the same international application of an independent claim for an apparatus or means specifically designed for carrying out the said process, or

(iii) In addition to an independent claim for a given product, the inclusion in the same international application of an independent claim for a process specially adapted for the manufacture of the product, and the inclusion in the same international application of an independent claim for an apparatus or means specifically designed for carrying out the process.

PCT Rule 13 would be applied in the restriction practice proposed for national stage applications entered under 35 U.S.C. 371 because 35 U.S.C. 372(b)(2) provides that "The Commissioner may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations".

Implementation of Proposed Unity of Invention Practice in International Applications and National Stage Applications Entered Under 35 U.S.C. 371

(1) The proposed practice for international and national stage applications would *not* be applied to national applications filed under 35 U.S.C. 111.

(2) The proposed practice would *not* affect the treatment of the claims of any applications (national or international) where the question of lack of unity of invention relates to other than different categories of invention issues. Therefore, restriction and unity of invention practice involving, for example, Markush type claims, genus-species, intermediate-final product or combination-subcombination situations would *not* be affected for any applications by this proposed rule change.

(3) The criteria of proposed § 1.141 would continue to be applicable to U.S. national applications filed under 35 U.S.C. 111 in a manner similar to that in effect prior to the Caterpillar decision and essentially the same as the practice which was in effect for many years prior to the PCT implementation. That is, national restriction practice would continue as set forth in MPEP Chapter 800, as modified in 1046 O.G. 2 for the practice relating to product, process of making and process of using. The practice in this latter situation is that a three way requirement for restriction can only be made where the process of making is distinct from the product (i.e., the requirements of MPEP 806.05(f) are met). Otherwise, claims to the process of using must be joined with the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product (MPEP 806.05(h)) could be made. This concept is included in proposed paragraph 1.141(b)

(4) Under the proposed rules, the criteria of PCT Rule 13.2 would be applied when determining unity of invention of claims to different categories of invention in considering international applications as an International Searching Authority and International Preliminary Examining Authority and during the national stage as a Designated or Elected Office under 35 U.S.C. 371.

(5) Under the proposed rules, in applying PCT Rule 13.2 to international applications as an International Searching Authority and an International Preliminary Examining Authority and to national stage applications under 35 U.S.C. 371, examiners would consider for unity of invention all of the claims to different categories of invention in the application and would permit retention in the same application for searching and/or examination, claims to the categories which meet the requirements of any one of PCT Rule 13.2(i) to (iii).

Under the proposed rules, the USPTO would also permit in the same international or national stage application the following two combinations:

(a) An independent claim for a given product and an independent claim for a process specially adapted for the manufacture of said product.

(b) An independent claim for a given product and an independent claim for a process of using the said product.

Under the proposed rules, if an application contains a combination of categories of claims which do not fall within any *one* of the combinations of PCT Rule 13.2(i) to (iii) or additional combinations (a) or (b) above, i.e., they claim more or less categories of invention than permitted in any one of the PCT Rule 13.2(i) to (iii) or combination (a) or (b) above, unity of invention may not be present. Further, an independent claim for a use in PCT Rule 13.2(i) and combination (b) above would be construed as being limited to a claim directed to a process of using. In determining unity of invention under PCT Rule 13.2(i) and (iii) and combination (a) above, under the proposed rules, the examiner would consider the word "specially" which appears before "adopted" to be an emphasis would rather than a limitation. In determining unity of invention under PCT Rule 13.2(ii), the examiner would consider the word "specifically" which appears before "designed" to be an emphasis word rather than a limitation.

Under the proposed rules, if an application included claims to all the categories of invention set forth in any one of PCT Rule 13.2(i), (ii), (iii), combinations (a) or (b) above, and no additional categories of invention were present, unity of invention would exist and no additional fees would be required or restriction requirement made.

For example, if an application contained claims to only a process for the manufacture of a product and claims to a use of a product and no product claim is present, there would be lack of unity of invention since the provisions of Rule 13.2(i) do not apply because claims to all categories of invention set forth in PCT Rule 13.2(i) are not included in the application and the process for manufacture of a product is independent of the use of the product since neither is dependent on the other. Also if claims to all three categories of PCT Rule 13.2(i) were present at the time of the first Office action in a national stage application and all the product claims are rejected in the first Office action, a requirement for restriction could also be made, if appropriate, in view of independent inventions being in the application without an allowable linking (product) claim.

Under the proposed rules, where claims to a category of invention in addition to those listed in any one of PCT Rule 13.2 (i), (ii), (iii) or combinations (a) or (b) above are included in an application, unity of invention may be lacking between the claims drawn to the combination of the categories of invention set forth in any *one* of PCT Rule 13.2(i), (ii) or (iii) or combinations (a) or (b) above, and the claims to the additional category of invention. For example, if an application contains claims to a process for manufacture, claims to an apparatus or means for carrying out the process and claims to a process of using the product manufactured, there could be a lack of unity of invention. In such a situation the examiner should group the claims to the process for manufacture and the claims for an apparatus or means of carrying out the process because unity of these two categories exists under PCT Rule 13.2(ii). The claims to the use of the product could be separately grouped if the "use" is shown to be "independent and distinct" of both the "process for manufacture" and the "apparatus or means of carrying out the process" as provided in Chapter 800 of the Manual of Patent Examining Procedure (MPEP).

When the claims presented in an application are directed to several categories of invention under the proposed rules so that more than one paragraph of PCT Rule 13.2 and combinations (a) or (b) above applies, the examiner would inspect the claims to see if the categories of invention set forth in PCT Rules 13.2, paragraphs (i), (iii) and (ii), and then combinations (a) or (b) above are present in the application in that order. For example, if the categories of PCT Rule 13.2(i) are found in the application, the claims to those categories stated in PCT Rule 13.2(i) will be considered as one invention and any claims to different categories of invention will be reviewed to determine if they are "independent and distinct" of *all* the claims covered in PCT Rule 13.2(i) in accordance that the provisions of Chapter 800 of the MPEP.

(6) Under PCT Rule 13.2 and combinations (a) and (b) above, unity

would exist where the claims are limited to one invention in each category of invention recited. For example, under PCT Rule 13.2(i), claims are permitted to one product, one process of manufacturing and one use. If multiple products, processses of manufacture or uses are claimed, the first invention in the category first mentioned in the claims would be considered as the elected invention under the proposed rules. The first recited invention of each additional category which is related to the first invention as indicated in the previous sentence would be considered elected. Accordingly, for example, if multiple products are claimed, the first recited product would be constructively elected and the first recited process, if multiple processes adapted for makimg and/or using the product are claimed, would also be constructively elected. Any additional inventions of the same category would be subject to payment of additional fees during the international stage. Any such holding by the examiner would be made in the form of a restriction requirement in a national stage application submitted under 35 U.S.C. 371. Such a restriction requirement would be made on the basis of criteria set forth in MPEP Chapter 800. Applicant would have the right to traverse such a restriction requirement in the response to the Office action.

(7) Under the proposed rules, the inventions of different categories, to have unity of invention, must be related rather than independent inventions. For example, the product claimed in PCT Rule 13.2(i) and combinations (a) and (b) above must be capable of being made by the claimed process for manufacture or being used in the claimed process of use. Likewise the PCT Rule 13.2(ii), the apparatus as claimed must be capable of carrying out the claimed process. In PCT Rule 13.2(iii), the claimed process of manufacture must be capable of preparing the claimed product and the claimed apparatus or means must be able to perform the claimed process of manufacture.

(8) Under proposed §§ 1.494 and 1.495, applicants should clearly indicate on all application papers filed for entry under 35 U.S.C. 371 that the filing is being made under 35 U.S.C. 371. Otherwise, the application papers would be treated as having been filed under 35 U.S.C. 111.

Patent Cooperation Treaty, Chapter II

The Patent Cooperation Treaty became effective for the United States on January 24, 1978. The United States, however, was one of six countries (out of the 40 countries who have ratified or acceded to the Treaty) which had reservations not to be bound by Chapter II. This reservation by the United States can now be removed. Public Law 99-616 and final regulations will become effective 3 months after the document removing the reservation is deposited with the Director General of the World Intellectual Property Organization.

Chapter I of the Patent Cooperation Treaty provides a standardized application format and a centralized filing procedure for international patent application. Pursuant to Chapter I, an applicant may submit an international application, designating those member countries in which the applicant desires patent protection. Filing an international application has the same result as filing a separate application in all designated member states. In addition, by filing an international application, the applicant does not have to incur the expenses associated with national patent prosecution in the designated countries until 20 months from the priority date of the international application. During this period, the applicant obtains an international research report citing prior art deemed to be relevant to the claims of the invention contained in the international application. This helps the applicant decide whether to proceed with patent prosecution in the various countries originally designated.

Chapter II of the Patent Cooperation Treaty provides two further benefits for the applicant. First, an additional 10 months is allowed, for a total of 30 months from the priority date of the international application, before the applicant must decide whether to proceed with national patent prosecution in the elected countries. Second, the applicant is provided with an international preliminary examination report. In contrast to the international search report, which provides citations of prior art pertinent to the invention, the international preliminary examination report is a non-binding opinion from an International Preliminary Examining Authority as to whether the invention is novel, involves an inventive step (non-obvious), and is industrially applicable. A preliminary examination report will be established within 28 months from the priority date. This preliminary examination report, together with the additional 10 months before the decision to proceed with national prosecution is required, places the applicant in a better position to consider commercial factors associated with the invention and to decide whether to pursue patent protection in the various elected countries.

To take advantage of these benefits provided by Chapter II, an applicant must file a "Demand" for a preliminary examination prior to the expiration of the 19th month from the priority date and must pay certain fees. The proposed rules would establish the amounts of some of the necessary fees and procedures under Chapter II. The proposed rules would also group all the rules unique to international applications in a separate area of the regulations. The proposed rules would establish three groupings of rules: (1) Those directed to procedures under Chapter I, (2) those directed to procedures under Chapter II, and (3) those directed to entering the national stage under 35 U.S.C. 371.

Discussion of Specific Rules

Section 1.8 is proposed to be amended to indicate clearly that the certificate of mailing procedures thereunder may not be used for the filing of papers and fees relating to international applications. It should be noted that the provisions of § 1.10 regarding the filing of papers or fees by "Express Mail" apply to all papers and fees to be filed in the Patent and Trademark Office, including those relating to international applications.

Section 1.61, *Filing of applications in the United States of America as a Designated Office*, is proposed to be removed and the substance thereof moved to proposed new § 1.494. Section 1.70, *Oath or declaration under 35 U.S.C. 371(c)(4)*, is proposed to be removed and the substance thereof moved to proposed new § 1.497. These moves will result in the rules relating to the international applications entering the national stage being located in a single area of the rules.

Section 1.101 is proposed to be amended to remove the discussion of the order of examination for international applications entering the national stage, which will be covered by proposed new § 1.496.

Section 1.141 is proposed to be amended to basically return the rule to its wording prior to the 1978 rule change implementing the Patent Cooperation Treaty and would be directed solely to national applications. This would avoid confusion with PCT Rule 13.2 which was interpreted by the court in *Caterpillar Tractor Company* v. *Commissioner of Patents and Trademarks*, supra, to have a different meaning than intended in present § 1.141. It would however retain for applicants the ability to claim a "reasonable number" of species rather than only 5, which limit existed prior to the 1978 rule change. Paragraph (b), as proposed to be amended, would continue the practice stated in the *Official Gazette* notice of August 1, 1984 published at 1046 O.G. 2. Unity of

invention in international applications before the USPTO as an International Searching Authority under Chapter I of the Patent Cooperation Treaty would be covered by proposed new § 1.475. Unity of Invention before the USPTO as an International Preliminary Examining Authority under Chapter II of the Patent Cooperation Treaty would be covered by proposed new § 1.487. Unity of invention in international applications entering the national stage under 35 U.S.C. 371 would be covered by proposed new § 1.499.

Section 1.401 is proposed to be amended to include the definition of terms used for Chapter II of the Patent Cooperation Treaty.

Section 1.414 is proposed to be amended to include reference to the United States Patent and Trademark Office functioning as an Elected Office under Chapter II of the Patent Cooperation Treaty as well as a Designated Office under Chapter I.

Section 1.416 is proposed to be added to indicate and describe the functioning of the United States Patent and Trademark Office as an International Preliminary Examining Authority under Chapter II of the Patent Cooperation Treaty.

Sections 1.431 and 1.432 are proposed to be amended to indicate that the time limit for payment of the designation fee is one year from the priority date or one month from the date of receipt of the international application if that one month time limit expires after the expiration of one year from the priority date in accordance with PCT Rule 15.4(b)(ii) and amended 35 U.S.C. 361.

Section 1.445 is proposed to be amended to increase the amount of the international search fees to provide for recovery of the average additional cost of processing applications with claims to more inventions than would have been permitted under the unity of invention criteria used when the international search fee amounts were established. The proposed amounts for national stage fees would be removed and set forth in proposed § 1.492.

The international search fee and national fees were established based on the effort and cost to the Office of searching and examining a single invention as defined by the United States Patent and Trademark Office prior to the decision in the Caterpillar case. Since additional effort will be required to search and examine an average application under the proposed new rules defining unity of invention, the average international search and national fee must also be increased to cover the additional cost to the Office.

Section 1.475, *Changes in person, name, or address of applicants,* is proposed to be redesignated as § 1.472 to allow the grouping of rules into PCT Chapter I, PCT Chapter II and national stage related rules. No change other than redesignation is proposed.

A new § 1.475 is proposed to be added to relate to unity of invention before the International Searching Authority. Proposed paragraph (a) clearly indicates that PCT Rule 13 is to be followed in all such cases and proposed paragraph (b) adds combinations acceptable under unity of invention in addition to those set forth in PCT Rule 13.2. Proposed paragraph (c) relates to the handling of claims to categories in addition to the combinations specified in proposed paragraph (b). Proposed paragraph (d) relates to situations in which more than one invention of the same category of invention is recited in an international application. Proposed paragraph (e) makes clear that inventions of different categories must be related, rather than independent, for unity of invention to exist.

Section 1.481, regarding determination of unity of invention before the International Searching Authority, is proposed to be redesignated as § 1.476 and to be amended to delete reference to § 1.141 from paragraph (a).

Section 1.482 is proposed to be redesignated as § 1.477 and to be amended to make clear in the title that it deals with protests to findings of lack of unity of invention before the International Searching Authority. The proposed amendment to paragraph (b) would correct an error in referring to another paragraph of the section.

A new § 1.480 is proposed to be added to deal with the Demand for an international preliminary examination. Paragraph (a) indicates that a Demand is required to be filed to obtain an international preliminary examination and that the proposed preliminary examination fee of § 1.482(a)(1) and the handling fee of § 1.482(b) are due at the time of filing of the Demand. If the fees are not paid at the time of filing of the Demand, the United States Patent and Trademark Office acting as an International Preliminary Examining Authority will provide an opportunity to pay the fees in accordance with PCT Rules 57.4 and 58.2.

Paragraph (b) of § 1.480 would specify that the Demand must be made on a standardized form as required by PCT Rule 53.1 and that such forms are available from the United States Patent and Trademark Office.

Paragraph (c) of § 1.480 would specify that if the Demand is made prior to the expiration of the 19th month from the priority date, that the provisions of PCT Article 39 and § 1.495 shall apply to allow entry into the national stage prior to the expiration of 30 months after the priority date. If the Demand is not filed prior to the expiration of the 19th month from the priority date, the provisions of PCT Article 22 and § 1.494 shall apply to allow entry into the national stage prior to the expiration of 20 months after the priority date.

Paragraph (d) of § 1.480 would indicate that withdrawal of a proper Demand will not entitle applicant to a refund of the preliminary examination fee even if no claims are found that can or will be searched (PCT Article 34(4)(a)). A Demand that is so informal that it would be considered under PCT Rules as if it had not been submitted would not be considered a proper Demand under the proposed rule. A change in purpose after the filing of a Demand will not entitle an applicant to a refund of the preliminary examination fee. PCT Rule 57.6 states that in no case shall the handling fee, or any supplement to the handling fee, be refunded.

A new § 1.482 is proposed to be added to specify the international preliminary examination fees. Paragraph (a) sets a lower fee for the international preliminary examination where an international search fee has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority. Paragraph (a) also sets a lower additional preliminary examination fee for the preliminary examination of additional inventions found in the international application where a supplemental search fee has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority. Paragraph (b) indicates that the handling fee is prescribed in PCT Rule 57 and any necessary supplement to the handling fee shall be paid directly to the International Bureau in accordance with PCT Rule 57.1(b).

A new § 1.484 is proposed to be added to describe the conduct of international preliminary examination. The rule describes that, if necessary, a written opinion will be established after consideration of any defects in accordance with PCT Rule 66.2 and after an examination to determine if the claimed invention has novelty, involves an inventive step (is non-obvious) and is industrially applicable. A written opinion prior to the international preliminary examination report would not be necessary if the international

application does not contain any defects as mentioned in PCT Rule 66.2 and if all claims are found to be novel, involve an inventive step (non-obvious) and are industrially applicable. The written opinion would set a time period for applicant to respond which may not be extended due to the tight time constraints under Chapter II of the Patent Cooperation Treaty. An international preliminary examination report will be established and one copy will be submitted to the International Bureau and one copy to applicant. The rule specifies that no international preliminary examination report will be established prior to issuance of an international search report and that no international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority. Paragraph (f) would specify that only one personal or telephone interview with the examiner will be permitted during the international preliminary examination. This is due to the time constraints in establishing the international preliminary examination report. The period during which the one interview can be held is limited by the non-extendable time limit for response by the applicant to the written opinion.

A new § 1.485 is proposed to be added to deal with amendments by applicant during international preliminary examination. An applicant would be permitted by the rule to make amendments at the time of filing of the Demand and within the period set in any written opinion on the application as defined in § 1.484. Amendments under the rule would be required to be made by submitting replacement sheets and a description of how the replacement sheet differs from the replaced sheet. If an amendment cancels an entire sheet, that amendment could be communicated by letter without a replacement sheet.

A new § 1.487 would define what constitutes unity of invention before the International Preliminary Examination Authority. The standards for unity of invention would generally parallel those set in § 1.475 regarding proceedings before the International Searching Authority.

A new § 1.488 is proposed to be added to set forth how the International Preliminary Examining Authority will proceed in handling determinations regarding the unit of invention criteria of proposed § 1.487.

A new § 1.489 would set forth the procedures to be followed by an applicant who wishes to protest a holding of lack of unity of invention by the International Preliminary Examining Authority. The additional fees would be required to be paid but could be accompanied by a request for refund and a statement setting forth reasons for disagreement with the holding of lack of unity of invention or why the required additional fees are excessive. This rule would be in accordance with PCT Rule 68.3(c).

A new § 1.491 is proposed to be added to define the start of the national stage. Section 1.491 would be the first rule in a new group of rules relating to applications entering the national stage pursuant to 35 U.S.C. 371.

A new § 1.492 is proposed to be added to set forth the fees and charges for international applications entering the national stage under 35 U.S.C. 371. The basic national fee is set forth in paragraph (a) at three levels to reflect the benefit that the United States Patent and Trademark Office will derive from having previously conducted an international preliminary examination or an international search. The rule also sets the fee for an independent claim in excess of 3 (paragraph (b)), for presentation of each claim in excess of 20 (paragraph (c)) and for an application containing a multiple dependent claim (paragraph (d)). Paragraphs (e) and (f) include the fees previously contained in § 1.445 and, as proposed, include the alternative times for entering the national state pursuant to proposed § 1.494 or § 1.495.

A new § 1.494 is proposed to be added to contain substantially the provisions of former § 1.61 in amended form. This section relating to filing application documents in the United States Patent and Trademark Office to enter the national stage has been grouped with other sections relating to the national stage for the convenience of applicants and examiners involved in the prosecution of international applications entering the national stage. The rule would apply where no Demand for international preliminary examination has been filed prior to the expiration of the 19th month from the priority date. If such a Demand were filed, § 1.495 would apply.

Proposed § 1.494(f) would require that a specific indication be given by the applicant when entering the national stage that the documents being submitted are being submitted under 35 U.S.C. 371. If no clear indication is found, the documents will be considered to be for a regular national application under 35 U.S.C. 111. Proposed paragraph (g) would make clear that the various time limits set out in the rule, some of which are set by the PCT, may not be extended pursuant to § 1.136 or otherwise. The extension of time provisions including petition and payment of a fee set out in § 1.136(a) do not apply to the time limits of the rule or time limits set by the International Searching Authority or the International Preliminary Examining Authority.

A new § 1.495 is proposed to be added to deal with filing application documents in the United States Patent and Trademark Office to enter the national stage where a Demand for international preliminary examination has been filed with an Elected Office prior to the expiration of the 19th month from the priority date. In such a case, an applicant will have 30 months from the priority date to enter the national stage. The proposed rule parallels in many respects proposed § 1.494.

A new § 1.496 is proposed to be added to specify that international applications in the national stage will be taken up for action based on the date when the requirements of 35 U.S.C. 371(c) were met.

A new § 1.497 is proposed to be added to contain substantially the wording of removed § 1.70. This rule relates to the oath or declaration required to enter the national stage and is grouped with other national stage entry requirements.

A new § 1.499 is proposed to be added to cover unity of invention during the national stage. The provisions of the section would basically parallel those of §§ 1.475 and 1.487. Proposed paragraph (f) would indicate the manner of handling a finding of lack of unity of invention on grounds other than involving different categories of invention.

Environmental, Energy, and Other Considerations

The proposed rule change will not have a significant impact on the quality of the human environment or conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because considerable savings can potentially be achieved under Chapter II of the Patent Cooperation Treaty because additional time is provided for applicants to decide whether to proceed

with the cost of foreign prosecution and savings will in fact be achieved under the unity of invention practice and the provision for reduced fees for small entities entering the national stage in making an application for a United States patent.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirement relating to demands contained in these proposed rules has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Comments relating to this requirement should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Commerce, Patent and Trademark Office. Other information requirements mentioned in the rule have been approved by OMB under Control No. 0651-0011.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Courts, Inventions and patents, Lawyers.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 376(b) and Pub. L. 99-616, the Patent and Trademark Office is proposing to amend Title 37 of the Code of Federal Regulations as set forth below.

It is proposed to amend 37 CFR, Part 1, as follows with deletions of portions of rules indicated by brackets and additions by arrows.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.8 is proposed to be amended by revising paragraph (a)(xi) to read as follows:

§ 1.8 Certificate of mailing.

(a)* * *

(xi) The filing of international applications for patent and ►all◄ papers ►and fees◄ relating thereto.

* * * * *

§ 1.61 [Removed]

3. Section 1.61 is proposed to be removed.

§ 1.70 [Removed]

4. Section 1.70 is proposed to be removed.

5. Section 1.101 is proposed to be amended by revising paragraph (a) to read as follows:

►§ 1.101 Order of examination.

(a) Applications filed in the Patent and Trademark Office and accepted as complete applications are assigned for examination to the respective examining groups having the classes of inventions to which the applications relate. Applications shall be taken up for examination by the examiner to whom they have been assigned in the order in which they have been filed except for those applications in which examination has been advanced pursuant to § 1.102. [International applications which have complied with the requirements of 35 U.S.C. 371(c) will be taken up for action based on the date on which such requirements were met. However, unless a request has been filed under 35 U.S.C. 371(f), no action may be taken prior to 21 months from the priority date.] ►See § 1.496 for order of examination of international applications in the national stage.◄

* * * * *

6. Section 1.141 is proposed to be revised to read as follows:

§ 1.141 Different inventions in one ►national◄ application.

(a) Two or more independent and distinct inventions [, that is, inventions which do not form a single general inventive concept,] may not be claimed in one ►national◄ application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one ►national◄ application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

(b) [A group of claims of different categories in an application so linked as to form a single inventive concept are considered to be one invention. In particular any of the following groupings of claims of different categories may be included in the same application:

(1) In addition to a claim for a given product,

(i) A claim for one process specially adapted for the manufacture of the said product, as where the process of making as claimed cannot be used to make other and materially different products;

(ii) A claim for one use of the said products, as where said use as claimed cannot be practiced with another materially different product; or

(iii) Both (b)(1) (i) and (ii);

(2) In addition to a claim for a given process, a claim for one apparatus or means specifically designed for carrying out the said process, that is, it cannot be used to practice another materially different process.

(c) If the situation of paragraph (b)(1) of this section exists where] ►Where◄ claims to all three categories, product, process ►of making◄ and ►process of◄ use, are included [, and the product claims are not allowable, the use and process claims are not so linked as to form a single general inventive concept. Where the process and use claims are not so joined by an allowable linking product claim, the applicant will be required to elect either the use or the process for prosecution with the product claim.] ►in a national application, a three way requirement for restriction can only be made where the process of making is distinct from the product. If the process of making and the product are not distinct, the process of using may be joined with the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product can be made.◄

Subpart C—International Processing Provisions

7. The authority for Subpart C is revised to read as follows:

Authority: Pub. L. 94-131, 89 Stat. 685 ►; Pub. L. 99-616, 35 U.S.C. 351 through 376◄.

8. Section 1.401 is proposed to be amended to redesignate paragraph (g) as paragraph (i) and add new paragraphs (g) and (h) as follows:

§ 1.401 Definitions of terms under the Patent Cooperation Treaty.

* * * * *

►(g) "Demand," when capitalized, means that document filed with the International Preliminary Examining Authority which requests an international preliminary examination.

(h) "Annexes" means amendments made to the claims, description or the

drawings before the International Preliminary Examining Authority.◄

[(g)] ►(i)◄ Other terms and expressions in this Subpart C not defined in this section are to be taken in the sense indicated in PCT Article 2 and 35 U.S.C. 351.

9. Section 1.414 is proposed to be revised to read as follows:

§ 1.414 The United States ►Patent and Trademark Office as a◄ Designated Office ►or Elected Office◄.

(a) The United States Patent and Trademark Office will act as a Designated Office ►or Elected Office◄ for international applications in which the United States of America has been designated ►or elected◄ as a State in which patent protection is desired.

(b) The ►United States◄ Patent and Trademark Office, when acting as a Designated Office ►or Elected Office◄ during international processing will be identified by the full title "United States Designated Office" or by the abbreviation "DO/US" ►or by the full title United States Elected Office or by the abbreviation "EO/US"◄.

(c) The major functions of the United States Designated Office ►or Elected Office◄ in respect to international applications in which the United States of America has been designated ►or elected◄, include:

(1) Receiving various notifications throughout the international stage; ►and◄

(2) Accepting for [regular] national ►stage◄ [patentability] examination international applications which satisfy the requirements of 35 U.S.C. 371 [; and

(3) Conducting reviews under PCT Article 25 for those international applications declared withdrawn].

10. A new § 1.416 is proposed to be added to read as follows:

►§ 1.416 The United States International Preliminary Examining Authority.

(a) Pursuant to appointment by the Assembly, the United States Patent and Trademark Office will act as an International Preliminary Examining Authority for international applications filed in the United States Receiving Office and in other Receiving Offices as may be agreed upon by the Commissioner, in accordance with agreement between the Patent and Trademark Office and the International Bureau.

(b) The United States Patent and Trademark Office, when acting as an International Preliminary Examining Authority, will be identified by the full title "United States International Preliminary Examining Authority" or by the abbreviation "IPEA/US."

(c) The major functions of the International Preliminary Examining Authority include:

(1) Receiving and checking for defects in the Demand;

(2) Collecting the handling fee for the International Bureau and the preliminary examination fee for the United States International Preliminary Examining Authority;

(3) Informing applicant of receipt of the Demand;

(4) Considering the matter of unity of invention;

(5) Providing an international preliminary examination report which is a non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable; and

(6) Transmitting the international preliminary examination report to applicant and the International Bureau.◄

11. Section 1.431 is proposed to be amended by revising paragraph (d)(2) to read as follows:

§ 1.431 International application requirements.

* * * * *

(d) * * *

(2) The designation fee, or the amount necessary to cover all the designations made in the request [which have not been] ►if not◄ paid by the applicant within one year from the priority date ►or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date◄.

* * * * *

12. Section 1.432 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.432 Designation of States and payment of designation fees.

* * * * *

(b) The designation fees may be paid upon filing of the international application, but must be paid [at the latest] before the expiration of one year from the priority date ►or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date◄ [(PCT Rule 15.4(b)]. Failure to timely pay the designation fee for a particular Designated State will result in the withdrawal of that designation [(PCT Article 14(3)(b))]. Failure to timely pay at least one designation fee will result in the withdrawal of the international application [(PCT Article 14(3)(a))].

13. Section 1.445 is proposed to be amended by revising the title, and paragraph (a) to read as follows:

§ 1.445 International application filing ►, ◄ [and] processing ►and search◄ fees.

(a) The following fees and charges ►for international applications◄ are established by the [Patent and Trademark Office] ►Commissioner◄ under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14) $170.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:

(i) No corresponding prior United States national application with ►basic filing◄ fee has been filed . . . . . $[420.00] ►520.00◄

(ii) ►A corresponding◄ [Corresponding] prior United States national application with ►basic filing◄ fee has been filed—$[250.00] ►350.00◄

(3) A supplemental search fee when required [(see PCT Article 17(3)(a) and PCT Rule 40.2)], per additional invention. $140.00

[(4) The national fee, that is, the amount set forth as the filing fee under § 1.16(a) through (d) credited, if requested at the time of filing, by an amount of $170.00 where an international search fee as required by paragraph (a)(2)(i) of this section has been paid on the corresponding international application to the United States Patent and Trademark Office as an International Searching Authority. Only one such credit is permitted based on a single international search fee.

(5) Surcharge for filing the national fee or oath or declaration later than 20 months from the priority date:

By a small entity (§ 1.9(f))	$55.00
By other than a small entity	$110.00

(6) For filing an English translation of an international application later than 20 months after the priority date (§ 1.61(b)) ..... $26.00]

* * * * *

§ 1.475 [Redesignated as § 1.472]

14. Section 1.475 is proposed to be redesignated as § 1.472.

15. A new § 1.475 is proposed to be added following the heading, "UNITY OF INVENTION", to read as follows:

►§ 1.475 Unity of invention before the International Searching Authority.

(a) An international application before the International Searching Authority will be considered to have unity of invention if the claims are in accordance with PCT Rule 13.[1]

(b) An international application containing claims to different categories of invention will be considered to have

unity of invention if the claims are drawn only to one of the combinations of categories as set forth in PCT Rule 13.2 [1] or to the combination of (1) a product and a process for the manufacture of said product or (2) a product and a process of use of said product.

If an application contains claims to more or less than one of the combinations of categories set forth in PCT Rule 13.2 [1] or a combination set forth in paragraphs (b)(1) or (2) of this section, unity of invention may not be present.

(c) If an international application contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.

(d) Unity of invention will exist where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 [1] or a combination set forth in paragraphs (b) (1) or (2) of this section. If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the inventions to be searched. Any such holding by the examiner will be made of record as a holding of lack of unity of invention.

(e) The inventions recited by the claims of different categories must be related rather than independent inventions.◄

16. Section 1.481 is proposed to be redesignated as §1.476 and to be amended by revising paragraph (a) to read as follows:

[§1.481]►§1.476◄ Determination of unity of invention before the International Searching Authority.

(a) Before establishing the international search report, the International Searching Authority will determine whether the international application complies with the requirement of unity of invention as set forth in PCT Rule 13[1] [and as set forth in §§1.141] and ► §1.475 ◄ [1.146 except as modified below in this section].

* * * * *

17. Section 1.482 is proposed to be redesignated as § 1.477 and to be amended by revising the title and paragraph (b) to read as follows:

[§ 1.482] ►§ 1.477◄ Protest to lack of unity of invention ►before the International Searching Authority◄.

* * * * *

(b) Protest under paragraph [(c)] ►(a)◄ of this section will be examined by the Commissioner or the Comissioner's designee. In the event that the applicant's protest is determined to be justified, the additional fees or a portion thereof will be refunded.

* * * * *

18. A new §1.480 is proposed to be added preceded by a heading to read as follows:

► International Preliminary Examination

§1.480 Demand for international preliminary examination.

(a) On the filing of a Demand and payment of the fees for international preliminary examination (§1.482), the international application shall be the subject of an international preliminary examination. The preliminary examination fee (§1.482(a)(1)) and the handling fee (§1.482(b)) shall be due at the time of filing of the Demand.

(b) The Demand shall be made on a standardized printed form. Copies of the printed Demand forms are available from the Patent and Trademark Office. Letters requesting printed forms should be marked "Box PCT".

(c) If the Demand is made prior to the expiration of the 19th month from the priority date, the provisions of §1.495 shall apply rather than §1.494.

(d) Withdrawal of a proper Demand will not entitle applicant to a refund of the preliminary examination fee or handling fee.◄

19. A new § 1.482 is proposed to be added to read as follows:

►§1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A preliminary examinaiton fee is due on filing the Demand:

(i) Where an international search fee as set forth in §1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of....$370.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of..... $570.00.

(2) An additional preliminary examination fee when required, per additional invention:

(i) Where a supplemental search fee as set forth in §1.445(a)(3) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority $125.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office.....$190.00

(b) The handling fee is due on filing the Demand. Any necessary supplement

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[1] PCT Rule 13—Unity of Invention.

13.1 Requirement.

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

13.2 Claims of different categories.

Rule 13.1 shall be construed as permitting, in particular, one of the following three possibilities:

(i) in addition to an independent claim for a given product, the inclusion in the same international application of an independent claim for a process specially adapted for the manufacture of the said product, and the inclusion in the same international application of an independent claim for a use of the said product, or

(ii) in addition to an independent claim for a given process, the inclusion in the same international application of an independent claim for an apparatus or means specifically designed for carrying out the said process, or

(iii) in addition to an independent claim for a given product, the inclusion in the same international application of an independent claim for a process specially adapted for the manufacture of the product, and the inclusion in the same international application of an independent claim for an apparatus or means specifically desinged for carrying out the process.

13.3 Claims of one and the same category.

Subject to Rule 13.1, it shall be permitted to include in the same international application two or more independent claims of the same category (i.e., product, process, apparatus, or use) which cannot readily be covered by a single generic claim.

13.4 Dependent claims.

Subject to Rule 13.1, it shall be permitted to include in the same international application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

13.5 Utility models.

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rules 13.1 to 13.4, apply in respect of the matters regulated in those Rules the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least two months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.

[1] See footnote to §1.475.

to the handling fee shall be paid directly to the International Bureau.

(35 U.S.C. 6, 376)◄

20. A new § 1.484 is proposed to be added to read as follows:

►§ 1.484 Conduct of international preliminary examination.

(a) An international preliminary examination will be conducted to formulate a non-binding opinion as to whether the claimed invention has novelty, involves an inventive step (is non-obvious) and is industrially applicable.

(b) No international preliminary examination report will be established prior to issuance of an international search report.

(c) No international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority.

(d) The International Preliminary Examining Authority will establish a written opinion if any defect exists or if the claimed invention lacks novelty, inventive step or industrial applicability and will set a non-extendable time limit in the written opinion for the applicant to respond.

(e) If no written opinion under paragraph (d) of this section is necessary, or after any written opinion and the response thereto or the expiration of the time limit for response to such written opinion, an international preliminary examination report will be established by the International Preliminary Authority. One copy will be submitted to the International Bureau and one copy will be submitted to the applicant.

(f) An applicant will be permitted no more than one personal or telephone interview with the examiner, which must be conducted during the non-extendable time limit for response by the applicant to the written opinion. A summary of any such personal or telephone interview must be filed by the applicant as a part of the response to the written opinion or, if applicant files no response, be made of record in the file by the examiner.◄

21. A new § 1.485 is proposed to be added to read as follows:

►§ 1.485 Amendments by applicant during international preliminary examination.

(a) The applicant may make amendments at the time of filing of the Demand and within the time limit set by the International Preliminary Examining Authority for response to any written opinion. Any such amendments must (1) be made by submitting a replacement sheet for every sheet of the application which differs from the sheet it replaces unless an entire sheet is cancelled and (2) include a description of how the replacement sheet differs from the replaced sheet. If an amendment cancels an entire sheet of the international application, that amendment shall be communicated in a letter.

(b) The time limit set for response in a written opinion of the International Preliminary Examining Authority may not be extended.◄

22. A new § 1.487 is proposed to be added to read as follows:

►§ 1.487 Unity of invention before the International Preliminary Examining Authority.

(a) An international application before the International Preliminary Examining Authority will be considered to have unity of invention if the claims are in accordance with PCT Rule 13.[1]

(b) An international application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the combinations of categories as set forth in PCT Rule 13.2 [1] or to the combination of (1) a product and a process for the manufacture of said product or (2) a product and a process of use of said product.

If an application contains claims to more or less than one of the combinations of categories of invention set forth in PCT Rule 13.2 [1] or a combination set forth in paragraphs (b) (1) or (2) of this section, unity of invention may not be present.

(c) If an international application contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.

(d) Unity of invention will exist where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 [1] or a combination set forth in paragraphs (b) (1) or (2) of this section. If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the inventions to be examined. Any such holding by the examiner will be made of record as a holding of lack of unity of invention.

[1] See footnote to § 1.475.

(e) The inventions recited by the claims of different categories must be related rather than independent inventions.◄

23. A new § 1.488 is proposed to be added to read as follows:

►§ 1.488 Determination of unity of invention before the International Preliminary Examining Authority.

(a) Before establishing any written opinion or the international preliminary examination report, the International Preliminary Examining Authority will determine whether the international application complies with the requirement of unity of invention as set forth in § 1.487.

(b) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention, it may:

(1) Issue a written opinion and/or an international preliminary examination report, in respect of the entire international application and indicate that unity of invention is lacking and specify the reasons therefor without extending an invitation to restrict or pay additional fees. No international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority.

(2) Invite the applicant to restrict the claims or pay additional fees, pointing out the categories of invention found, within a set time limit which will not be extended. No international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority, or

(3) If applicant fails to restrict the claims or pay additional fees within the time limit set for response, the International Preliminary Examining Authority will issue a written opinion and/or establish an international preliminary examination report on the main invention and shall indicate the relevant facts in the said report. In case of any doubt as to which invention is the main invention, the invention first mentioned in the claims and previously searched by an International Searching Authority shall be considered the main invention.

(c) Lack of unity of invention may be directly evident before considering the claims in relation to any prior art, or after taking the prior art into consideration, as where a document discovered during the search shows the invention claimed in a generic or linking claim lacks novelty or is clearly obvious, leaving two or more claims joined thereby without a common inventive

concept. In such a case the International Preliminary Examining Authority may raise the objection of lack of unity of invention.►

24. A new § 1.489 is proposed to be added to read as follows:

►§ 1.489 Protest to lack of unity of invention before the International Preliminary Examining Authority.

(a) If the applicant disagrees with the holding of lack of unity of invention by the International Preliminary Examining Authority, additional fees may be paid under protest, accompanied by a request for refund and a statement setting forth reasons for disagreement or why the required additional fees are considered excessive, or both.

(b) Protest under paragraph (a) of this section will be examined by the Commissioner or the Commissioner's designee. In the event that the applicant's protest is determined to be justified, the additional fees or a portion thereof will be refunded.

(c) An applicant who desires that a copy of the protest and the decision thereon accompany the international preliminary examination report when forwarded to the Elected Offices, may notify the International Preliminary Examining Authority to that effect any time prior to the issuance of the international preliminary examination report. Thereafter, such notification should be directed to the International Bureau.◄

25. A new § 1.491 is proposed to be added preceded by a new heading to read as follows:

►National Stage

§ 1.491 Entry into the national stage.

An international application enters the national stage when the applicant has filed the documents and fees required by 35 U.S.C. 371(c) within the periods set forth in § 1.494 or § 1.495.◄

26. A new § 1.492 is proposed to be added to read as follows:

§ 1.491 Entry into the national stage.

The following fees and charges for international applications entering the national stage under 35 U.S.C. 371 are established by the Commissioner under 35 U.S.C. 376:

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)) $150.00
By other than a small entity $300.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2)(i) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.9(f)) $170.00
By other than a small entity $340.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2)(i) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)) $225.00
By other than a small entity $450.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)) $17.00
By other than a small entity $34.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.9(f)) $6.00
By other than a small entity $12.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f)) $55.00
By other than a small entity $110.00

(If the additional fees required by paragraphs (b), (c) and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic national fee or oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.9(f)) $55.00
By other than a small entity $110.00

(f) For filing an English translation of an international application later than 20 months after the priority date (§ 1.494(c)) or for filing an English translation of the international application or of any annexes to the international preliminary examination report later than 30 months after the priority date (§ 1.495(c) and (e)) $26.00

(35 U.S.C. 6, 376)◄

27. A new § 1.494 is proposed to be added to read as follows:

►§ 1.494 Entering the national stage in the United States of America as a Designated Office.

(a) Where no Demand has been filed with an appropriate International Preliminary Examining Authority by the expiration of 19 months from the priority date (see § 1.495), the applicant must fulfill the requirements of PCT Article 22 and 35 U.S.C. 371 within the time periods set forth in paragraphs (b) or (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) The applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 20 months from the priority date (1) a copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; (2) a translation of the international application into the English language, if it was originally filed in another language; (3) the basic national fee (see § 1.492(a)); and (4) an oath or declaration of the inventor (see § 1.497).

(c) The applicant may furnish any required English translation of the international application, the basic national fee and the oath or declaration of the inventor after 20 months but not later than the expiration of 22 months from the priority date. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the basic national fee or the oath or declaration of the inventor later than the expiration of 20 months after the priority date.

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 20 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 20 months from the priority date will be considered to be cancelled.

(e) Verification of the translation of the international application or any other document pertaining to an international application may be required where it is considered

necessary, if the international application or other document was filed in a language other than English.

(f) The documents and fees submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

(g) The time limits set out in paragraphs (b), (c) and (d) of this section may not be extended pursuant to § 1.136 or otherwise.◄

28. A new § 1.495 is proposed to be added to read as follows:

►§ 1.495 Entering the national stage in the United States of America as an Elected Office.

(a) Where a Demand has been filed with an appropriate International Preliminary Examining Authority and not withdrawn by the expiration of 19 months from the priority date, the applicant must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) or (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) The applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date (1) a copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; (2) a translation of the international application into the English language, if it was originally filed in another language; (3) the basic national fee (see § 1.492(a)); and (4) an oath or declaration of the inventor (see § 1.497).

(c) The applicant may furnish any required English translation of the international application, the basic national fee and the oath or declaration of the inventor after 30 months but not later than the expiration of 32 months from the priority date. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 30 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the basic national fee or the oath or declaration of the inventor later than the expiration of 30 months after the priority date.

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 30 months from the priority date will be considered to be cancelled.

(e) A translation into English of any annexes to the international preliminary examination report, if the annexes were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Translations of the annexes which are not received by the expiration of 30 months from the priority date may be submitted within 32 months from the priority date accompanied by the processing fee set forth in § 1.492(f). Translations of the annexes which are not timely received will be considered to be cancelled.

(f) Verification of the translation of the international application or any other document pertaining to an international application may be required where it is considered necessary, if the international application or other document was filed in a language other than English.

(g) The documents submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

(h) The time limits set out in paragraphs (b), (c), (d) and (e) of this section may not be extended pursuant to § 1.136 or otherwise.◄

29. A new § 1.496 is proposed to be added to read as follows:

►§ 1.496 Order of examination of international applications in the national stage.

International applications which have complied with the requirements of 35 U.S.C. 371(c) will be taken up for action based on the date on which such requirements were met. However, unless an express request for early processing has been filed under 35 U.S.C. 371(f), no action may be taken prior to one month after entry into the national stage.◄

30. A new § 1.497 is proposed to be added to read as follows:

►§ 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).

(a) When an applicant of an international application, if the inventor, desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.494 or § 1.495, he or she must file an oath or declaration in accordance with § 1.63.

(b) If the international application was made as provided in § 1.422, § 1.423 or § 1.425, the applicant shall state his or her relationship to the inventor and, upon information and belief, the facts which the inventor is required by § 1.63 to state.◄

31. A new § 1.499 is proposed to be added to read as follows:

►§ 1.499 Unity of invention during the national stage.

(a) An international application which has entered the national stage by meeting the requirements of 35 U.S.C. 371 will be considered to have unity of invention if the claims are in accordance with PCT Rule 13 [1].

(b) An application in the national stage containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the combinations of categories as set forth in PCT Rule 13.2 [1] or to the combination of (1) a product and a process for the manufacture of said product or (2) a product and a process of use of said product.

If an application contains claims to more or less than one of the combinations of categories of invention set forth in PCT Rule 13.2 [1] or a combination set forth in paragraphs (b)(1) or (2) of this section, unity of invention may not be present.

(c) If an application in the national stage contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.

(d) Unity of invention will exist in an application in the national stage where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 [1] or a combination set forth in paragraphs (b)(1) or (2) of this section. If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the elected invention to be examined. Any such holding of an election by the examiner will be made in the form of a restriction requirement which confirms the election made by the presentation of the claims. Such a restriction requirement would be made on the basis

[1] See footnote to § 1.475.

of whether the inventions are independent and distinct. Applicant has the right to traverse such a restriction requirement in the response to the Office action in which the election is indicated.

(e) The inventions recited by the claims of different categories must be related rather than independent inventions.

(f) If the examiner finds that a national stage application lacks unity of invention, the examiner may in an Office action require the applicant in the response to that Office action to elect the invention to which the claims shall be restricted, this official action being called a requirement for restriction. Such requirement may be made before any action on the merits but may be made at any time before the final action at the discretion of the examiner. Review of any such requirement is provided under §§ 1.143 and 1.144.◄

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

December 18, 1986.

[FR Doc. 87-4449 Filed 3-3-87; 8:45 am]

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Wednesday
March 4, 1987

Part VII

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Parts 456 and 458

Residential Energy Conservation Program and Commercial and Apartment Conservation Service Program; Interim Rule and Proposed Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 456

[Docket No. CAS-RM-81-130-A]

Residential Energy Conservation Program

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of interim final amendments to existing rules and public hearing.

SUMMARY: The Department of Energy (DOE) hereby gives notice that it is issuing interim final amendments to the regulations of the Residential Conservation Service (RCS) Program (10 CFR Part 456). These amendments are under the authority of the National Energy Conservation Policy Act. (NECPA), as amended by Title I of the Conservation Service Reform Act (CSRA) (Pub. L. 99-412). The interim final amendments implement changes in law as to which DOE has no significant discretion.

The RCS Program requires large natural gas and electric utilities to perform energy audits of their customers' homes upon request and to provide other related information to their residential customers. These interim final amendments to 10 CFR Part 456 affect both the regulations covering the regular RCS Program and the RCS Federal Standby Plan (FSP). The primary regulatory changes required by the new legislation include the deletion of some program services, the official termination of the program on June 30, 1989, and the addition of flexibility for States and utilities in designing their residential energy conservation programs.

DATES: Effective March 4, 1987. A public hearing will be held on these interim final rules in Washington, DC, beginning at 9:30 a.m., e.s.t., on April 21, 1987, at the location specified below.

Requests to speak must be received no later than 4:00 p.m. on April 20, 1987. Please bring at least seven (7) copies of the oral statement to the hearing.

Written comments (seven copies) on these interim final rules must be received by May 4, 1987, 4:30 p.m., e.s.t., in order to insure their consideration.

ADDRESS: The public hearing will be held in Washington, DC, at: U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW.

All written comments (seven copies) and requests to speak at the public hearing should be addressed to: Office of Conservation and Renewable Energy, Office of Hearings and Dockets, RCS Rule, Docket No. CAS-RM-81-130-A, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202-586-9320).

FOR FURTHER INFORMATION CONTACT:

Harry L. Lane, CE-222, U.S. Department of Energy, Residential and Commercial Conservation Program, Office of Conservation and Renewable Energy, 1000 Independence Avenue. SW., Room 6B-113, Washington, DC 20585, (202) 586-1893.

Neal J. Strauss or Peter A. Greenlee, GC-12, U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW., Room 6B-144, Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Residential Conservation Service (RCS) Program was established by Part 1 of Title II of the National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619, November 9, 1978, as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. No. 96-294, June 30. 1980, 42 U.S.C. 8211 et seq. Implementation of the program was begun November 7, 1979, with the issuance of a final rule (44 FR 64602, November 7, 1979), and continued under a revised final rule (47 FR 27752, June 25, 1982). The RCS Program, as mandated by statute, requires large electric and natural gas utilities to inform their residential customers of the benefits of certain energy conservation and renewable resource measures, and to offer their customers energy audits of their homes. The legislation provides for substantial and detailed State involvement, under State plans approved by the Department of Energy (Department or DOE). Furthermore, the legislation requires implementation of a Federal Standby Plan where States are unwilling or unable to carry out their role under the law.

Today the Department is issuing the interim final amendments to 10 CFR Part 456, the final regulations for the Residential Conservation Service Program, as required by Title I of the Conservation Service Reform Act (CSRA), Pub. L. No. 99-412, for those changes in law which are not discretionary. Key features of the program affected by the Act include: (1) Termination of all State and utility requirements as of June 30, 1989; (2) requirement for one more program announcement; (3) deletion of arranging and listing services; (4) continuation of present State plans with certification; (5) option for utilities to request waivers; (6) requirement that the Department provide technical assistance; and (7) requirement for States, utilities, and the Department to prepare more extensive reports.

This notice of interim final rulemaking complements the notice of proposed rulemaking (published in this separate part of the **Federal Register**) under which DOE is publishing rule amendments concerning changes in law as to which the Department is exercising discretion. Specifically, these changes concern: (1) Provisions covering the option States are given to adopt and implement alternative plans; (2) removal of 10 CFR Part 458 in response to the CSRA repeal of the Commercial and Apartment Conservation Service authority; and (3) provisions for continuation of CACS State plans approved prior to August 1, 1984.

The rule amendments reflect the Department's ongoing effort to meet its legislative responsibilities without imposing unnecessary burdens on affected parties. There are two objectives: (1) To provide a regulatory framework within which States and, to a lesser degree, DOE may carry out their responsibilities under NECPA and CSRA; and (2) to allow States and utilities the maximum flexibility to design an effective residential conservation program consistent with legislative intent.

A section-by-section discussion of the major provisions of the amendments follows. Where necessary, it sets out the statutory basis for the amendments and describes the major differences between these provisions and those contained in the earlier RCS rule. For the convenience of the reader, following the preamble discussion, the Department is publishing the text of the program regulations in their entirety including those provisions which remain unchanged as well as the amended and added sections.

To minimize the administrative burden of those who may have cited the prior regulations in implementing guidelines or other material, DOE is reserving all deleted sections. In this manner, all portions of the rule which

continue in force under CSRA can be found in the same section number as in the previous rule.

II. Major Provisions/Revisions-Interim Final Amendments

The following discussion specifically identifies those provisions which have been changed or added in the interim final rulemaking.

A. Subpart A—General Provisions and Definitions

1. Section 456.101 which deals with "purpose and scope" is amended to reflect the enactment of CSRA.

2. Definitions—§ 456.105. The definitions section remains largely unchanged from the prior RCS rule. The exceptions are discussed in the following paragraphs:

"Alternative State Plan"—This definition is provided pursuant to section 226 of NECPA as added by section 103 of CSRA.

"CSRA"—this term is an acronym for the Conservation Service Reform Act of 1986.

"Eligible Customer"—In accordance with section 215(g) of NECPA, as amended, this definition has been revised to provide that in order for a resident of a multifamily building (5 or more units) to be eligible for an RCS audit, the unit must be individually metered for heating or cooling. This definition also assures there is a reasonable expectation that energy use in the dwelling unit can be addressed by the audit, which evaluates measures for reducing energy used for space conditioning and domestic hot water.

"Residential Building"—As required by section 103(d) of CSRA, the definition of this term has been simplified to cover buildings with heating and/or cooling systems and to exclude buildings covered under section 304(a) of the Energy Conservation and Production Act.

3. Utility and Home Heating Supplier Liability. DOE is deleting 456.106 since it deals with obligations to arrange certain program services which have been repealed under section 102(b) of CSRA. The section number is reserved.

4. Termination—§ 456.107. In accordance with section 105 of CSRA, DOE is adding this section on the termination of the RCS program. Under that section, all authority, including the authority to enforce the prohibitions under section 216, shall terminate effective June 30, 1989.

B. Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

1. Tennessee Valley Authority—§ 456.206. Section 212(c)(4) of NECPA as added by CSRA confirms that in the case of the Tennessee Valley Authority (TVA), the authority otherwise vested in a State regulatory authority or instrumentality of a State is vested in TVA. After considering the language of section 456.206 in light of section 212(c)(4) of NECPA, DOE concluded that no change was required.

2. Temporary Programs—§ 456.207. Section 102(g) of CSRA amends the part of section 218 of NECPA governing the duration of Temporary Programs which may be granted and allows the Secretary to grant or renew Temporary Programs until such time as he may determine. In light of this revision and other repealed program requirements, the definition of temporary program contained in § 456.207(a) is revised to delete the provisions on arranging and listing and to delete the 3-year time constraint on temporary program approval. Subsections 456.207 (b), (c), (d) and (e) are deleted since the deadline for submission of Temporary Program proposals has passed and the material is no longer relevant. Subsection 456.207(b) is added to reflect the Secretary's authority to extend Temporary Programs previously approved. Subsection (f)(2) is deleted and subsection (f) is redesignated (c).

3. Status of Plans Approved Prior to CSRA—§ 456.208. This section is added to the interim final rule in response to provisions of section 102(j)(3) of CSRA, which permit any residential conservation plan approved by the Secretary before August 28, 1986, to continue as an approved plan upon certification by the appropriate State official that: (1) Plans are to continue until June 30, 1989, and one more program announcement is to be made during the intervening time, (2) the definition of residential building is amended to cover buildings with heating and/or cooling systems and to omit new buildings covered under section 304(a) of the Energy Conservation and Production Act, and (3) the program coverage is extended to include multifamily buildings containing five or more units when the dwelling units are individually metered. Under the provisions of CSRA, the certification must be submitted to the Secretary by December 26, 1986, and the changes covered by such certification are effective on February 24, 1987 (180 days from enactment.) If the certification is in the proper form, the approval previously granted will continue under CSRA with no further DOE approval required.

C. Subpart C—Content of State Plans

1. Procedures for enforcing compliance with State Plan—§ 456.303. Reference to the Master Record has been deleted from § 456.303(a) as required by section 102(b) of CSRA (amending section 213 of NECPA).

2. Program announcement—§ 456.305. Section 102(a) of CSRA extended until June 30, 1989, the requirement that utilities announce the availability of audits every two years. However, it provides that this announcement does not have to be made more than once between the enactment of CSRA (August 28, 1986) and termination of the RCS program (June 30, 1989). Covered utilities should note, however, that their obligation to provide audits upon request continues for the duration of the program. The language under this section is revised to reflect these changes. In addition, § 456.305(a)(5), which describes information requirements for the program announcement, is revised to reflect the deletion of arranging and listing services by the utilities from the program and § 456.305(a)(6) is deleted because of the lapsing of Federal energy tax credits. Section 456.305(d) extends the time used in the definition of a new customer to June 30, 1989.

3. Requirements for program audits—§ 456.306. The requirement to provide information on existing Federal energy tax credits is deleted from subsection 456.306(c).

4. Arranging installation and financing—§§ 456.307 and 456.308. In accordance with section 102(b) of CSRA, §§ 456.307 and 456.308, covering the requirements that utilities offer to arrange installation and financing for their customers, are deleted. The section numbers are reserved.

5. Accounting and payment of costs—§ 456.309. The project management activities covered in § 456.309(b)(2)(ii) are revised to reflect the deletion of the arranging and listing requirements.

6. Customer billing, repayment of loans, and termination of service—§ 456.310. Subsections 456.310(b) and 456.310(b)(2)(iii), on repayment of loans, are revised to reflect the deletion of the requirements to arrange financing.

7. Lists of suppliers, contractors, and lenders—§ 456.311. In accordance with section 102(b) of CSRA, § 456.311, containing the regulations governing the maintenance and distribution of the lists of suppliers, contractors and lenders is deleted. The section number is reserved.

8. Home heating suppliers—§ 456.314. Subsections 456.314 (c)(3), (c)(4) and (c)(5) on waiver of requirements are deleted to reflect the deletion of the arranging and listing requirement.

9. Reporting and recordkeeping—§ 456.316. The reporting requirements are minimally adjusted to reflect the deletion of the arranging and listing requirements in (b)(1)(A), and the reporting requirement has been extended to June 30, 1989. While the regulatory language has not changed, DOE is charged by section 104 of CSRA with significantly expanded responsibilities for reporting and technical assistance. In order to carry out these responsibilities, consideration is being given to seeking information from States when providing guidance under the provisions of subsection 456.316(d). Such information might include the number of residential buildings and occupants receiving benefits, details about the number of eligible customers, numbers of announcements, audit requests received, low and moderate income households served, estimated actual and predicted energy savings resulting from activities under the State plan, the sources of such savings, the energy savings potential of additional residential measures, information concerning related program activities intended to conserve energy in State residences (including a brief description of who provides the service, how it is carried out, and the results achieved), information concerning State or utility studies covering technical or behavioral issues about delivery of energy conservation services to the residential sector (including major findings and how to obtain copies). CSRA does not define the terms "low income" and "moderate income". In future reporting guidance, DOE intends to interpret "low income" to include households to be those having less than $15,000 annual income and "moderate income" households to be those having between $15,000 and $30,000 annual income. In arriving at these ranges, consideration was given first to the eligibility guidelines for the Department's Weatherization Assistance Program for Low Income Persons (10 CFR Part 440). These guidelines are published annually, and are based on poverty level income guidelines issued by the Office of Management and Budget (OMB) and the Department of Health and Human Services. These guidelines provide for complex determination of low income eligibility, and the degree of complexity is unwarranted merely for reporting the results of activities under 10 CFR Part 456. The Department next looked to its Energy Information Administration, and found it has been using $15,000 per year as the delimiting level for "low" income for its analyses. The Department plans to use this level for simplicity and consistency. There was no comparable precedent for "moderate", but the range chosen is reasonable based on Census data about household income which shows that households earning between $15,000 and $30,000 are in the middle of the range of household incomes nationally and that households with incomes in excess of $30,000 are a minority of households.

The Department invites comments on the items which it proposes to call for in giving reporting guidance. Specifically, the Department would like comment on the availability of information at the State level and the level of interest in other States' program results embodied in such information.

D. Subpart D—Nonregulated Utility Plans

Content of plans—§ 456.406. Subsection (b)(3) on "utilizing State services" is removed to reflect the deletion of the listing requirements. Subsection (b)(4) is renumbered to (b)(3).

E. Subpart E—Supply, Installation, and Financing by Utilities

Section 106 of CSRA requires two significant changes in DOE's handling of supply, installation and financing activities by public utilities. First, section 106(a) states that utility exemptions obtained under § 456.505 (a) and (b) would no longer apply unless the Secretary determines that the exempted activity was being carried out during the 12-month period ending June 1, 1985. Second, section 106(b) shifts the authority for enforcing utilities' compliance with consumer protection standards relating to waived or exempted activities from the Secretary of Energy to State regulatory authorities, pursuant to State law, or to the Federal Trade Commission (FTC), pursuant to section 216(h) of NECPA as amended.

1. Prohibition—§ 456.502. This section is revised to reflect the transfer of authority under section 106(b) of CSRA from DOE to a State regulatory authority, to the extent permitted by State law, or the FTC to take action upon a determination that a utility is charging unfair or unreasonable prices or rates of interest or engaging in unfair methods of competition or unfair or deceptive acts or practices with respect to the supply and installation of residential energy conservation measures. The amended language of subsections (b), (b)(1), and (b)(2) reflects the legislated changes.

2. Exemption for utility subcontractor supply and installation—§ 456.504. In response to CSRA repeal of listing and arranging requirements, § 456.504(a)(1) is deleted and the remaining subsections renumbered and subsection (b)(3) is amended.

3. Exemption for existing supply and installation—§ 456.505. Subsection (c) is added to reflect the requirement under section I06(a) of CSRA that a utility which was supplying or installing energy conservation or renewable resource measures, has broadly advertised that it would supply or install, or had completed substantial preparation for supplying or installing such measures on or by November 9, 1978, must recertify to DOE that it was in fact carrying out such supply or installation activities during the year preceding June 1, 1985, in order to retain its exemption from the general prohibition against such activities. Documentation could be tear sheets of newspaper advertisements, copies of letters to target audiences, or other proof the program was active in the specified time period. Each such exemption currently in effect will be terminated if such documentation cannot be or is not provided to the Department by July 1, 1987.

F. Subpart F—Federal Standby Authority and Enforcement Provisions

This subpart includes a non-discretionary revision in § 456.602(c) to reflect the expanded coverage of Federal standby authority to include alternative State plans as required by section 226(f)(2) of NECPA, as amended by section 103 of CSRA.

G. Subpart J—Residential Conservation Service (RCS) Federal Standby Plan

1. Utility and home heating supplier liability—§ 456.1004. In accordance with section 102(b) of CSRA, § 456.1004, addressing the relief from liability a utility might incur from arranging installations or financing under the Federal Standby Plan, has been deleted from this subpart. The section number has been reserved.

2. Scope of benefits—§ 456.1005. Since the benefits listed under this section are necessarily tied to the utility arranging and listing provisions which were repealed by section 102(b) of CSRA, these regulations have been deleted from this subpart. The section number has been reserved.

3. Program announcement—§ 456.1006. The required informational content of the program announcement

has been revised to reflect the deletion of arranging and listing requirements in § 456.1006(a)(4). The requirement of subsection (a)(6) to explain Federal tax credits has been deleted. The utility responsibility toward new customers has been extended until June 30, 1989, and § 456.1006(c) reflects this change. In subsection (d), material relating to listed lenders is removed.

4. Requirements for program audits—§ 456.1007. This section has been revised to reflect the deletion of arranging and listing requirements, the deletion of the provisions concerning benefits, and the revised provisions concerning utility petitions for waiver of requirements under the Federal Standby Plan.

5. Arranging installation and financing—§§ 456.1008 and 456.1009. In accordance with section 102(b) of CSRA, the regulations contained in §§ 456.1008 and 456.1009, governing the requirements that utilities offer to arrange installation and financing of recommended energy conservation measures for their customers, have been deleted from this subpart. The section numbers have been reserved.

6. Accounting and payment of costs—§ 456.1010. The project management activities covered in subsection (b)(2) have been revised to reflect the deletion of the arranging and listing requirements.

7. Customer billing, repayment of loans, and termination of service—§ 456.1011. Subsection (b) on repayment of loans has been revised to reflect the deletion of the requirement to arrange financing.

8. List of suppliers, contractors, and lenders—§ 456.1012. In accordance with section 102(b) of CSRA, the regulations in § 456.1012, governing the maintenance and distribution of the lists of suppliers, contractors and lenders, have been deleted from this subpart. The section number has been reserved.

9. Home heating suppliers—§ 456.1015. Subsections (b)(iv) through (b)(vi) have been removed to reflect the deletion of the arranging and listing requirements.

10. Supply, installation and financing by utilities—§ 456.1017. The section has been revised to reflect the deletion of the listing requirements by removing (b)(1)(i) and renumbering the remaining subsections.

11. Complaint processing procedures—§ 456.1018. This section has been revised in subsections (a) and (c) to reflect the deletion of the provisions concerning arranging and listing services.

12. Reporting and recordkeeping—§ 456.1020. The reporting requirements in subsection (a) have been revised to reflect the CSRA program termination date of June 30, 1989, and deletion of the arranging and listing requirements. However, please note the comments above about DOE's increased responsibilities in this, area and how these might be partially addressed by collecting information from States in connection with § 456.316 also apply here.

13. Waivers—§ 456.1023. A new section 456.1023 is inserted in light of the newly enacted provisions on waivers for regulated and nonregulated utilities under section 227 of NECPA. The provisions covering the waiver process are included under subpart L.

H. Subpart L—Utility Waiver Process

Section 227 of NECPA, as amended, allows a covered utility to request a waiver from the Secretary from any provision of this part or any provision of a State residential energy conservation program under this part. This subpart identifies the responsibilities of States and covered utilities under the utility waiver process. For purposes of this subpart, the term residential energy conservation program means any program carried out by a utility for the purpose of (1) increasing the efficiency with which energy is consumed in residential buildings served by the utility; or (2) utilizing solar or other forms of renewable energy in residential buildings served by the utility. This subpart identifies the responsibilities of States and covered utilities under the utility waiver process.

1. Coverage—§ 456.1202. All regulated and nonregulated covered utilities under a State plan, an alternative State plan, a temporary program, or under Federal standby are eligible to request a waiver under this subpart. DOE understands the CSRA provisions to allow utilities to request waivers from required activities under State plans and alternative State plans and also propose substitute activities not covered by such plans, or both.

2. Approval process—§ 456.1203. The appropriate State official must find that a waiver request meets the required criteria in order for the waiver to be approved by the Secretary. The authority for approval by the Secretary stems from language in CSRA which states that the Secretary shall approve a request for a waiver by a utility if certain criteria are met. In addition to adequate consumer protection procedures, the criteria require that if a waiver is approved, the implemented program will result in energy savings equal to or greater than what would be achieved under a "properly implemented" RCS plan. The CSRA Conference Report (H. Rep. 99–787) expresses the conferees' concern that a waived program may be compared to an RCS program that has not been "properly implemented", resulting in minimal savings of energy. To avoid such occurrences, the conferees intend that, upon waiver application, the State should examine the currently implemented RCS plan to see if it has been properly implemented. The State may take into consideration such factors as methods used by the utility for: marketing the program to different groups, auditor training, predicting retrofit performance, conducting the audits, delivering audit results, following up on audits, and delivering related services. DOE recommends the use of public hearings as a tool to assist in making determinations with respect to utility waiver requests. It has been our experience that such hearings generally produce ideas and considerations, that would not have otherwise been given sufficient consideration. For example, if a utility is seeking a waiver to allow it to supply or install energy conservation measures, public notice and review would provide those in the small business community an opportunity to evaluate and make known the effect of granting such a waiver on their business. If in the course of its consideration of the request, the State concludes the utility's implementation of the program has been less effective than it ought to have been, the request would not be forwarded to DOE. Also, until a waiver request has been favorably acted on, the utility is responsible for continuing its activities under the applicable existing plan.

3. Reporting requirements—§ 456.1204. The reporting requirements included under this section follow the requirements of section 225(b) of NECPA as added by CSRA, and are necessary as a basis for the revocation of a waiver under 456.1205. Reviewers should note that utilities' reporting responsibilities under the applicable plan continue; the reporting discussed here is in addition to that.

4. Revocation Procedures—§ 456.1205. Any waiver granted to a regulated utility or a nonregulated utility covered by a State residential energy conservation plan will be revoked by the Secretary upon the request of the Governor of the State in which the utility provides service. The Governor may request the revocation of a waiver if the savings expected as a result of the waiver are less than the savings in the year prior to the waiver approval or if the consumer protection procedures are no longer adequate. A hearing on the performance of the utility's residential

energy conservation programs is necessary (and DOE recommends such hearing be public) before a request for revocation is made. A statement regarding the hearing and summary of the findings leading up to the request must be submitted to the Secretary as part of the revocation request.

III. Regulatory Impact Analysis

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule", as defined by section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for rules which fall within that definition.

The principal impact of the interim final rule will be to decrease the costs of administering and complying with RCS plans. The interim final rule is not likely to result in: (1) An annual effect on the economy of § 100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. DOE has concluded therefore that the interim final rule is not a "major rule". The interim final rule makes non-discretionary changes in the existing RCS rule which are mandated by law. These changes directly and mainly impact on States and utilities. The impact on small businesses, if any, will be indirect and is not likely to be widespread throughout the Nation. To the extent that small businesses have complaints about alleged anti-competitive activities, CSRA and other law provide for remedies outside the scope of DOE regulatory authority.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires, in part, that an agency prepare a regulatory flexibility analysis for any rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register**. The majority of the revisions in this rule would impact mainly upon the States and utilities. Elimination of the above-described program services and the addition of provisions for granting utility waivers upon State recommendation are expected to have minimal, indirect impacts in a relatively small number of cases. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that the interim final rule will not have a significant impact on a substantial number of small entities.

V. Interim Final Effect of Rule Amendments

Although the Department will respond to oral and written comments on this notice in the notice of final rulemaking, the Department is not holding a hearing or providing opportunity to comment prior to giving interim final effect to the rule amendments contained in this notice. The reason for the Department's action in this regard is that the amendments given interim final effect today involve non-discretionary changes in the regulations as to which there are neither substantial issues of fact or law nor relevant substantial impacts on the Nation or large numbers of persons of which the Department could take account consistent with CSRA. Moreover, issuance of interim final rules is the only practical way to comply with the CSRA requirement to issue rules by February 24, 1987, to amend existing regulations based on statutory provisions of NECPA which have been altered or eliminated.

VI. Environmental Impacts

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), DOE prepared an Environmental Impact Statement for the entire Residential Conservation Service Program (DOE/EIS–0050). The notice of availability was published in the **Federal Register** on November 7, 1979. The subject matter of this interim final rulemaking is within the scope of this programmatic Environmental Impact Statement and the impacts of the interim rule were adequately addressed in the EIS. Copies may be obtained by writing: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

VII. Paperwork Reduction Act

The reporting and recordkeeping requirements contained in §§ 456.316 and 456.1020 have been submitted to the Office of Management and Budget for review and clearance under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

VIII. Comment and Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments, with respect to the interim final procedures, requirements and criteria. Comments should be submitted to the Office of Hearings and Dockets/CE address indicated in the addresses section of this notice and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Conservation Service Program. Docket No. CAS–RM–81–130–A." Seven copies should be submitted. All written comments must be postmarked by May 4, 1987, to ensure consideration. All written comments received on the interim final rule will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

B. Hearing Procedures

The time and place of the public hearing are indicated in the date and addresses sections of this notice. DOE invites any person who has an interest in the interim final rulemaking issued today, or who is representing a group or class of persons that has an interest in the interim final rulemaking, to make a request for an opportunity to make an oral presentation. Such a request should be directed to the Office of Hearings and Dockets/CE address indicated in the addresses section of this preamble, and must be received by the date indicated in the dates section of this notice. A request should be labeled both on the document and on the envelope "Residential Conservation Service Program, Docket No. CAS–RM–81–130–A." The person making the request should briefly describe the interest concerned and provide a telephone number where he or she may be contacted during the day.

C. Conduct of Hearings

DOE reserves the right to arrange the schedule of presentations to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes or based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer to chair the hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons

presenting statements. Any participant who wishes to ask a question at the hearing may submit the question, in writing, at the registration desk. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made, and the entire record of the hearing, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

List of Subjects in 10 CFR Part 456

Energy audits, Energy conservation, Housing, Insulation, Reporting and recordkeeping requirements, Utilities.

Issued in Washington, DC, February 25, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

1. 10 CFR Part 456 Chapter III is amended by revising Part 456 to read as follows:

PART 456—RESIDENTIAL ENERGY CONSERVATION PROGRAM

Subpart A—General Provisions and Definitions

Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

Subpart C—Content of State Plans

Subpart D—Nonregulated Utility Plans

Subpart E—Supply, Installation, and Financing by Utilities

Subpart F—Federal Standby Authority and Enforcement Provisions

Subparts G–I—[Reserved]

Subpart J—Residential Conservation Service Federal Standby Plan

Subpart K—Alternative State Plans [Reserved]

Subpart L—Utility Waiver Process

Appendix I to Part 456—Program Measures.

Appendix II to Part 456—Prototypical House Assumptions.

Appendix III to Part 456—Multifamily Applicability Criteria and Procedures for Determining Usage Cutoff Levels.

Authority: Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 et seq. (42 U.S.C. 8211 et seq.), as amended by Title V, Subtitle B of the Energy Security Act, Pub. L. 96–294, 94 Stat. 611 et seq. and Title I of the Conservation Service Reform Act of 1986, Pub. L. 99–412; Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 et seq. (42 U.S.C. 7101 et seq.).

Subpart A—General Provisions and Definitions

§ 456.101 Purpose and scope.

This part contains the regulations of the Residential Conservation Service (RCS) Program. This program is mandated by Part 1 of Title II of the National Energy Conservation Policy

Act (NECPA), Pub. L. 95–619 as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. 96–294, and by Title I of the Conservation Service Reform Act of 1986 (CSRA), Pub. L. 99–412.

§ 456.102 Petitions concerning conflicts of laws.

(a) A utility filing a petition to determine whether the utility—

(1) Is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA, or

(2) Is required or permitted by a State or local law or regulation to take any action prohibited by NECPA, shall file the petition with the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any such petition shall contain a copy of the applicable State or local laws or regulations and a description of the action the utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(b) The Assistant Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State, and such other persons as the Assistant Secretary deems appropriate. Any such person or entity may file comments with the Assistant Secretary with respect to such petition within 30 days of receipt of the notice.

(c) If the Assistant Secretary determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or permits or requires a utility to take any action prohibited by NECPA, the Assistant Secretary shall issue an order superseding such State or local laws or regulations to the extent the laws or regulations are inconsistent with NECPA. Such an order shall be effective with respect to all utilities otherwise subject to such State or local laws or regulations and shall moot any outstanding petitions under this section by such utilities.

§ 456.103 Appeals and other relief.

(a) Any person seeking relief from the application of this rule may submit a request for relief in accordance with Subpart R of 10 CFR Part 205. When applicable, such a request shall contain the approval of the Governor.

(b) Any person aggrieved by any order, finding, or determination made under §§ 456.102, 456.502–456.505, or 456.507 may appeal that order, finding, or determination in accordance with Subpart H of 10 CFR Part 205. Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under Subpart H of 10 CFR Part 205 and an order granting or denying the appeal has been issued.

§ 456.104 List of covered utilities.

(a) Before the beginning of each calendar year, the Department of Energy shall publish in the **Federal Register** a list of all covered utilities for that calendar year.

(b) Not later than 60 days after publication of the list, each State Regulatory Authority shall forward to the Assistant Secretary a copy of such list with designations as to which covered utilities on the list are under the jurisdiction of that Regulatory Authority.

(c) The publication of the list is for informational purposes, and the failure to include a covered utility on the list or the failure of a State Regulatory Authority to designate a covered utility subject to its jurisdiction in no way affects the duties of or requirements upon such covered utility under these rules or any plan promulgated pursuant to these rules.

§ 456.105 Definitions.

For purposes of this part—

(a) *Alternative State Plan.* The term "alternative State plan" means a plan developed pursuant to Subpart K of this part.

(b) *Assistant Secretary.* The term "Assistant Secretary" means the Assistant Secretary for Conservation and Renewable Energy of the U.S. Department of Energy.

(c) *Covered Utility.* The term "covered utility" means in any calendar year a public utility which during the second preceding calendar year had either—

(1) Sales of natural gas for purposes other than resale which exceeded 10 billion cubic feet, or

(2) Sales of electric energy for purposes other than resale which exceeded 750 million kilowatt-hours.

(d) *CSRA.* The term "CSRA" means Title I of the Conservation Service Reform Act of 1986, Pub. L. 99–412, which amended Part 1 of Title II of the National Energy Conservation Policy Act (NECPA).

(e) *Eligible Customer.* The term "eligible customer" means a person who owns or occupies a residential building or dwelling unit therein and receives a bill or bills based on individually metered energy use from a covered utility or participating home heating supplier for energy used in such residential building or individual dwelling unit, except that—

(1) The owner of the common area within a residential building containing five or more dwelling units shall not be treated as an eligible customer for the purpose of the common area; and

(2) This definition shall not apply to any building which has five or more dwelling units and which does not contain an individual meter for heating or cooling energy sources used in such dwelling unit.

(f) *Energy Conservation Measures.* The term "energy conservation measures" means the following measures in a residential building—

(1) *Caulking.* The term "caulking" means pliable materials used to reduce the passage of air and moisture by filling small gaps which may include (i) at fixed joints on a building, (ii) under baseboards inside a building, (iii) in exterior walls at electric outlets, (iv) around pipes and wires entering a building, and (v) around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

(2) *Weatherstripping.* The term "weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

(3) *Furnace Efficiency Modifications.* The term "furnace efficiency modification" means—

(i) *Replacement Furnaces or Boilers.* The term "replacement furnaces or boilers" means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation, or reduced heat losses.

(ii) *Furnace Replacement Burner (Oil).* The term "furnace replacement burner (oil)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which, because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

(iii) *Flue Opening Modification (Vent Damper).* The term "flue opening modification (vent damper)" means an automatically operated damper installed in a gas-fired furnace which—

(A) Is installed downstream from the drafthood; and

(B) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

(iv) *Intermittent Pilot Ignition Devices (IID).* The term "intermittent pilot ignition device (IID)" means a device which, when installed in a gas-fired

furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

(4) *Replacement Central Air Conditioner.* The term "replacement central air conditioner" means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

(5) *Ceiling Insulation.* The term "ceiling insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof. The term "ceiling insulation" also includes such material installed on the exterior of the roof.

(6) *Wall Insulation.* The term "wall insulation" means a material, primarily designed to resist heat flow, which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

(7) *Floor Insulation.* The term "floor insulation" means a material, primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

(8) *Duct Insulation.* The term "duct insulation" means a material, primarily designed to resist heat flow, which is installed on a heating or cooling duct in an unconditioned area of a building.

(9) *Pipe Insulation.* The term "pipe insulation" means a material, primarily designed to resist heat flow, which is installed on a heating or cooling pipe in an unconditioned area of a building.

(10) *Water Heater Insulation.* The term "water heater insulation" means a material, primarily designed to resist heat flow, which is suitable for wrapping around the exterior surface of the water heater casing.

(11) *Storm Window.* The term "storm window" means a window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone.

(12) *Thermal Window.* The term "thermal window" means a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

(13) *Storm Door.* The term "storm door" means a second door, installed outside or inside a prime door, creating an insulating air space.

(14) *Thermal Door.* The term thermal door" means—

(i) A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material; or

(ii) A prime exterior door with an R-value of at least 2.

(15) *Heat Reflective and Heat Absorbing Window or Door Material.* The term "heat reflective and heat absorbing window or door material" means a window or door glazing material with exceptional heat reflecting or heat absorbing properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat reflecting or heat absorbing properties.

(16) *Devices Associated with Electric Load Management Techniques.* The term "devices associated with electric load management techniques" means devices that reduce the maximum kilowatt demand on an electric utility and which are either—

(i) Part of a radio, ripple or other utility controlled load switching system on the customer's premises;

(ii) Clock-controlled load switching devices on major appliances;

(iii) Interlocks, and other load actuated, load-limiting devices; or

(iv) Energy storage devices with control systems.

(17) *Clock Thermostat.* The term "clock thermostat" means a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed and which uses—

(i) A temperature control device for interior spaces incorporating more than one temperature control level, and

(ii) A clock or other automatic mechanism for switching from one control level to another.

(g) *Energy Conserving Practices.* The term "energy conserving practices" means low or no cost practices designated by the Governor in a State Plan which (a) save energy, (b) do not require the installation of energy conservation or renewable resource measures, and (c) do not adversely impact the RCS Program. Such practices may include, but are not limited to—

(1) Furnace Efficiency Maintenance and Adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to 80 °F. on gas or oil forced-air furnaces, and turning off the pilot light on a gas furnace during the summer;

(2) Nighttime Temperature Setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55, during sleeping hours;

(3) Reducing Thermostat Settings in Winter, which means-limiting the maximum thermostat control setting for the furnace to 68 °F. during the heating season;

(4) Raising Thermostat Setting in Summer, which means setting the thermostat control for an air conditioner to 78 °F. or higher during the cooling season;

(5) Water Flow Reduction in Showers and Faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute;

(6) Reducing Hot Water Temperatures, which means manually setting back the water heater thermostat setting to 120 °F., and reducing the use of heated water for clothes washing;

(7) Reducing Energy Use When a Home is Unoccupied, which means reducing the thermostat setting to 55 °F. when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and turning a water heater off when a home is vacant for two days or longer;

(8) Plugging Leaks in Attics, Basements, and Fireplaces, which means (i) installing scrap insulation or other pliable materials in gaps around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, (ii) installing fireproof material to plug any holes around any damper in a fireplace, and (iii) adding insulation to an attic or basement door;

(9) Sealing Leaks in Pipes and Ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacing washers in leaking water valves; and

(10) Efficient Use of Shading, which means using shades or drapes (i) to

block sunlight from entering a building in the cooling season, (ii) to allow sunlight to enter during the heating season, and (iii) to cover windows tightly at night during the heating season.

(h) *ESA.* The term "ESA" means Subtitle B of Title V of the Energy Security Act, Pub. L. 96–294, which amended Part 1 of Title II of the National Energy Conservation Policy Act (NECPA).

(i) *Governor.* The term "Governor" means the Governor or chief executive officer of a State or his designee; or, if a State agency is specifically designated by State law to carry out any function under the RCS Program, then the term "Governor" means that State agency for that function.

(j) *Home Heating Supplier.* The term "home heating supplier" means a person who sells or supplies home heating fuel (including No. 2 heating oil, kerosene, butane, and propane) to an eligible customer for consumption in a residential building.

(k) *Measure Warranties.* (1) The term "manufacturer's measure warranty" means, at a minimum, a written warranty by the manufacturer of an energy conservation or renewable resource measure that the eligible customer for whom the measure is installed, the installation contractor who installs the measure, and the seller of the measure shall be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials for those measures found within one year from the date of installation to be defective due to materials, manufacture, or design;

(2) The term "supplier's measure warranty" means, at a minimum, a written warranty equivalent to that referred to in paragraph (1) of this definition provided by the supplier of an energy conservation or renewable resource measure to persons who purchase the measure from the supplier;

(3) The term "contractor's measure warranty" means, at a minimum, a written warranty by a contractor installing an energy conservation or renewable resource measure that any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

(l) *NECPA.* The term "NECPA" means Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95–619, as amended by Subtitle B of Title V of the Energy Security Act (ESA) and by Title I of the Conservation Service Reform Act of 1986 (CSRA).

(m) *Nonregulated Utility.* The term "nonregulated utility" means a public utility which is not a regulated utility.

(n) *Nonregulated Utility Plan.* The term "nonregulated utility plan" means a plan developed pursuant to Subpart D of this part.

(o) *Participating Home Heating Supplier.* The term "participating home heating supplier" means a home heating supplier that has elected to participate in a State Plan which includes home heating suppliers.

(p) *Program Announcement.* The term "program announcement" means the RCS program information and offer of services required to be provided by a covered utility or participating home heating supplier to each eligible customer by § 456.305.

(q) *Program Audit.* The term "program audit" means an audit in which the estimates of costs and energy savings are based on an adequate assessment, including actual measurements or inspections, as appropriate, performed on-site by the auditor, of the building shell and of the space heating, space cooling, and water heating equipment of the residence of an eligible customer. In the case of residential buildings containing more than four dwelling units, the program audit may mean an audit in which the estimates of costs and energy savings are based on a sampling of the types of units in the building.

(r) *Program Information.* The term "program information" means the program announcement and any information dissemination activities related to an RCS program.

(s) *Program Measures.* The term "program measures" means those energy conservation or renewable resource measures which the Assistant Secretary has by rule determined to be appropriate by climatic region and fuel use category and which are found in Appendix I to this part, or which are determined to be program measures by a Governor in accordance with § 456.315(b).

(t) *Public Utility.* The term "public utility" means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both to residential customers for use in residential buildings.

(u) *Rate.* The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge or classification,'and any contract pertaining to the sales of electric energy or natural gas.

(v) *Ratemaking Authority.* The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(w) *RCS Program.* The term "RCS Program" (Residential Conservation Service Program) means the program required to be implemented by covered utilities pursuant to an approved State Plan, an alternative State plan, an approved Nonregulated Utility Plan, or a Federal Standby Plan.

(x) *Regulated Utility.* The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

(y) *Renewable Resource Measure.* The term "renewable resource measure" means the following measures in or with respect to a residential building—

(1) *Solar Domestic Hot Water Systems.* The term "solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermostat hot water heaters.

(2) *Active Solar Space Heating Systems.* The term "active solar space heating systems" means equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer devices, such as fans or pumps.

(3) *Combined Active Solar Space Heating and Solar Domestic Hot Water System.* The term "combined active solar space heating and solar domestic hot water system" means equipment designed to perform both of the functions described in paragraphs (1) and (2) of this definition.

(4) *Wind Energy Devices.* The term "wind energy devices" means equipment that uses wind energy to produce energy in any form for residential purposes.

(5) *Replacement Solar Swimming Pool Heaters.* The term "replacement solar swimming pool heaters" means a device which uses the sun's energy solely for the purpose of heating swimming pool water and which displaces the use of a swimming pool heater using electricity, gas or other fossil fuels.

(z) *Residential Building.* The term "residential building" means any building used for residential occupancy which—

(1) Is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply; and

(2) Has a system for heating or cooling, or both.

(aa) *Secretary.* The term "Secretary" means the Secretary of Energy.

(bb) *State.* The term "State" means a State, the District of Columbia and Puerto Rico.

(cc) *State Agency.* The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(dd) *State Plan.* The term "State Plan" means a plan developed pursuant to Subpart B and C of this part.

(ee) *State Regulatory Authority.* The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sales of electric energy or natural gas by any public utility (other than by such State agency), except that in the case of a public utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(ff) *TVA.* The term "TVA" means the Tennessee Valley Authority.

§ 456.106 [Reserved]

§ 456.107 Termination.

Effective June 30, 1989, in accordance with Section 228 of NECPA, all authority, including the authority to enforce any prohibitions, under this part shall terminate, except that such expiration shall not affect any action or proceeding based upon an act committed prior to midnight June 30, 1989, and not finally determined by such date.

Subpart B—Preparation, Submission, and Approval of State Plans Temporary Programs

§ 456.201 Scope.

This subpart identifies the responsibilities of the States and the Tennessee Valley Authority (TVA) in the preparation and submission of State Plans; the procedures for approval of the State Plan by the Assistant Secretary; and the procedures for submission and criteria for approval of Temporary Programs.

§ 456.202 Initial submission.

If a State intends to submit a State Plan, the Governor shall submit by January 6, 1980, a list of nonregulated covered utilities, if any, operating in the State which will be subject to the State Plan.

§ 456.203 Notice, comment, and public hearing.

Prior to submission of the State Plan to the Assistant Secretary for approval, the Governor shall provide for meaningful public notice, an opportunity for public comment, and public hearing.

§ 456.204 Procedures for submission and approval of State Plans.

(a) *Who shall submit.* Three (3) copies of the proposed State Plan shall be submitted to the Assistant Secretary by either:

(1) The Governor of the State; or

(2) The TVA with respect to all covered utilities over which the TVA has ratemaking authority and, in the discretion of TVA, with respect to any covered utility over which the TVA and another State Regulatory Authority have ratemaking authority.

(b) *Time for submission.* The proposed State Plan shall be submitted by June 4, 1980, unless the time for submission has been extended by the Assistant Secretary, upon request of the Governor, for good cause shown.

(c) *Approval.* If a proposed State Plan meets the criteria of Subparts B and C of this part, the Assistant Secretary shall approve it within 90 days of the date the proposed State Plan was submitted.

(d) *Disapproval.* (1) If a proposed State Plan does not meet the criteria of Subparts B and C of this part, the Assistant Secretary shall, within 90 days of the date the proposed State Plan was submitted, disapprove the proposed State Plan in writing and shall specify in writing the grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed State Plan, or such longer period as the Assistant Secretary may determine, for good cause shown, the Governor may submit another proposed State Plan.

(e) *Amendments.* The Governor may submit proposed amendments to an approved State Plan at any time. The Assistant Secretary shall approve or disapprove a proposed amendment within 90 days of receipt of the proposed amendment.

§ 456.205 Home heating suppliers.

If the Governor submits a plan applicable to home heating suppliers in the State, it shall be a part of the State Plan and shall be submitted in accordance with the procedures of this subpart applicable to the submission of the State Plan.

§ 456.206 Tennessee Valley Authority (TVA).

In this part, except as otherwise specified, references to the Governor shall be deemed to refer also to the TVA and references to the State Plan shall be deemed to refer also to the TVA Plan. References in this part to a State as a geographic area shall, with respect to the TVA Plan, be referenced to the service areas of the covered utilities subject to the TVA Plan. Reference in this part to a State as a governmental entity (other than references to State laws or regulations) or to any State Agency or officer shall be deemed to refer also to the TVA.

§ 456.207 Temporary Programs.

(a) *Definition of Temporary Program.* A Temporary Program is a plan or a part of a State Plan which exempts in whole or in part for a specified period, to be determined by the Assistant Secretary, one or more utilities from one or more of the following provisions—

(1) The requirements for preparing and distributing the Program Announcement described in § 456.305;

(2) The requirements for offering and performing, audits described in § 456.306;

(3) The requirements concerning accounting and payment of costs described in § 456.309;

(4) The requirements regarding billing of costs, repayment of loans, and termination of service described in § 456.310; and

(5) The prohibition against supplying and installing by covered utilities described in § 456.502(a).

(b) *Continuation.* Temporary programs approved by the Secretary prior to August 28, 1986, may be extended until such date as determined by the Secretary.

(c) *Federal Standby Authority.* The Federal Standby Authority described in Subpart F shall not be exercised with respect to a covered utility which either—

(1) Is subject to an approved Temporary Program; or

(2) Was subject to an approved Temporary Program which has terminated and such covered utility will be subject, within a reasonable time to be determined by the Assistant Secretary, to an adequately implemented approved State Plan or Nonregulated Utility Plan.

§ 456.208 Status of Plans Approved Prior to CSRA.

Any residential energy conservation plan approved by the Secretary before August 28, 1986, shall continue as approved, provided certification is made to the Secretary that—

(a) The plan will continue until June 30, 1989, and one more program announcement will be made;

(b) The definition of "residential building" will be amended to "any building used for residential occupancy which is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply and which has a system for heating or cooling, or both; and

(c) Program coverage will include multi-family buildings containing five or more units when the dwelling units are individually metered for all energy sources.

Subpart C—Content of State Plans

§ 456.301 Scope.

This subpart prescribes the minimum requirements for the content of State Plans. The State may include additional information and provide additional requirements in the State Plan for the RCS Program if such information and requirements are not specifically prohibited by these rules or by any applicable law or regulation. All references in this subpart to covered utilities apply to regulated and nonregulated covered utilities subject to the State Plan.

§ 456.302 Coverage of State Plan.

(a) *Regulated utilities.* All regulated utilities providing utility service in a State which meet the definition of "covered utility" in § 456.105 shall be subject to the State Plan and shall be identified in the State Plan.

(b) *Nonregulated utilities.* The State Plan shall identify which nonregulated covered utilities, if any, are covered under the State Plan.

(c) *Home heating suppliers.* The State Plan shall state whether it includes an RCS Program for home heating suppliers.

(d) *Temporary Programs.* The State Plan shall identify any covered utilities for which a request for a Temporary Program provision has been submitted, and describe or attach such provision for each such utility.

§ 456.303 Procedures for enforcing compliance with State Plan.

(a) For the purposes of this section the term "RCS participant" means any person or entity directly governed by the State Plan, including covered utilities, and participating home heating suppliers.

(b) The State Plan shall require each RCS participant to comply with the State Plan.

(c) The State Plan shall contain adequate procedures for enforcing compliance with the State Plan by each RCS participant.

§ 456.304 State monitoring of utility supply, installation, and financing.

The State Plan shall—

(a) Contain procedures to ensure that covered utilities which supply, install or finance the sale or installation of energy conservation or renewable resource measures shall—

(1) Charge fair and reasonable prices and interest rates, which shall be determined by periodic review of comparative prices and interest rates by a State designated agency;

(2) Conduct such activities in a manner which does not have a substantial adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts of practices;

(3) When undertaking to finance a lending program for such measures through financial institutions, seek funds for such financing from financial institutions located throughout the area covered by the lending program (to the extent each such utility determines feasible, consistent with good business practice, and not disadvantageous to its customers); and

(4) Meet the requirements of § 456.504 if they undertake supply or installation activities under § 456.504.

(b) Require any utility undertaking a program involving the supply or installation of any energy conservation or renewable resource measure as permitted by § 456.504, or providing financing for the purchase or installation of any such measure, to notify the Assistant Secretary when such program becomes effective.

§ 456.305 Program announcement.

(a) *Distribution and content.* The State Plan shall require each covered utility and each participating home heating supplier to provide each eligible customer, no later than six months after approval of the State Plan, but not more than once during the period from August 28, 1986 to June 30, 1989, with the following:

(1) A list of the program measures for the category of residential buildings owned or occupied by such eligible customer.

(2) A reasonable estimate (or range of estimates) of the savings in energy costs for a specified period of time which are likely to result from installation of each of the program measures in a typical building or buildings in such category.

(3) A list of the energy conserving practices which shall be developed by the Governor. Such practices may include the practices defined in § 456.105.

(4) A reasonable estimate (or range of estimates) of the savings in energy costs for a specified period of time which are likely to result from the adoption of the practices, individually or as a group.

(5) An offer to perform the service required to be offered under § 456.306 (Program Audits) and a description of the service. The offer of the program audit may be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first.

(b)(1) The State Plan shall specify whether a covered utility or participating home heating supplier is permitted or prohibited from including with the program information any advertising for the sale, installation or financing by any supplier, contractor, or lender (including the covered utility) of any program measure.

(2) If advertising is permitted, the State Plan shall contain procedures to ensure that such advertising does not unfairly discriminate against any person.

(c) *Calculation procedures.* The State Plan shall, with respect to estimates of the savings required under § 456.305(a)(2), describe the procedures by which such estimates shall be made.

(d) *New customers.* (1) A new customer is a person who becomes an eligible customer after a distribution of the Program Announcement but before June 30, 1989.

(2) The State Plan shall require,that each covered utility and participating home heating supplier provide each new customer within 60 days of such customer becoming a new customer with the information required in § 456.305(a).

(3) The State shall require that a covered utility or participating home heating supplier retain in its files for not less than five years a copy of each report of each program audit performed pursuant to the State Plan which shall be available to any subsequent owner without charge. The State Plan shall require that a covered utility or participating home heating supplier inform each subsequent eligible customer who is an owner of a residential building, or dwelling unit therein, of the availability of this report.

(e) The State Plan shall prohibit unfair discrimination among measures, eligible customers, suppliers, contractors, and lenders in the content of, and in the providing of, information required under this section.

§ 456.306 Requirements for program audits.

(a) *Timing of program audit.* The State Plan shall require that each covered utility participating home heating supplier shall provide a program audit to each eligible customer within a reasonable time after the request for an audit.

(b) *Content of program audit.* (1) The State Plan shall describe the program audit services to be offered by utilities and participating home heating suppliers and shall require at a minimum that

covered utilities and participating home heating supplier provide (either directly or through one or more auditors under contract), upon request, to each eligible customer a program audit which addresses the applicable program measures and identifies the applicable energy conserving practices which shall be developed by the Governor. Such practices may include those practices defined in § 456.105.

(2) The State Plan may allow the auditor in each program audit to determine the applicability of each program measure in that residence based on applicability criteria set forth in the State Plan subject to DOE approval; and, in the case of residential buildings containing more than four dwelling units, based on either the above or DOE applicability criteria and usage cut-off procedures, as set forth in Appendix III. If a program measure is not applicable, then the requirements of this section to provide estimates of the cost and savings of installation of such measure in such residence do not apply.

(3) The State Plan shall contain procedures to assure the validity of the program audit with respect to all program measures.

(4) The State Plan shall require the auditor to offer at the time of the audit to provide the customer at a minimum with a written sample of the typical format of the audit results and a brief explanation of how to interpret such results.

(5) The State Plan shall allow auditors to perform a program audit only for those measures or products approved by the Governor.

(c) *Results of program audit.* (1) The State Plan shall require that the utility provide the following information in writing to each eligible customer who receives a program audit—

(i) An estimate of the total cost, expressed in dollars or a range of dollars, of installation by a contractor of each applicable program measure as designated in the Table of Program Measures (Appendix I);

(ii) An estimate of the total cost, expressed in dollars or a range of dollars, of purchase by the customer of each applicable program measure as designated in the Table of Program Measures (Appendix I);

(iii) An estimate of the energy savings, expressed in dollars or a range of dollars, of each applicable program measure addressed by the program audit.

(2) The State Plan shall require any utility which does not provide in-person results of audits to provide customers with the opportunity to discuss the results of the audit with a qualified person.

(3) The State Plan shall allow utilities to provide audit results only for those measures or products approved by the Governor.

(d) *Prohibitions.* (1) The State Plan shall prohibit covered utilities and participating home heating suppliers from discriminating unfairly among eligible customers in providing program audits.

(2) The State Plan shall prohibit any auditor from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any program measure if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders.

(3) The State Plan shall prohibit any unfair discrimination among program measures.

(e) *Program audits of furnaces.* The State shall require that, in order for an auditor of a covered utility or participating home heating supplier to provide cost and savings estimates for furnace efficiency modifications with respect to a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by that covered utility or participating home heating supplier, the eligible customer must request such audit in writing.

(f) *Qualifications for program auditors.* The State Plan shall require that each person who performs a program audit pursuant to the State Plan shall be qualified to perform the necessary measurements and inspections to determine the estimated cost of purchasing and installing the recommended program measures and the savings in energy costs that are likely to result from the installation of such measures.

§ 456.307 [Reserved]

§ 456.308 [Reserved]

§ 456.309 Accounting and payment of costs.

(a) *Accounting.* The State Plan shall require with respect to Federally mandated measures, and may permit with respect to costs or revenues directly associated with State measures, that all amounts expended or received by a covered utility which are attributable to the RCS Program, including any penalties paid under Subpart F (Federal Standby Authority), shall be accounted for on the books and records separately from amounts attributable to all other activities of the covered utility.

(b) *Payment of costs.* The State Plan shall require that covered utilities treat costs as described below and shall describe how the costs described in paragraph (b)(2) of this section will be treated:

(1) All amounts expended by a covered utility in providing the information required under § 456.305(a) and in conducting all public education and program promotion directly related to providing information about a utility's RCS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the covered utility in the same manner as other current operating expenses of providing such utility service;

(2) The cost of the following program elements shall be recovered in the manner specified by the State regulatory authority (in the case of a regulated utility) or the nonregulated utility (except that the amount that may be recovered directly from a residential customer for whom the activities described in § 456.309(b)(2)(ii) are performed shall not exceed a total of $1.5 per dwelling unit or the actual cost of such activities, whichever is less);

(i) Administrative and general expenses, including those associated with program audits and customer billing services, and

(ii) Project management requirements, including the providing of program audits; and

(3) In determining the amount to be recovered directly from customers as provided in paragraph (b)(2) of this section, the State regulatory authority (in the case of a regulated utility) or the nonregulated utility shall take into consideration, to the extent practicable, the eligible customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) *Duplication of audits.* (1) In areas where a residential customer is an eligible customer of more than one covered utility, the Governor, or the covered nonregulated utility, as appropriate, may include in a State Plan or a Nonregulated Utility Plan procedures to ensure that each eligible customer may receive an RCS audit from only one of these covered utilities.

(2) No utility should be required to make more than one audit of a residential building or dwelling unit therein unless a new owner requests a subsequent audit.

§ 456.310 Customer billing, repayment of loans, and termination of service.

The State Plan shall require that—

(a) *Customer billing.* Every charge by a covered utility or a participating home heating supplier to a customer for any portion of the costs of carrying out any activity pursuant to the State Plan that is charged to the residential customer for whom such activity is performed (including repayment of a loan) and that is included on a billing for utility service submitted by the utility or home heating supplier to such residential customer shall be stated separately on such billing from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed so as to require that charges to the customer for activities performed pursuant to the State Plan must be included on the bill for periodic utility service.

(b) *Repayment of loans.* (1) In the case of any loan by a covered utility, the utility, with the approval of the customer, shall permit repayment of the loan as part of the periodic utility bill.

(2) In the case of any loan for the purchase or installation of program measures made by a participating home heating supplier under the RCS Program—

(i) The participating home heating supplier shall permit the eligible customer to include repayment of the loan in such customer's payment of his periodic fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period;

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default in payment (as determined under applicable law) from the eligible customer; and

(iii) No penalty shall be imposed by a home heating supplier for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(c) *Termination of service.* No covered utility or participating home heating supplier shall terminate utility or fuel service to any customer for any default by such customer for payments due for any services under the RCS Program.

§ 456.311 [Reserved]

§ 456.312 Complaints processing and redress procedures.

The State Plan shall contain procedures—

(a) For resolving complaints against persons who sell or install energy conservation or renewable resource measures under the RCS Program; and

(b) To assure that any person who alleges any injury resulting from a violation of any State Plan provision shall be entitled to redress.

§ 456.313 Coordination.

The State Plan shall provide procedures to ensure effective coordination between the RCS Program and all local, State, and Federal energy conservation programs within and affecting the State.

§ 456.314 Home heating suppliers.

(a) *Consideration of limited resources.* If a State Plan covers home heating suppliers, it shall, within the terms of the requirements of this subpart, take into account the limited resources of small home heating suppliers.

(b) *Participation and withdrawal.* The State Plan, if it includes home heating suppliers, shall include a procedure by which the Governor shall allow a home heating supplier to participate in the RCS Program. The State Plan shall also allow a home heating supplier to withdraw voluntarily from the RCS Program.

(c) *Waiver of requirements.* The State Plan shall contain a procedure by which the Governor may waive for any participating home heating supplier any requirement of the State Plan, except those listed below, upon a demonstration to the Governor's satisfaction that the resources of such supplier do not enable it to comply with the particular requirement. The requirements which the Governor shall not waive are the following sections which prohibit anticompetitive activities or unfair discrimination by covered utilities or participating home heating suppliers—

(1) Section 456.306(c) (Prohibitions concerning program audits); and

(2) Section 456.306(d) (Furnace audits).

§ 456.315 Program measures.

(a) The State Plan shall contain a list of the program measures. This list shall contain either those energy conservation and renewable resource measures identified in Appendix I to this rule as program measures for that State, or a list of energy conservation and renewable resource measures determined to be program measures by the Governor in accordance with paragraph (b) of this section.

(b)(1) The Governor may exclude from the State RCS Program, any program measure identified in Appendix I as a program measure for that State on the following bases:

(i) When, by substituting State derived data, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) less any Federal and State (at the discretion of the Governor) tax credits (T), by the first year energy savings in dollars (S).

$$P = \frac{F-T}{S} \quad P>7 \text{ years, and/or}$$

(ii) When, by substituting a State specific prototypical house, it is determined that the program measure has a payback period (P) of more than seven years pursuant to the formula in paragraph (b)(1)(i) of this section.

(2) The State Plan shall contain data to substantiate any exclusion pursuant to paragraphs (b)(1) (i) or (ii) of this section.

(c) The Governor may add any measure not identified in Appendix I as a program measure for that State, to the State RCS Program without DOE approval.

§ 456.316 Reporting and recordkeeping.

(a) The State Plan shall contain provisions to assure that a report is submitted to the Assistant Secretary no later than July 1, 1982, and annually thereafter through June 30, 1989, covering the twelve-month period ending the preceding April 1.

(b)(1) The report shall include—

(i) The number of energy audits requested, and/or provided;

(ii) The nature and status of any direct financing activities or exempted or waived supply or installation activities engaged in by the utilities;

(iii) Estimated State costs and utility costs of implementing the program; and

(iv) The general nature and approximate number of complaints received about the program and the operation of the complaints processing procedures of § 456.309 in the State.

(2) The report shall also contain a copy of any program announcement not already provided.

(c) The State Plan shall contain procedures to assure that a copy of the data collected during each audit and a copy of the costs and savings presented to the customer receiving the audit are retained on file for five years from the date of the audit.

(d) Any other provisions of this section notwithstanding, the Assistant Secretary may, as he deems essential to Departmental implementation of program responsibilities and subject to approval of OMB under the provisions of the Paperwork Reduction Act (Pub. L. 96–511)—

(1) Require additional information; and

(2) Waive any reporting and recordkeeping requirements, except the recordkeeping requirements in paragraph (c) of this section.

§ 456.317 Quality assurance.

The State Plan shall contain procedures to ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the RCS Program.

Subpart D—Nonregulated Utility Plans

§ 456.401 Scope.

This subpart identifies the responsibilities of covered nonregulated utilities not subject to a State Plan for the preparation and submission of Nonregulated Utility Plans, the procedures for approval of Nonregulated Utility Plans by the Assistant Secretary, and the minimum requirements for the content of Nonregulated Utility Plans.

§ 456.402 Coverage.

This subpart shall apply to all nonregulated utilities which are not covered by a State Plan.

§ 456.403 Notice, comment, and public hearing.

Prior to submission of the Nonregulated Utility Plan to the Assistant Secretary for approval, the nonregulated utility shall—

(a) *Notice and comment.* Provide meaningful public notice of the requirement for the nonregulated utility to submit a Nonregulated Utility Plan.

(b) *Hearing.* Hold at least one public hearing in the nonregulated utility's service area for the purpose of hearing testimony and receiving comments on the content of the proposed Nonregulated Utility Plan.

§ 456.404 Procedures for submission and approval of Nonregulated Utility Plans.

(a) *Submission.* Each utility subject to this subpart shall submit to the Assistant Secretary a proposed Nonregulated Utility Plan by June 4, 1980, unless the time for submission has been extended by the Assistant Secretary for good cause shown upon request, of the nonregulated utility.

(b) *Approval.* If a proposed Nonregulated Utility Plan meets the criteria of this subpart, the Assistant Secretary shall approve it within 90 days of the date the proposed Nonregulated Utility Plan was submitted.

(c) *Disapproval.* (1) If a Nonregulated Utility Plan does not meet the criteria of this subpart, the Assistant Secretary shall, within 90 days of the date the proposed Nonregulated Utility Plan is submitted, disapprove the proposed Nonregulated Utility Plan and specify in writing grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed Nonregulated Utility Plan, or such longer period as the Assistant Secretary may determine pursuant to the criteria of paragraph (a) of this section, the nonregulated utility shall submit another proposed Nonregulated Utility Plan.

(d) *Amendments.* The nonregulated utility may submit proposed amendments to an approved Nonregulated Utility Plan at any time. The Assistant Secretary shall approve or disapprove a proposed amendment within 90 days of receipt of the proposed amendment.

§ 456.405 Temporary Programs.

A nonregulated utility may operate a Temporary Program as defined in § 456.207(a) in accordance with the provisions of § 456.207.

§ 456.406 Content of plans.

(a) *General requirements.* (1) Except as provided in this section, each Nonregulated Utility Plan shall meet all the requirements for State Plans in Subpart C.

(2) Except as otherwise provided in this section, all references in Subpart C to—

(i) Covered utilities shall be deemed to refer to utilities subject to this subpart;

(ii) A State Plan shall be deemed to refer to a Non-Regulated Utility Plan;

(iii) Participating home heating suppliers shall not apply;

(iv) A State (as a governmental entity, other than references to State laws or regulations) or any State Agency or officer shall be deemed to refer to the nonregulated utility submitting the Plan; and

(v) A State (as a geographic area) shall be deemed to refer to the nonregulated utility's service area.

(b) *Utilizing State services.* (1) In a State submitting a State Plan, a nonregulated utility may, by written understanding with the appropriate State agency, utilize services which have been provided for in the State Plan.

(2) If a Nonregulated Utility Plan utilizes services as permitted by this paragraph, all references in the State Plan to those services with regard to utilities subject to the State Plan shall be deemed to refer to the nonregulated utility.

(3) If a Nonregulated Utility Plan proposes to utilize any of the services pursuant to this paragraph, the Plan shall so state and copies of the written agreements with the appropriate State agencies shall be included with the Nonregulated Utility Plan in the submission to the Assistant Secretary.

Subpart E—Supply, Installation, and Financing by Utilities

§ 456.501 Scope and definitions.

(a) This subpart contains the prohibition against a utility's supply and installation of energy conservation and renewable resource measures. It specifies the exemptions to this prohibition and the procedures, where applicable, for obtaining these exemptions. It also sets forth certain requirements concerning utility financing programs.

(b) For purposes of this subpart—(1) A "covered utility" means a covered utility, any company which is owned or controlled by such a utility, or any company which owns or controls such a utility:

(2) A covered utility "installs" a measure whenever the contract for installation obligates the covered utility to install the measure;

(3) A covered utility "supplies" a measure when it sells a measure at retail or leases a measure to an eligible customer; and

(4) A covered utility "finances" the supply or installation of a measure when the loan contract names the utility as the lender.

§ 456.502 Prohibition.

(a) Except as provided in this subpart, no covered utility may supply or install any energy conservation or renewable resource measure.

(b) Notwithstanding §§ 456.503–456.507, no covered utility may supply, or install, any energy conservation or renewable resource measure if the Federal Trade Commission, pursuant to Section 216(h) of NECPA, or a State regulatory authority, pursuant to State law, has determined that such activity involves—

(1) Charging unfair or unreasonable prices or rates of interest with respect to the supply and installation of residential energy conservation measures; or

(2) Engaging in unfair methods of competition or unfair or deceptive acts or practices with respect to such supply and installation.

(c) Violations of this section are subject to a civil penalty of not more than $25,000 for each day of violation assessed by order of the Assistant Secretary pursuant to Section 216(h) and 219 of NECPA and § 456.606 of these rules.

§ 456.503 Exemption for certain measures.

The prohibition in § 456.502(a) shall not apply to the supply or installation of (a) furnace efficiency modifications, (b) clock thermostats, and (c) devices

associated with load management techniques for the type of energy sold by the utility.

§ 456.504 Exemption for utility subcontractor supply and installation.

(a) The prohibition contained in § 456.502(a) shall not apply to any energy conservation measure or renewable resource measure supplied or installed by a public utility through contracts between such utility and independent suppliers or contractors where the customer requests such supply and installation and each supplier or contractor—

(1) Is not subject to the control of the public utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and

(2) If selected by the utility, is selected in a manner consistent with § 456.504(b).

(b) Activities of a public utility conducted pursuant to paragraph (a)(2) of this section—

(1) May not involve unfair methods of competition;

(2) May not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of energy conservation or renewable resource measures;

(3) Shall be undertaken in a manner that provides, subject to reasonable conditions the utility may establish to ensure the quality of supply and installation of energy conservation or renewable resource measures, that any financing by the utility of such measures shall be available to finance the supply or installation by any contractor or to finance the purchase of such measures to be installed by the customer;

(4) Shall be undertaken, to the extent practicable and consistent with paragraphs (b)(1)–(3) of this section, in a manner that minimizes the cost of energy conservation and renewable resource measures to such customers; and

(5) Shall include making available upon request a current estimate of the average price of supply and installation of energy conservation and renewable resource measures subject to the contracts entered into by the public utility under paragraph (a) of this section.

(c) Before a utility can undertake a supply or installation program permitted by this section, the State Plan must contain procedures to ensure that such a program will be undertaken in full compliance with requirements described in paragraphs (a) and (b) of this section.

§ 456.505 Exemption for existing supply and installation.

(a) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure in which the covered utility was engaged on November 9, 1978—

(1) During such time as applications for determinations with respect to such activities, filed in accordance with § 456.509, are pending; and

(2) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure was being supplied or installed by the utility seeking such determination.

(b) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing—

(1) During such time as applications for determinations with respect to such activity filed in accordance with § 456.509 are pending; and

(2) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure had been broadly advertised or for which substantial preparations had been completed by the utility seeking such determination.

(c) Effective July 1, 1987, paragraphs (a) and (b) shall not apply to the supply or installation of residential energy conservation measures other than measures which the Secretary determines, pursuant to a request by a covered utility with supporting documentation, were being installed or supplied during the 12 month period ending June 1, 1985.

§ 456.506 Exemption for supply and installation authorized by State or local law.

(a) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure—

(1) In which a State or local law or regulation in effect on November 9, 1978, required or explicitly permitted a covered utility to engage; or

(2) Which the Attorney General of the appropriate State certifies to the Assistant Secretary was intended by a State law or regulation in effect on November 9, 1978, to be required or permitted.

(b) A covered utility is exempt from any Federal requirement to include in its RCS Program any supply or installation of any energy conservation or renewable resources measure in which it is engaged by reason of a State law or regulation in effect prior to November 9, 1978, permitting or requiring such activities. However, a covered utility that includes supply and installation in its RCS Program pursuant to the exemption in paragraph (a) of this section shall be subject to all the requirements of the State Plan with respect to those activities in the same manner as any contractor, supplier, or lender, except that it shall be exempt from the requirements of § 456.309 (Accounting and Payment of Costs) and § 456.310 (Customer Billing, Repayment of Loans, and Termination of Service) with respect to such activities.

§ 456.507 Waivers.

(a) The Assistant Secretary may waive any prohibition of § 456.502(a) upon petition by a covered utility pursuant to § 456.509 and a finding that—

(1) The petition, in the case of a covered utility subject to a State Plan, is supported by the Governor; and

(2) If such waiver were granted—

(i) Fair and reasonable prices and rates of interest would be charged; and

(ii) The otherwise prohibited activities would not involve or result in unfair or deceptive acts or practices.

(b) Before the Assistant Secretary makes the finding described in paragraph (a)(2)(i) of this section, he or she shall consult with the Federal Trade Commission.

§ 456.508 Notification.

Each utility undertaking a program involving the supply or installation of any energy conservation or renewable resource measure as permitted under § 456.504, or providing financing for the purchase or installation of any such measure, must notify the Assistant Secretary when such program becomes effective.

§ 456.509 Procedure for obtaining determinations and waivers.

(a) A utility making an application for a determination under § 456.505 or a petition for a waiver under § 456.507 shall file such application or petition clearly labeled as such with the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All such

petitions shall contain all information necessary for the determination under § 456.505 or the findings required by § 456.507.

(b) In addition to any other requirement that may be applicable, any utility making an application or petition under this section shall give direct notice to the Governor, State Energy Office, and State Regulatory Authority of any State in which such exemption or waiver would be applicable, informing them that they may within ten days submit comments on the application or petition to the Assistant Secretary. The application or petition filed with the Assistant Secretary shall include a certification that the applicant or petitioner has complied with the requirements of this paragraph. In the discretion of the Assistant Secretary, opportunity to comment may be provided to other interested persons.

§ 456.510 Appeals.

Any person adversely affected by any decision made pursuant to this subpart by the Assistant Secretary may appeal that decision in accordance with Subpart H of 10 CFR Part 205. All such appeals shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

§ 456.511 Certain exempt activities and compliance with accounting, costing, billing, and repayment provisions.

Any covered utility conducting activities pursuant to the exemptions provided for in § 456.503, § 456.504 or § 456.505(b) or the waiver provisions of § 456.507 shall comply with the requirements of §§ 456.309 (a), (b)(2), and (b)(3), and § 456.310 with respect to those activities. Any covered utility carrying out activities pursuant to the exemptions provided for in § 456.505(a) shall, within such reasonable time as the Secretary prescribes, comply with the requirements of §§ 456.309 (a), (b)(2), and (b)(3), and § 456.310 with respect to such activities.

Subpart F—Federal Standby Authority and Enforcement Provisions

§ 456.601 Scope.

This subpart specifies the procedures to be followed to ensure that eligible customers receive the services of the Residential Conservation Service Program when a State or nonregulated utility does not submit an acceptable Residential Conservation Service Plan within the necessary time or fails to implement adequately an approved RCS or Alternative plan. These procedures are required to be implemented by the Secretary pursuant to the provisions of section 219 of NECPA. All of the Secretary's responsibilities under this subpart, except for the authority to bring actions in any court of the United States, have been delegated to the Assistant Secretary. Section 456.602 specifies the conditions under which the Assistant Secretary shall invoke standby authority for covered regulated utilities and covered nonregulated utilities. Sections 456.603 and 456.604 specify the content of the Federal plans for States and nonregulated utilities, respectively. Section 456.605 specifies the procedures to be followed by the Secretary if a public utility fails to comply with a Federal standby order issued pursuant to §§ 456.603 or 456.604. Section 456.606 specifies the civil penalties which the Assistant Secretary may assess and the enforcement provisions.

§ 456.602 Conditions under which standby authority shall be invoked.

The Assistant Secretary shall invoke standby authority if he concludes:

(a) That a State fails to submit a Residential Conservation Service Plan meeting the requirements of Subparts B and C by September 2, 1980, or within such additional period as the Assistant Secretary allows pursuant to § 456.204 (b) or (d);

(b) That a nonregulated utility fails to submit a Residential Conservation Service Plan meeting the requirements of Subpart D by September 2, 1980, or within such additional period as the Assistant Secretary allows pursuant to § 456.404 (a) or (c);

(c) That 30 days have elapsed after a determination that an approved State RCS or alternative plan is not being adequately implemented in a State is final and may not be appealed under section 226(f)(2) of NECPA: or

(d) After notice and opportunity for a public hearing, that an approved plan is not being adequately implemented by a covered nonregulated utility.

§ 456.603 Standby authority in lieu of State plans.

When the Assistant Secretary determines that one of the conditions specified in §§ 456.602 (a) or (c) exists;

(a) The Assistant Secretary shall promulgate a Residential Conservation Service Plan which meets the appropriate requirements of Subpart B and C of this part and which is applicable to each covered regulated utility in the State;

(b) The Assistant Secretary shall, by order, require each covered regulated utility in the State to carry out a Residential Conservation Service Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order; and

(c) If the State had an approved plan which included nonregulated utilities, the Assistant Secretary shall take the actions described in §§ 456.604 (a) and (b) with respect to such nonregulated utilities.

§ 456.604 Standby authority for nonregulated utilities.

When the Assistant Secretary determines that one of the conditions specified in §§ 456.602 (b) or (d) exists;

(a) The Assistant Secretary shall, by order, require the covered nonregulated utility to promulgate a plan which meets the requirements of Subpart D of this part; and

(b) The Assistant Secretary shall, by order, require such nonregulated utility to carry out a Residential Conservation Service Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order.

§ 456.605 Failure to comply with orders.

If the Secretary determines that any covered utility to which an order has been issued pursuant to §§ 456.603(b), 456.604(a), or 456.604(b) has failed to comply with such order, the Secretary may file a petition in the appropriate United States district court to enjoin such utility from violating the order.

§ 456.606 Enforcement provisions; Penalties; Election of review procedures.

(a) Any covered utility which violates any requirement of a plan promulgated under §§ 456.603(a) or 456.604(a), or which fails to comply with an order under §§ 456.603(b), 456.604(a), or 456.604(b) within 90 days from the issuance of such order, or which violates the prohibition in § 456.502 concerning supply, installation, or financing by covered utilities, shall be subject to a civil penalty of not more than $25,000 for each violation.

(b) Each day that such violation continues shall be considered a separate violation.

(c) A civil penalty under this section shall be assessed by an order of the Assistant Secretary.

(d) Before issuing an order assessing a civil penalty against any person under this section, the Assistant Secretary shall provide to such person notice of the proposed penalty. The notice of proposed penalty shall inform the person of the opportunity to make an election, in writing, within 30 days after receipt of the notice. The election involves deciding whether to have the procedures of paragraph (f) of this

section apply, in lieu of the procedures in paragraph (e) of this section, with respect to the assesment of a civil penalty.

(e)(1) Unless the election described in paragraph (d) of this section is made within 30 calendar days after receipt of the notice given under paragraph (d) of this section, the Assistant Secretary shall assess the penalty, by order, after a determination of violation has been made on the record. Such determination of violation shall be made after an opportunity has been afforded for an agency hearing pursuant to Section 554 of Title 5, United States Code, before an administrative law judge appointed under Section 3105 of Title 5. The assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a civil penalty is assessed under this paragraph (e) may, within 60 calendar days after the date of the order of the Assistant Secretary assessing the penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside, in whole or in part, the order of the Assistant Secretary, or the court may remand the proceedings to the Assistant Secretary for such further action as the court may direct.

(f)(1) In any case where the procedures of this paragraph (f) have been elected, as described in paragraph (d) of this section, the Assistant Secretary shall assess such penalty by order. The order shall be made not later than 60 calendar days after the alleged violator's date of receipt of notice of the proposed penalty under paragraph (d) of this section.

(2) If the civil penalty assessed by order under paragraph (f)(1) of this section has not been paid within 60 calendar days after the assessment order was made, the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph (f) apply may not be revoked except with the consent of the Assistant Secretary.

(g) If any person, fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (e) of this section, or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (f) of this section, the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of the respective final order or judgment imposing the civil penalty shall not be subject to review.

(h) Notwithstanding the provisions of Title 28, United States Code, or of Section 502 of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys with the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which this section applies (including any related collection action) in a court of the United States or in any other court,except the Supreme Court. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

Subparts G–I—[Reserved]

Subpart J—Residential Conservation Service Federal Standby Plan

§ 456.1000 Introduction.

(a) The RCS Federal Standby Plan (FSP or Plan) specifies the procedures to be followed to ensure that eligible customers receive the services of the RCS Program when a State does not submit an acceptable RCS Plan within the necessary time or fails to implement adequately an approved plan.

(b) This Plan sets forth the functions which utilities subject to the Plan will be ordered to perform. The core of the Plan is the offer of an on-site energy audit of an eligible customer's residence.

(c) In implementing the Federal Standby Plan, the Assistant Secretary shall have the discretion to allow a utility which is currently complying in good faith with an approved RCS State plan to continue to operate under that plan even though the State lead agency has relinquished or been relieved of its responsibilities. Furthermore, the Assistant Secretary shall have the discretion to allow any utility in a Federal Standby State which is currently operating under an approved RCS Program in a separate State to operate a similar program in the Standby State. In accordance with § 456.1022, the utility shall submit to DOE for approval a copy of the RCS Plan under which it is currently operating.

§ 456.1001 Definitions.

All definitions set forth in § 456.105 are applicable where relevant to this subpart, except as set forth below.

(a) *Energy Conserving Practices.* The term "energy conserving practices" means low or no cost practices designated by the Assistant Secretary which save energy, do not require the installation of energy conservation or renewable resource measures, and do not adversely impact the RCS Federal Standby Plan. Utilities may add to or delete from the practices set forth in § 456.105, as specified in § 456.1022.

(b) *Participating Home Heating Supplier.* The term "participating home heating supplier" means a home heating supplier that has elected to participate in the RCS Federal Standby Plan.

(c) *Program Announcement.* The term "program announcement" means the RCS Program information and offer of services required to be provided by a covered utility or participating home heating supplier to each eligible customer by § 456.1006.

(d) *Program Measures.* The term "program measures" means those energy conservation or renewable resource measures which the Assistant Secretary has by rule determined to be appropriate by climatic region and fuel use category and which are found in Appendix I of this part, or which are determined to be program measures by a utility or participating home heating supplier in accordance with § 456.1016.

(e) *RCS Federal Standby Plan.* The term "RCS Federal Standby Plan" (FSP or Plan) means a plan developed pursuant to Subpart F of this part and Section 219 of the National Energy Conservation Policy Act (NECPA).

§ 456.1002 Coverage of RCS Federal Standby Plan.

(a) *Regulated utilities.* All regulated utilities providing utility service in a State where the FSP is ordered to be enforced and which meet the definition of "covered utility" shall be subject to the FSP.

(b) *Home heating suppliers.* Any home heating supplier in a State where the FSP is ordered to be enforced and which wishes to participate in the FSP may so notify the Assistant Secretary.

§ 456.1003 Procedures for investigating and enforcing compliance with the RCS Federal Standby Plan.

(a) *Investigation and enforcement.* (1) The Assistant Secretary requires each utility and each participating home

heating supplier subject to the FSP to comply with the Plan pursuant to the authority given the Assistant Secretary in section 219 of NECPA (42 U.S.C. 8220).

(2) Individuals or groups wishing to report possible noncompliance with this Plan shall inform the Assistant Secretary. Each utility and participating home heating supplier shall inform their customers on how to notify the Assistant Secretary with respect to such reports. This information shall be contained in the program announcement distributed pursuant to § 456.1008. The Assistant Secretary may investigate any allegation of noncompliance or any complaint concerning the RCS Program or this Plan submitted to DOE, or on his own initiative may review the activities of utilities or participating home heating suppliers subject to the FSP to determine compliance with the Plan.

(b) *Conflicts of laws.* Each utility subject to the FSP shall petition the Assistant Secretary in accordance with § 456.102 whenever the utility believes it is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA or any rule or FSP promulgated pursuant to NECPA, or whenever the utility believes it is required or permitted by a State or local law or regulation to take any action prohibited by NECPA or any rule or FSP promulgated pursuant to NECPA.

(1) The petition shall contain a copy of the applicable State or local laws or regulations and a description of the action the utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(2) The Assistant Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State and such other persons as the Assistant Secretary deems appropriate. Any such person or entity may file comments with the Assistant Secretary with respect to such petition within 30 days of receipt of the notice.

(3) If the Assistant Secretary determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or any rule or FSP promulgated pursuant to NECPA or permits or requires a utility to take any action prohibited by NECPA or any rule or FSP promulgated pursuant to NECPA. the Assistant Secretary shall issue an order superseding such State or local laws or regulations to the extent inconsistent with NECPA or any rule or FSP promulgated pursuant to NECPA. Such an order shall be effective with respect to all utilities subject to such State or local laws or regulations and shall moot any outstanding petitions under this section by such utilities.

(c) *Appeals.* (1) Any person aggrieved by any order, finding, or determination made under paragraph (b) of this section or § 456.1017 may appeal that order, finding, or determination within 30 days in accordance with 10 CFR, Subpart H of Part 205. All such appeals shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

(2) Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under that subpart and an order granting or denying the appeal has been issued.

§ 456.1004 [Reserved]

§ 456.1005 [Reserved]

§ 456.1006 Program announcement.

(a) *Distribution and content.* Each utility subject to the FSP shall send to each eligible customer a copy of the program announcement no later than 90 days after the issuance of an order from the Assistant Secretary to comply with the FSP. Each participating home heating supplier shall send to each eligible customer a copy of the program announcement no later than the date set forth in the notice from the Assistant Secretary approving participation by the home heating supplier in the FSP. A program announcement must, at a minimum—

(1) List the program measures identified in Appendix I or the program measures developed by the utility pursuant to § 456.1016, for the category of residential building owned or occupied by such eligible customer;

(2) List the energy conserving practices defined in § 456.105 and § 456.1001 or the practices developed by the utility and approved by the Assistant Secretary pursuant to § 456.1022 and state that they are of low or no cost;

(3) Include a reasonable estimate (or a range of estimates) of the savings in energy costs for a period of one year, which are likely to result from installation of each of the applicable program measures and adoption of the energy conserving practices in a typical building or buildings in such category;

(4) Include an offer to perform the service required to be offered under § 456.1007 (Program Audits);

(i) The offer of the program audit may be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first. An unconditional offer, however, shall be offered to eligible customers within one year of a conditional offer.

(ii) The offer must explain that an eligible customer may request the service offered in the program announcement by a request card included in the program announcement, or by any other appropriate method which is the most convenient for the utility.

(iii) The offer must list the direct costs, if any, of receiving the service, which are to be charged to the eligible customer.

(5) Include the following disclosure or a similar statement: "The estimates contained in this program announcement are based on estimates for typical houses and local fuel prices which were in effect at the time this program announcement was published. The energy audit which we offer will provide more specific estimates for your home".

(b) *Calculation procedures.* Each utility or participating home heating supplier shall provide the Assistant Secretary, pursuant to § 456.1021, with a copy of the procedures used for determining the estimates of the savings in energy costs referred to in paragraph (a)(3) of this section.

(c) *New customers.* (1) A new customer is a person who becomes an eligible customer after a distribution of the program announcement but before June 30, 1989.

(2) Each utility and participating home heating supplier subject to the FSP shall send a program announcement which meets the requirements of this section to each new customer within 60 days of such customer becoming a new customer.

(3) Each covered utility or participating home heating supplier shall retain in its files for not less than five years a copy of each report of each program audit performed pursuant to an RCS Program. Within 60 days of becoming a new customer, each new eligible customer, who is an owner of a residential building or dwelling unit therein, shall be informed by the utility or participating home heating supplier subject to the FSP that, upon request and without charge, the customer may receive a copy of the results of any program audit of the customer's residence which the utility or participating home heating supplier may have performed pursuant to the RCS Program.

(d) *Prohibitions.* (1) The program announcement shall not include any advertising, unless approved by the Assistant Secretary pursuant to § 456.1022, for the sale, installation, or financing by any supplier, contractor, or lender (including the utility and

participating homeheating supplier) of any energy conservation measure, renewable resource measure, energy conserving practice, or product. The utility or home heating supplier shall submit to DOE evidence which reasonably assures that such advertising shall not be anticompetitive or unfairly discriminate against any person.

(2) The utility or participating home heating supplier is prohibited from unfairly discriminating among measures, eligible customers, suppliers, contractors, and lenders in the content of, and in the providing of, information required under this section.

§ 456.1007 Requirements for program audits.

(a) *Timing and preconditions.* (1) Each utility or participating home heating supplier subject to the FSP that unconditionally offers an audit to an eligible customer shall provide such audit within 90 days after the customer's request for the audit.

(2) Each utility or participating home heating supplier subject to the FSP that conditionally offers an audit to an eligible customer shall provide an audit within 45 days after the customer's request.

(3) Each utility or participating home heating supplier subject to the FSP is prohibited from requiring any precondition for providing a program audit to an eligible customer and is prohibited from discriminating unfairly among eligible customers in providing program audits.

(b) *Contents of program audit.* (1) Each utility and participating home heating supplier subject to the FSP shall provide (either directly or through one or more auditors under contract) to each eligible customer, upon request, a comprehensive program audit which addresses the applicable program measures and identifies the appropriate energy conserving practices referred to in § 456.105 and § 456.1001 or those practices approved by the Assistant Secretary pursuant to § 456.1022.

(2) The auditor shall determine in each program audit the applicability of each program measure in that residence based on applicability criteria set forth below or in the case of residential buildings containing more than four dwelling units, based on the DOE applicability criteria set forth in Appendix III of this part. Additionally, any utility or participating home heating supplier may establish its own applicability criteria, subject to the approval of the Assistant Secretary pursuant to § 456.1022. If a program measure is not applicable then the requirement of this section to provide estimates of the cost and savings of installation of the measure in such residence does not apply. A program measure is applicable in a residence if:

(i) The measure is not already present in the residence and the measure can be installed practically;

(ii) Installation of the measure is not a violation of Federal, State, or local law or regulations;

(iii) With respect to ceiling insulation, the difference between the existing level of insulation in the residence and the appropriate insulation level, as determined by the Assistant Secretary, is R–11 or more;

(iv) With respect to pipe and duct insulation, there are hot water pipes and heating and cooling ducts which extend through unconditioned spaces;

(v) With respect to wall insulation, there is no insulation in a substantial portion of the exterior walls;

(vi) With respect to floor insulation, no floor insulation is present;

(vii) With respect to flue-opening modifications, the furnace combustion air is taken from a conditioned area;

(viii) With respect to clock thermostats, the residence currently has a thermostat and the existing furnace or central air conditioner is compatible with a clock thermostat;

(ix) With respect to heat-absorbing or heat-reflective window and door material, the residence has an existing central or room air conditioner;

(x) With respect to direct gain glazing systems and indirect gain systems, the living space of the residence has either a south-facing (+ or −45° of True South) wall or an integral south-facing (+ or −45° of True South) roof, which is free of major obstruction to solar radiation;

(xi) With respect to active solar domestic hot water systems, a site exists on or near the residence which is free of major obstruction to solar radiation;

(xii) With respect to active solar heating systems, or combined active solar systems, a site exists on or near the residence which is free of major obstruction to solar radiation;

(xiii) With respect to replacement solar swimming pool heaters, there is an existing heated swimming pool and a location exists on the premises which is free of major obstruction to solar radiation;

(xiv) With respect to solaria/sunspace systems, the living space of the residence has a south-facing ground-level wall, which is free of major obstructions to solar radiation;

(xv) With respect to window heat gain retardants, the living area has a window that is not shaded from summer sunshine and the residence has substantial use of energy for air conditioning;

(xvi) With respect to window heat loss retardants, the living area has a window with fewer than three panes; and

(xvii) With respect to wind energy devices:

(A) The estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, at 10 meters (32 feet) above ground level; and

(B) There are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

(3) Each utility and participating home heating supplier subject to the FSP shall use as program audit procedures those obtained in the DOE Model Audit or any other audit procedures approved by DOE, pursuant to § 456.1022. For the purposes of this paragraph, the term "program audit procedures" means the measurements or inspections which the auditor must make in a customer's residence and the calculations which must be performed in making energy cost savings estimates.

(4) The auditor is required to base any cost and savings estimates for any applicable furnace efficiency modification of a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This season efficiency shall be based on estimated peak (tuned-up) steady state efficiency corrected for cycling losses. Steady state efficiency shall be derived from the manufacturer's design data and observation of the furnace components, or by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(5) The auditor shall offer, at the time of the audit, to provide the eligible customer, at a minimum, with a written sample of the typical format of the audit results and a brief explanation of how to interpret such results.

(c) *Results of program audit.* Each utility or participating home heating supplier subject to the FSP is required to provide the following information in writing to each eligible customer who receives a program audit:

(1) An estimate of the total cost, expressed in dollars or a range of dollars, of installation by a contractor of each applicable program measure.

(2) An estimate of the total cost, expressed in dollars or a range of dollars, of purchase by the customer of each applicable program measure.

(3) An estimate of energy savings, expressed in dollars or a range of dollars, of each applicable program

measure addressed by the program audit.

(4) In the case of a utility or participating home heating supplier which does not provide in-person results of audits, the customer must be given the opportunity to discuss the results of the audit with a qualified person.

(d) *Prohibitions and disclosure required for program audits.* (1) Unless otherwise approved by the Assistant Secretary pursuant to § 456.1022, the auditor is prohibited from estimating, as part of any program audit provided pursuant to the FSP, the costs or energy cost savings of installing any measure or product which is not a program measure.

(2) Auditors are prohibited from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any program measure if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders.

(3) No utility, participating home heating supplier, or auditor may unfairly discriminate among program measures.

(4) Each auditor must provide the eligible customer with a written statement of any substantial interest which the person or the person's employer has, directly or indirectly, in the sale or installation of any program measures.

(e) *Program audits of furnaces.* In order for an auditor of a utility or participating home heating supplier subject to the FSP to provide cost and savings estimates for furnace efficiency modifications with respect to a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by that utility or participating home heating supplier, the eligible customer must request such audit by signing a form which includes the following statement:

> If your home is heated by a source of fuel other than (state the type of fuel supplied by the utility or participating home heating supplier), only the supplier of the other fuel may audit your furnace unless you specifically request us to audit your furnace. Federal law requires that the request be in writing. If you want us to audit your furnace, although we do not supply the fuel for it please sign below.

(f) *Qualifications for program auditors.* Each auditor who performs a program audit pursuant to FSP shall:

(1) Be qualified according to the applicable procedures in § 456.1014 of this subpart; and

(2) Be under contract or subcontract to, be a employee of, or be an employee of a contractor or subcontractor to, a utility or participating home heating supplier subject to the FSP.

§ 456.1008 [Reserved]

§ 456.1009 [Reserved]

§ 456.1010 Accounting and payment of costs.

(a) *Accounting.* All amounts expended or received by a utility subject to the FSP which are attributable to the RCS Program, including any penalties paid under 10 CFR Part 456 Subpart F (Federal Standby Authority), shall be separately accounted for on the books and records from amounts attributable to all other activities of the utility.

(b) *Payments of costs.* Utilities subject to the FSP shall treat costs as described below and shall notify the Assistant Secretary, pursuant to § 456.1020, how the costs described in paragraph (b)(2) of this section will be treated.

(1) All amounts expended by a utility subject to the FSP for the program announcement and all public education and program promotion directly related to providing information about a utility's RCS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the utility subject to the FSP in the same manner as other current operating expenses of providing such utility service.

(2) The cost of the following program elements shall be recovered in the manner specified by the State regulatory authority for all regulated utilities subject to the FSP (except that the amount that may be recovered directly from a residential customer for whom the activity described in paragraph (b)(2)(ii) of this section is performed shall not exceed $15 per dwelling unit, or the actual cost of such activities, whichever is less):

(i) Administrative and general expenses, including those associated with program audits and customer billing services.

(ii) Project manager requirements, including the providing of program audits.

(3) In determining the amount to be recovered directly from customers as provided under paragraph (b)(2) of this section, the State regulatory authority shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) *Duplication of audits.* (1) In areas where a residential customer is an eligible customer of more than one utility or participating home heating supplier, such customer is entitled to an RCS audit from only one of these utilities or home heating suppliers.

(2) No utility or participating home heating supplier subject to the FSP shall be required to make more than one audit of a residential building or dwelling unit therein, unless a new owner, who is an eligible customer, requests a subsequent audit.

§ 456.1011 Customer billing, repayment of loans, and termination of service.

(a) *Customer billing.* Every charge to a customer by a utility or a participating home heating supplier, subject to the FSP, for any portion of the costs of carrying out any activity pursuant to the FSP that is charged to the residential customer for whom such activity is performed (including repayment of a loan) and that is included on a billing for utility service submitted by the utility or home heating supplier to such residential customer, shall be stated separately on such billing from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed so as to require that charges to the customer for activities performed pursuant to the FSP must be included on the periodic utility or fuel bill.

(b) *Repayment of loans.* (1) In the case of any loan by a utility, the utility, with the approval of the customer, shall permit repayment of the loan as part of the periodic utility bill.

(2) In the case of any loan for the purchase or installation of program measures made by a participating home heating supplier under the FSP—

(i) The participating home heating supplier shall permit the eligible customer to include repayment of the loan in the customer's payment of his periodic fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period;

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under applicable law) in payment by the eligible customer; and

(iii) No penalty shall be imposed by a participating heating supplier for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(c) *Termination of service.* No utility or participating home heating supplier subject to the FSP shall terminate or otherwise restrict utility or fuel service to any customer for payments due for any services under the FSP.

§ 456.1012 [Reserved]

§ 456.1013 Quality assurance.

(a) To ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the FSP, each utility or participating home heating supplier shall develop and offer to each customer at the time of the audit or with the audit results the following:

(1) Information on how to recognize the most common type of improper installation; and

(2) Information on the availability and responsibilities of independent (public or private) inspection services and the means of contacting these services.

(b) Pursuant to § 456.1021 each utility and participating home heating supplier shall submit to the Assistant Secretary for approval, the information to be provided to eligible customers required under paragraph (a) of this section.

(c) Any utility or participating home heating supplier may request an exception from the requirements of paragraph (a) of this section pursuant to § 456.1022. Such requests must demonstrate that existing mechanisms are sufficient to ensure reasonable levels of effectiveness and safety in the installation of measures.

§ 456.1014 Qualification procedures for auditors.

(a) Each utility and participating home heating supplier subject to the FSP must provide an adequate number of auditors for the RCS program who have successfully completed an auditor training program using either the DOE auditor training manual or any other DOE approved certification examination.

(b) Paragraph (a) of this section shall not applicable to any auditor who has previously operated under an approved RCS State Plan unless the utility or participating home heating supplier decides otherwise.

(c) Pursuant to § 456.1021, each utility and participating home heating supplier subject to the FSP shall provide to the Assistant Secretary for approval, procedures for training auditors, a description of the training materials, and a reasonable timetable for the implementation of the qualification procedures for auditors.

§ 456.1015 Home heating suppliers.

(a) *Participation and Withdrawal.* Any home heating supplier in a State subject to the RCS Federal Standby Plan wishing to participate in the Plan may contact the Assistant Secretary.

(1) Notwithstanding any other provision of this part, any participating home heating supplier may request a waiver of certain requirements in this Plan as provided in paragraph (b) of this section.

(2) Any participating home heating supplier may voluntarily withdraw from the FSP by submitting to the Assistant Secretary a written notification.

(3) Prior to withdrawal, the participating home heating supplier shall give notice of its withdrawal to those customers who have either requested RCS audits or otherwise have been involved in RCS services and shall refer them to the appropriate utility in the same service area.

(4) The withdrawal notice to the Assistant Secretary shall give assurance that the home heating supplier has performed the requirements in paragraph (a)(3) of this section.

(b) *Waiver of requirements.* (1) The Assistant Secretary will consider individual requests for waivers of FSP requirements from participating home heating suppliers on the basis of the limited resources of the home heating suppliers.

(2) The Assistant Secretary will not waive the following requirements for any home heating supplier who chooses to participate in the program:

(i) Section 456.1003 (Investigation and enforcement).

(ii) Section 456.1007(d) (Prohibitions and disclosures required for program audits).

(iii) Section 456.1007(e) (Furnace audits).

§ 456.1016 Program measures.

(a)(1) Each utility or participating home heating supplier subject to the FSP may exclude any program measure for its service area on the following basis:

(i) When, by substituting utility or home heating supplier derived data, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) less any Federal and State tax credit (T), by the first year energy savings in dollars (S)

$$P=\frac{F-T}{S} P>7 \text{ years; and/or}$$

(ii) When, by substituting a utility or home heating supplier specific prototypical house, it is determined that the program measure has a payback period (P) of more than seven years pursuant to the formula in paragraph (a)(1)(i) of this section.

(2) The utility or participating home heating supplier shall provide to the Assistant Secretary data to substantiate any exclusion pursuant to paragraph (a)(1) (i) or (ii) of this section.

(b) The utility or participating home heating supplier may add, with DOE's approval, pursuant to § 456.1022, any measure not identified in Appendix I as a program measure for its service area, to the Plan.

§ 456.1017 Supply, installation and financing by utilities.

(a) *General.* Except as provided below, the provisions of the paragraphs (b)(2) (i)–(iii) of this section, shall be undertaken in a manner which minimizes the cost of residential energy conservation measures to such customers.

(b) *Exemption for utility subcontractor supply and installation.* The Assistant Secretary shall grant an exemption to the prohibition contained in § 456.502(a) to a utility to supply or install any energy conservation or renewable resource measure through contracts between such utility and independent suppliers or contractors where the customer requests such supply and installation and the following conditions are met:

(1) The utility certifies to DOE that each supplier or contractor;

(i) Shall not be subject to the control of the utility, except as to the performance or such contract and shall not be an affiliate or subsidiary of such utility and;

(ii) If selected by the utility, shall be selected in a manner consistent with paragraph (b)(2) of this section.

(2) The utility submits to DOE a description of the proposed utility activities which shall include evidence that such activities:

(i) Shall not involve unfair methods of competition;

(ii) Shall not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of energy conservation or renewable resource measures;

(iii) Shall be undertaken in a manner that provides, subject to reasonable conditions to utility may establish to ensure the quality of supply and installation of energy conservation or renewable resource measures, that any financing by the utility of such measures shall be available to finance the supply or installation by any contractor or to finance the purchase of such measures to be installed by the customer; and

(iv) To the extent practicable and consistent with paragraphs (b)(2) (i)–(iii) of this section, shall be undertaken in a manner which minimizes the cost or

residential energy conservation measures to such customers.

(3) Any covered utility wishing to obtain an exemption to the prohibition contained in § 456.502(a) shall obtain approval by sending the request for exemption along with the required conditions and evidence described in paragraphs (b) (1) and (2) of this section to the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(4) Upon request, a utility conducting activities pursuant to this section shall provide DOE with a current estimate of the average price of supply and installation of energy conservation and renewable resource measures subject to the contracts entered into by the utility under paragraph (b) of this section.

§ 456.1018 Complaints processing procedures.

(a) *Conciliation services for customer complaints.* (1) Each utility or participating home heating supplier subject to the FSP is required at the time of the audit or with the audit results to offer to provide to eligible customers information on available conciliation services for the purpose of resolving complaints by eligible customers against persons who install or supply program measures.

(2) Each utility and participating home heating supplier shall establish procedures to resolve complaints by eligible customers against the utility or home heating supplier under the FSP.

(b) *Redress proceedings.* Each utility or participating home heating supplier subject to the FSP shall offer to provide to eligible customers, at the time of the audit or with the audit results, information on available redress proceedings for use by all persons alleging injury arising from an activity carried out under the FSP or from a violation of the FSP.

(c) *Additional requirement with respect to conciliation and redress.* Each utility or participating home heating supplier shall submit to the Assistant Secretary pursuant to § 456.1021, the information that will be made available to inform eligible customers of available conciliation services and redress proceedings. If such services are unavailable, the Assistant Secretary shall be notified and shall take appropriate action.

§ 456.1019 Coordination.

The Assistant Secretary shall contact annually the cognizant Federal, State, and local officials responsible for energy conservation programs within and affecting a State which is covered by the FSP.

§ 456.1020 Reporting and recordkeeping.

(a) Each utility and participating home heating supplier subject to the FSP shall submit a report to the Assistant Secretary no later than six months after the date of DOE approval of all procedures submitted pursuant to § 456.1021. An annual report shall subsequently be submitted no later than each July 1 and thereafter until July 1, 1989, unless the initial six month report is required to be submitted less than 90 days prior to July 1. In such a case, the annual report shall be submitted the following July 1 and annually thereafter through June 30, 1989.

(b) The six month report or annual report or both, as indicated, shall include the following information:

(1) The approximate number of eligible customers (6 month report only).

(2) A copy of the program announcement if not already provided (6 month report only).

(3) The number of program announcements provided to eligible customers, including the number of those making conditional audit offers (6 month report and annual report).

(4) The number of energy audits requested and provided.

(5) The nature of any direct financing activities and exempted or waived supply or installation activities engaged in by the utilities, including:

(i) Where applicable, any copy of any State or local law or regulation in effect on November 9, 1978 which requires or explicitly permits the utility to engage in any supply or installation of any energy conservation or renewable resource measures (6 month report);

(ii) The procedures used to select products to be supplied, installed, or financed (6 month report and annual report);

(iii) The procedures used to select installers to perform utility supported work (6 month report and annual report);

(iv) Steps the utility has taken to ensure that the activities have no adverse effect on competition (6 month report and annual report); and

(v) The price and interest rates charged by utilities in conjunction with the supply, installation and financing services offered pursuant to exemptions or waivers granted under section 216 (b), (c), (d)(1), (d)(2), and (e) of NECPA (6 month report and annual report).

(6) Description of the treatment of costs described in § 456.1010(b)(2) (utility only) (6 month report or annual report).

(7) The estimated utility or home heating supplier costs of implementing the RCS Program incurred during the reporting period (6 month report and annual report).

(8) The number and description of complaints against the utility or participating home heating supplier (6 month report and annual report).

(c) Each covered utility and participating home heating supplier shall keep for five years from the date of the program audit a copy of the audit report, and shall make such report available upon request to the Assistant Secretary.

(d) Any provisions of this section notwithstanding, the Assistant Secretary may, as he deems essential to the Departmental implementation of program responsibilities and subject to approval of the OMB under provisions of the Paperwork Act (Pub. L. 96–511)—

(1) Require additional information; or

(2) Waive any reporting and recordkeeping requirements, except the recordkeeping requirement in paragraph (c) of this section.

§ 456.1021 Information which a utility and participating home heating supplier shall report to the Assistant Secretary.

Utilities and participating home heating suppliers subject to the FSP shall report the following procedures to the Assistant Secretary for his approval on a date specified in the order:

(a) Procedures for determining the estimates of energy costs savings (§ 456.1006(b)).

(b) Procedures for ensuring that reasonable levels of effectiveness and safety are attained in the supply and installation of measures under the RCS Program (§ 456.1013(b)).

(c) Training procedures and a description of the training materials for auditors, including the timetable for the implementation of the qualification procedures for auditors § 456.1014(c)).

(d) The information to be offered to eligible customers on available conciliation services and redress proceedings §§ 456.1018(a)(1) and (b)).

(e) Procedures for handling complaints against a utility or participating home heating supplier (§ 456.1018(a)(2)).

§ 456.1022 Exceptions.

As provided for in the applicable sections, any utility or participating home heating supplier wishing to seek an exception from one or more of the following sections shall obtain approval from the Assistant Secretary by sending the request for approval, along with supporting documents, to the Assistant Secretary for Conservation and Renewable Energy, Department of

Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(a) Section 456.1000(c). (Exception for existing RCS programs);

(b) Section 456.1006(a)(2). (Listing substitute energy conserving practices in the program announcement);

(c) Section 456.1006(d). (Allowing advertising in the program announcement);

(d) Section 456.1007(a)(3). (Extending the time for the performance of an audit after a customer's request);

(e) Section 456.1007(b)(1). (Identifying substitute energy conserving practices during the program audit);

(f) Section 456.1007(b)(2). (Developing substitute applicability criteria);

(g) Section 456.1007(b)(3). (Developing substitute program audit procedures);

(h) Section 456.1007(e)(1). (Estimating costs or energy cost savings of installing any measure or product which is not a program measure);

(i) Section 456.1013(c). (Developing quality assurance procedures);

(j) Section 456.1016(a)(2). (Substantiating exclusion of program measures in calculating payback period); or

(k) Section 456.1016(b). (Adding program measures to the FSP not identified in Appendix I).

§ 456.1023 Waivers.

As provided for in Subpart L, any utility or participating home heating supplier wishing to petition for a waiver from any requirement under this subpart shall follow the procedures contained under section § 456.1203.

Subpart K—Alternative State Plans [Reserved]

Subpart L—Utility Waiver Process

§ 456.1201 Scope.

This subpart specifies the procedures to be followed by covered utilities to request a waiver from the Secretary from any provision of this part or any provision of a State residential energy conservation program under this part. For purposes of this section, the term "residential energy conservation program" means any program carried out by a utility that has as its purpose—

(a) Increasing the efficiency with which petroleum, natural gas or electric energy is consumed in residential buildings served by such utility; or

(b) Utilizing solar or other forms of renewable energy in residential buildings served by such utility.

§ 456.1202 Coverage.

This subpart shall apply to all regulated and nonregulated utilities which meet the definition of "covered utility" in § 456.105.

§ 456.1203 Approval process.

(a) *Criteria.* A waiver may be approved under this subpart if a covered utility shows in appropriate State proceedings and the appropriate State officials find that—

(1) The existing and planned residential energy conservation programs that will be implemented by the utility if a waiver from such provision is approved will result in savings in petroleum, natural gas or electric energy consumed in residential buildings served by the utility that are equal to or greater than the savings that would be achieved in connection with a properly implemented State residential conservation service plan under this part; and

(2) Adequate procedures are in effect that prevent unfair, deceptive or anticompetitive acts or practices affecting commerce that relate to the implementation of such residential energy conservation programs, including provisions to assure that any person who alleges any injury resulting from unfair, deceptive or anticompetitive acts or practices in connection with such programs shall be entitled to redress under such procedures as may be established by the Governor in the State in which the utility provides the service.

(b) *Approval.* The Secretary shall approve a request of a utility for a waiver under paragraph (a) of this section if the Secretary determines that—

(1) Opportunity for a hearing on the request for a waiver has been provided in the State in which the utility provides utility service; and

(2) In the case of a regulated utility, the Governor of the State in which the utility provides utility service and the State regulatory authority that has ratemaking authority with respect to such utility both—

(i) Find that the showings under paragraph (a) (1) and (2) of this section are sufficient; and

(ii) Support the request by the utility for the waiver.

(3) In the case of a nonregulated utility, the Governor of the State in which the utility provides utility service—

(i) Finds that the showings under paragraph (a) (1) and (2) of this section are sufficient; and

(ii) Supports the request by the utility for the waiver.

(c) *Submittal.* (1) Utilities seeking a waiver shall prepare a request documenting their proposal and showing how the approval criteria of § 456.1203(a) are met. The request shall be submitted to the Governor and, in the case of regulated utilities, to the State regulatory authority.

(2) The Governor, and, in the case of regulated utilities, the State regulatory authority, shall, for those waiver requests supported, submit to the Assistant Secretary a statement concerning the opportunity for a hearing on the request and a brief summary of findings concerning the sufficiency of the utility showings regarding the criteria in paragraph (a) (1) and (2) of this section together with the utility waiver request.

§ 456.1204 Annual Report to Governor.

Any utility that receives a waiver under this section shall provide the Governor of the State in which that utility provides utility service with an annual report describing the performance of its residential energy conservation programs in relation to the showings of such utility under paragraphs (a)(1) and (2) of this section.

§ 456.1205 Revocation procedures.

(a) The Secretary shall revoke any waiver granted to a covered utility subject to a State plan under this subpart upon a request under this section by the Governor of the State in which the utility provides utility service.

(b) The Governor, with the concurrence of the State regulatory authority in the case of a regulated utility, may request such a revocation on the basis that the savings described under § 456.1203(a)(1) on an annual basis are less than the savings in the year prior to approval of the waiver or that the procedures specified under § 456.1203(a)(2) are no longer adequate.

(c) A request for revocation may be made only after a review and opportunity for public hearing on the performance of the residential energy conservation programs of the utility. In order to facilitate such review and hearing, the utility shall provide the Governor such information as the Governor requests about such residential energy conservation program.

(d) The revocation request submitted to the Secretary shall contain a statement concerning the review and hearing discussed in paragraph (c) of this section, and a brief summary of the findings leading to the request to paragraph (b) of this section.

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Appendix I to Part 456—Program Measures

(a) *General.* (1) The measures table was developed by evaluating program measures with respect to a prototypical house (see Appendix II) for all HUD/MPS climate zones and categories of residential fuel use. A measure was determined to be a program measure for a climate zone and category of residential fuel use if the ratio of installed first cost, less any Federal and State income tax credits, divided by first year energy savings in dollars was less than or equal to 7 years. The RCS Model Audit procedures were used to determine energy savings.

(2) DOE applied only resident-installed costs to those measures which are not likely to be installed by a contractor: caulking and weatherstripping. Resident-installed and contractor costs were used to determine installed first cost for those measures which DOE believes could be easily installed by homeowners without encountering safety hazards or without conflicting with most building code requirements. These measures include ceiling insulation, floor insulation, water heater insulation, clock thermostats, heat reflective and heat absorbing window and door materials, and pipe and duct insulation. Contractor-installed costs alone were used for those measures where local codes or regulations and safety considerations are likely to preclude homeowner installations or where a measure is not easily installed by a homeowner. These measures include: wall insulation, storm and thermal windows and doors, replacement heating systems, oil burner replacements, vent dampers, intermittent ignition devices (IID's), replacement central air-conditioners, active solar space heating systems, combined active solar space heating and hot water heating systems, solar domestic water heating systems, replacement solar pool heaters, and wind energy devices.

(b) *Climate Zones of Program Measures.* In the table of program measures, the climate zones for heating degree-days are as follows:

Climate	Heating degree-days
1	0 to 1000.
2	1001 to 2500.
3	2501 to 3500.
4	3501 to 4500.
5	4501 to 5000.
6	5001 to 6000.
7	6001 to 7000.
8	7001 and above.

The cooling degree-days utilized in the evaluation of program measures for each climate zone within each State are the cooling degree-days for the weather station which is specified for that climate zone in the DOE Model Audit.

(c) *Category of Residential Fuel Use.* The program measures are designated in the following tables by categories of residential fuel use. These categories are:

(1) For ceiling insulation, wall insulation, floor insulation, duct insulation, pipe insulation, storm or thermal windows, storm or thermal doors, replacement heating systems, replacement oil burners, vent dampers, IID's, active solar space heating systems, and combined solar space heating and solar domestic hot water systems:

(i) "Electricity," which includes all residential buildings in which the principal source of space heating is an electric resistance heating system;

(ii) "Gas," which includes all residential buildings in which either natural gas, or propane, or butane is the principal space heating fuel;

(iii) "Oil," which includes all residential buildings in which either #2 heating oil or kerosene is the principal space heating fuel and includes all other residential buildings not included in the categories "Electricity," "Gas," or "Heat Pump";

(iv) "Heat Pump," which includes all residential buildings in which the principal source of space heating is an electric heat pump.

(2) For water heater insulation and solar domestic hot water:

(i) "Electricity" includes all residential buildings in which the principal fuel for water heating is electricity;

(ii) "Gas" includes all residential buildings in which the principal fuel for water heating is either natural gas, or propane, or butane;

(iii) "Oil" includes all residential buildings for which the principal fuel for water heating is either #2 heating oil, kerosene, or a fuel not included under "Electricity" or "Gas" in this subsection.

(3) For heat reflective and heat absorbing window and door material, "Electricity" includes all residential buildings in which electricity is used for air-conditioning and includes buildings that are cooled with a heat pump.

(4) For replacement central air-conditioners, "Electricity" includes all residential buildings in which electricity is used by a central air-conditioner.

(5) For replacement solar swimming pool heaters:

(i) "Electricity" includes all swimming pools for which the principal fuel for pool heating is electricity;

(ii) "Gas" includes all swimming pools for which the principal fuel for pool heating is natural gas, or propane, or butane;

(iii) "Oil" includes all swimming pools for which the principal fuel for pool heating is either #2 heating oil, kerosene, or a fuel not included under "Electricity" or "Gas" in this subsection.

(6) For wind energy devices:

(i) "Electricity" includes all residences in which the principal source of space heating is an electric resistance heating system and which have electric domestic water heating;

(ii) "Heat Pump" includes all residences in which the principal source of space heating is an electric heat pump and which have electric domestic hot water heating.

(d)(1) *Caulking, Weatherstripping, and Clock Thermostats.* Caulking and weatherstripping fell within the 7-year payback in all climate zones for all fuel use categories for resident-installed costs and are considered program measures in all States. Clock thermostats fell within the 7-year payback in all climate zones for all fuel use categories for resident- and contractor-installed costs. (For the sake of simplicity, these measures do not appear in the tables.)

(2) *Devices Associated with Electric Load Management Techniques.* Devices associated with electric load management techniques are program measures for all categories of fuel use if the local electric utility offers a residential rate that reflects any differences in the utility's cost of service (either energy or demand costs) between peak and off-peak periods, or if a residential electric rate comprised of an integrated peak measured demand and an energy use component is applied.

(3) *Ceiling Insulation.* Where indicated as a program measure in Table 2, the R-Value for ceiling insulation shall be determined by the State.

(4) *Floor Insulation.* Where indicated as a program measure in Table 2, the R-Value for floor insulation shall be determined by the State.

(5) *Replacement Solar Swimming Pool Heaters.* These are evaluated as a program measure as indicated in Table 2. This analysis assumed a pool blanket or cover is also used. The measure should be audited for as indicated in Table 2 whenever the residence has a heated pool.

(6) *Intermittent Ignition Devices (IID's).* IID's are not displayed as program measures in Table 2, but are program measures for the category "Gas" in the Oregon climate zone "8."

(7) *Active Solar Space Heating Systems and Combined Solar Space Heating and Hot Water Systems.* Active solar space heating systems and combined solar space heating and hot water systems are program measures as indicated by Table 1 below.

TABLE 1

State	HUD/MPS region	Fuel	Active solar systems	Combined [1]
Arizona	3	Electric	C	C.
		Gas		
		Oil		
		H.P.		
Arizona	4	Electric	C	C.
		Gas	[C]	
		Oil	C	
		H.P.	[C]	
California	3	Electric		C.
		Gas		
		Oil		
		H.P.		
New Mexico	3	Electric	C	C.
		Gas		
		Oil		
		H.P.		
New Mexico	4	Electric	C	C.
		Gas		
		Oil		
		H.P.	[C]	
New Mexico	5	Electric	C	
		Gas		
		Oil		
		H.P.		

[1] Combined solar space heating and hot water systems.

(8) *Wind Energy Devices.* A State that does not change its audit requirements by deleting measures based on the amended RCS measures table shall, whenever a wind energy device appears in Table 2 with

brackets and is also asterisked, continue to include a wind energy device as a program measure in its State Plan. Whenever a wind energy device is bracketed or bracketed and asterisked, a State that changes its audit requirements by deleting measures based on the amended RCS measures table shall include in its State Plan the requirement that utilities audit for the appropriate type of wind energy device identified in Table 2. Where both types of wind energy devices are identified in Table 2, an audit is required for only one of these devices.

(e) *Bracketed Measures.* A State is required to include in its State Plan those measures that appear in brackets in Table 1 or 2 only when a State changes its audit requirements by deleting any measures from its State Plan based upon the amended RCS measures tables.

(f) *Table of Program Measures by State.* All other program measures are displayed in Table 2 organized by State where:

R = Resident-installed costs
C = Contractor-installed costs
X = 2-kW nonutility interconnected DC wind machine without battery storage
Y = 2-kW interconnected AC wind machine without battery storage.

TABLE 2

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
AL	2																
	Electric	RC	C	[RC]	RC	RC	RC			RC				C		C	
	Gas	RC		[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC					C				C	
	H.P.	RC		[R]		R	R									C	
AL	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
AK	8																
	Electric	RC	C	RC		RC	RC	C		RC							
	Gas	RC	C	RC		RC	RC				C		C				
	Oil	RC	C	RC		RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C			
	Gas	RC	C	[R]	RC	R	R	[C]									
	Oil	RC	C	[R]	RC	R	R	[C]									
	H.P.	RC	C			R	R	[C]									
AZ	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
AZ	3																
	Electric	RC	C	RC	RC	RC	RC	C	[C]	RC	C			C			[X]
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									[X]
AZ	4																
	Electric	RC	C	RC	RC	RC	RC	C	[C]	RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C			C	
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
AZ	6																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C			C	C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
AR	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
AR	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
CA	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
CA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
CA	4																

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
CA	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CA	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
CO	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
CO	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CO	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC					C	C	[XY]
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[XY]
CT	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[X]*
DE	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
DC	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
FL	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C		C	
	Gas	RC	C		RC	R	R										
	Oil	RC	C	[R]	RC	R	R	[C]								C	
	H.P.	RC	C			R	R									C	
FL	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		R	R									C	
GA	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
	Gas	RC	C	[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[R]		R	R									C	
GA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C				C	
	H.P.	RC	C	[RC]		RC	RC									C	
GA	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
HI	1																
	Electric	RC	C	[RC]	RC	RC	RC	[C]	[C]	RC				C			[xy]*
	Gas	RC	C	[RC]	RC	RC	RC	[C]	[C]				C				
	Oil	RC	C	[R]	RC	R	R	[C]	[C]								
	H.P.	RC	C	[R]		R	R	[C]	[C]								[xy]*
ID	7																

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
ID	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
IL	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
IL	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IL	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IL	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IN	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
IN	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IN	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IN	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
IA	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
KS	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
KS	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		
	Gas	RC	C	RC	RC	RC	RC	C					C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
KS	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[X]*
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[X]*
KS	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[X]*
KY	4																

TABLE 2—Continued

State	HUD/ MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
KY	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC										
	5																
KY	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	R	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
	6																
LA	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	R	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC										
	2																
LA	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[R]	RC	RC	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC									C	
	3																
ME	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
	8																
MD	Electric	RC	C	RC	RC	RC	RC	C		RC	C						[X]*
	Gas	RC	C	RC	R	RC	RC	C					C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					[X]*
	H.P.	RC	C	RC		RC	RC	C									
	4																
MD	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
	5															C	
MD	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
	6															C	
MA	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C			C	
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
	6															C	
MA	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C					C	[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
	7															C	[X]*
MI	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	R	RC	RC	C			C		C			C	
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
	7															C	
MI	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	R	RC	RC	C			C		C			C	
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
	8															C	
MN	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C			C	
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
	8															C	
MS	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC		RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
	2																
MS	Electric	RC	C	[RC]	RC	RC	RC			RC				C			
	Gas	RC		[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC					C					
	H.P.	RC	C	[R]		R	R										
	3																
MO	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
	4																
MO	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
	5															C	

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
MO	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
MT	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NV	2																
	Electric	RC	C	[RC]	RC	RC	RC			RC	C						
	Gas	RC		[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC					C					
	H.P	RC		[RC]		R	RC										
NV	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC										
NV	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC										
NV	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C									
NV	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NV	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NV	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NH	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NH	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C			C					C	[x]*
NJ	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NJ	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NM	3																

TABLE 2—Continued

State	HUD/ MPS region	fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
			Ceiling	Wall	Floor	Water heater	Duct	Pipe										
		Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[x]*
		Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
		Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
		H.P.	RC	C	[RC]		RC	RC	[C]									[x]*
NM	4																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[x]*
		Gas	RC	C	RC	RC	RC	RC	C			C		C				
		Oil	RC	C	RC	RC	RC	RC	C				C					
		H.P	RC	C	RC		RC	RC	C									[x]*
NM	5																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	[x]*
		Gas	RC	C	RC	RC	RC	RC	C			C		C				
		Oil	RC	C	RC	RC	RC	RC	C				C					
		H.P	RC	C	RC		RC	RC	C								C	[x]*
NM	6																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[xy]*
		Gas	RC	C	RC	RC	RC	RC	C			C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C									[xy]*
NM	7																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		
		Gas	RC	C	RC	RC	RC	RC	C			C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C									
NM	8																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[x]*
		Gas	RC	C	RC	R	RC	RC				C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C								C	[x]*
NY	6																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[x]*
		Gas	RC	C	RC	RC	RC	RC	C			C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C								C	[x]*
NY	7																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[xy]*
		Gas	RC	C	RC	RC	RC	RC	C			C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C								C	[xy]*
NY	8																	
		Electric	RC	C	RC	RC	RC	RC	C	C	RC	C				C	C	[xy]*
		Gas	RC	C	RC	R	RC	RC	C			C		C				
		Oil	RC	C	RC	R	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C								C	[xy]*
NC	2																	
		Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
		Gas	RC		[RC]	RC	R	RC						C				
		Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
		H.P	RC		[R]		R	R									C	
NC	3																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
		Gas	RC	C	[RC]	RC	RC	RC				C		C				
		Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
		H.P	RC	C	[RC]		RC	RC									C	
NC	4																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
		Gas	RC	C	RC	RC	RC	RC				C		C				
		Oil	RC	C	RC	RC	RC	RC	C				C					
		H.P	RC	C	RC		RC	RC									C	
NC	5																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C						
		Gas	RC	C	RC	RC	RC	RC				C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC										
ND	8																	
		Electric	RC	C	RC	RC	RC	RC	C		RC							
		Gas	RC	C	RC	RC	RC	RC	C			C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C									
OH	5																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
		Gas	RC	C	RC	RC	RC	RC				C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C								C	
OH	6																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
		Gas	RC	C	RC	RC	RC	RC				C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C								C	
OH	7																	
		Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
		Gas	RC	C	RC	RC	RC	RC	C			C		C				
		Oil	RC	C	RC	RC	RC	RC	C			C	C					
		H.P	RC	C	RC		RC	RC	C								C	
OK	3																	

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			[x]*
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									[x]*
OK	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			[xy]*
	Gas	RC	C	RC	RC	RC	RC	C					C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									[xy]*
OK	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[xy]*
OK	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	[xy]*
OR	4																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC		RC		RC	RC										
OR	5																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC		RC		RC	RC										
OR	6																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
OR	7																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
OR	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
PA	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
PA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
PA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
PA	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
RI	6																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C					C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					[x]*
	H.P.	RC	C	RC		RC	RC	C								C	
SC	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
	Gas	RC		[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC		[R]		R	R									C	
SC	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C				C	
	H.P.	RC	C	[RC]		RC	RC									C	
SC	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
SD	7																

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
SD	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
TN	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
TN	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC										
TN	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
TX	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C			
	Gas	RC	C		RC	R	R	[C]									
	Oil	RC	C	[R]	RC	R	R	[C]									
	H.P.	RC	C			R	R	[C]									
TX	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
TX	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
TX	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
TX	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
UT	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
UT	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
UT	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
UT	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC					C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
VT	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						[x]*
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
VT	8																[x]*
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[x]*
VA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]								C	
VA	4																

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
VA	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
VA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
WA	6																
	Electric	RC		RC		RC	RC			RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	R		RC		RC	RC										
WA	7																
	Electric	RC		RC	R	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC		RC		RC	RC										
WA	8																
	Electric	RC	C	RC	R	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
WV	5																
	Electric	RC	C	RC	RC	RC	RC			RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
WV	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WI	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WI	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WY	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WY	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
PR	1																
	Electric	RC	C	[RC]	RC	RC	RC	[C]	[C]	RC				C	C		
	Gas	RC	C	[R]	RC	R	R	[C]	[C]								
	Oil	RC	C	[R]	RC	R	R	[C]	[C]								
	H.P.	RC	C	[R]		R	R	[C]	[C]								

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
Alabama	2	Electric				R	R, C.
		Gas					
		Oil				R	
		H.P.					
	3	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.					
Alaska	8	Electric				R, C	R, C.
		Gas				R	
		Oil				R, C	
		H.P.				R, C	
Arizona	1	Electric			R		R, C.
		Gas			R		

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Oil			R		
		H.P.					
	2	Electric	R	R	R, C	R	R, C.
		Gas	R		R, C		
		Oil	R		R, C		
		H.P.			R		
	3	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	4	Electric	R	R, C	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	5	Electric	R	R	R, C	R, C	R, C.
		Gas		R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	6	Electric	R, C	R	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R, C	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R, C	R	
		Oil		R	R, C	R	
		H.P.	R	R	R, C	R, C	
Arkansas	3	Electric	R		R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	4	Electric			R	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
California	2	Electric	R	R	R, C	R	R, C.
		Gas			R	R	
		Oil		R	R	R	
		H.P.			R	R	
	3	Electric	R, C	R	R, C	R, C	R, C
		Gas	R		R	R	
		Oil	R	R	R, C	R, C	
		H.P.	R		R	R	
	4	Electric	R, C	R	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R, C	R	R, C	R, C	
		H.P.	R	R	R	R, C	
	5	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R, C	R	R, C	R, C	
		H.P.	R, C	R	R, C	R, C	
	6	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	
	7	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R, C	
		Oil	R, C	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas	R		R	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	
Colorado	6	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.	R	R	R, C	R, C	
Connecticut	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Delaware	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
District of Columbia	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Florida	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	2	Electric			R	R	R, C.
		Gas					
		Oil			R		

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		H.P.					
Georgia	2	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.					
	4	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
Hawaii	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
Idaho	7	Electric				R	R, C.
		Gas			R	R	
		Oil			R	R, C	
		H.P.				R	
	8	Electric				R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R		
Illinois	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Indiana	4	Electric			R	R	RC
		Gas					
		Oil			R	R	
		H.P.			R	R	
	5	Electric			R, C	R	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
	6	Electric			R, C	R	R, C.
		Gas				R	
		Oil			R, C	R	
		H.P.			R	R	
	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R	R	
Iowa	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Kansas	4	Electric	R		R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	5	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	6	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil	R	R	R	R	
		H.P.			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
Kentucky	4	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	5	Electric			R, C	R	R, C.
		Gas					
		Oil			R, C	R	
		H.P.			R	R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
	6	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
Louisiana	2	Electric			R	R	R, C.
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
Maine	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Maryland	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
	6	Electric		R	R	R, C	R, C.
		Gas				R	
		Oil		R	R	R	
		H.P.				R	
Massachusetts	6	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R, C	R, C	
	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R, C	R, C	
Michigan	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Minnesota	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R, C	R, C	
Mississippi	2	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P					
Missouri	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
Montana	8	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Nebraska	6	Electric			R	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Nevada	2	Electric			R	R	R, C.
		Gas					
		Oil			R		
		H.P.					
	3	Electric	R		R, C	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	4	Electric			R	R	R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Gas			R	R	
		Oil			R	R	
		H.P			R	R	
	5	Electric			R, C	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R, C	
		Oil			R	R, C	
		H.P			R	R, C	
New Hampshire	7	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R, C	R, C	
New Jersey	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P			R	R, C	
New Mexico	3	Electric	R, C	R	R, C	R, C	R, C.
		Gas			R		
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R	
	4	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R	
	5	Electric	R, C	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	6	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	7	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R, C	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P	R	R	R, C	R, C	
New York	6	Electric	R, C	R	R, C	R, C	R, C
		Gas			R	R	
		Oil	R		R	R	
		H.P	R	R	R, C	R, C	
	7	Electric	R	R	R, C	R, C	R, C
		Gas			R	R	
		Oil	R		R	R, C	
		H.P	R	R	R, C	R,C	
	8	Electric	R	R	R, C	R, C	R, C
		Gas			R	R	
		Oil	R		R	R, C	
		H.P	R	R	R, C	R, C	
North Carolina	2	Electric			R	R	R, C
		Gas					
		Oil			R	R	
		H.P					
	3	Electric			R	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P			R	R	
	4	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R	R	
	5	Electric			R, C	R, C	R, C
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R	R	
North Dakota	8	Electric			R	R, C	R, C
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Ohio	5	Electric			R	R, C	R.
		Gas				R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Oil			R	R	
		H.P				R	
	6	Electric			R	R, C	R.
		Gas				R	
		Oil			R	R	
		H.P			R	R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R	
Oklahoma	3	Electric		R	R, C	R	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P			R, C	R	
	4	Electric			R, C	R, C	R, C.
		Gas			R		
		Oil			R, C	R	
		H.P			R, C	R	
	5	Electric		R	R, C	R, C	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P			R, C	R	
	6	Electric		R	R, C	R, C	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P		R	R, C	R	
Oregon	4	Electric			R	R	R, C.
		Gas			R	R, C	
		Oil			R, C	R, C	
		H.P					
	5	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P				R	
	6	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P			R	R	
	7	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil	R		R, C	R, C	
		H.P			R	R	
	8	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P			R	R	
Pennsylvania	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Rhode Island	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
South Carolina	2	Electric					R, C.
		Gas					
		Oil					
		H.P					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
South Dakota	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	R, C.
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Tennessee	3	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	4	Electric				R	R, C.
		Gas					
		Oil			R	R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants[1]
		H.P.					
	5	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
Texas	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	2	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.					
	3	Electric			R, C	R	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	4	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	5	Electric		R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
Utah	5	Electric	R		R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.	R	R	R, C	R, C	
Vermont	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
Virginia	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Washington	6	Electric					R.
		Gas			R	R	
		Oil			R	R	
		H.P.					
	7	Electric					R.
		Gas			R	R	
		Oil			R	R, C	
		H.P.					
	8	Electric				R	R.
		Gas			R	R	
		Oil			R	R, C	
		H.P.					
West Virginia	5	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	6	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Wisconsin	7	Electric			R	R, C	R, C.
		Gas			R	R	
		Oil			R	R, C	
		H.P.			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R	R, C	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
Wyoming	7	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Puerto Rico	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					

[1] This measure is only applicable for homes where the air-conditioning system is powered electrically.

Appendix II to Part 456—Prototypical House Assumptions

(a) *Reference House.* (1) The prototypical house, on which the RCS measures table is based, is the ranch style home developed in the National Bureau of Standards document NBSIR 77-1309. This house is based upon a National Association of Home Builders (NAHB) survey of 84,000 homes built by 1,600 builders selected randomly from the builder members of NAHB. The house is typical of ranch style houses built in 1974.

(2) The house has been slightly modified to make it more representative of existing housing stock and to allow for the calculation of all RCS measures. DOE has elected to reduce the insulation levels from the NAHB survey (1974) level of R-19 ceiling and R-11 walls to R-7 insulation in the ceiling and no insulation in the walls as a basis for the measures table. Insulation manufacturers' data on residential retrofit applications for ceiling insulation indicate that the majority of existing attics that have not been reinsulated have an existing R-Value of between R-5 and R-9. The furnace/hot water space has been enlarged to accommodate oil furnaces and storage for solar domestic water heaters. The prototypical house, to provide the basis for audits, is assumed to have the features necessary for the application of renewable energy measures. For example, it was assumed to have a south-facing roof suitable for solar collectors, no obstruction to wind energy systems, and a swimming pool that could use a solar pool heater. It is recognized that many residences do not have these features.

(3) The prototypical house and assumptions were chosen as representative of typical homes in the Nation which could benefit from RCS measures. States are encouraged to review the prototypical house relative to construction practices on the local level. A State may submit an amended RCS measures table based upon modifications to the prototypical house if documentation supports such requests.

(b) *Characteristics of the Prototypical House.* (1) *Infiltration.* The prototypical house is assumed to have deteriorated caulking on window and door frames, no weatherstripping, and no gaskets on electrical outlets. Some minor cracks are assumed to exist in ceiling and floor joints. Some wiring and pipe penetration is assumed through the attic floor.

Existing conditions also include undampered vents, no fireplace, and at least 13 entrances and exits through the home per average day. The infiltration category of the prototypical house is essentially the "poor" category listed in the RCS Model Audit.

(2) *Insulation.* As indicated above, the prototypical house is assumed to have no wall insulation, R-7 ceiling insulation in a vented attic, and no floor or crawl space insulation. The walls with 2 x 4 studs on 16-inch centers have a thermal conductance of 0.21 Btu per hour per square foot per degree Fahrenheit (Btu/h/ft²/° F). The thermal conductance of the ceiling with joists or truss cords on 24-inch centers is 0.12 Btu/h/ft²/° F. The thermal conductance of the floor with 2 x 10 floor joists on 24-inch centers and carpeting and vented crawl space is 0.19 Btu/h/ft²/° F.

(3) *Windows.* All glazing is assumed to be single pane with a thermal conductance of 1.13 Btu/h/ft²/° F.

(4) *Water Heater.* The water heater is assumed to be more than 3 years old and is in conditioned space with adequate clearance for an insulation jacket.

(5) *Space Heating and Cooling.* Primary space conditioning equipment for the prototypical home includes one of the following: electric resistance furnace, electric resistance baseboard, electric resistance radiant ceiling or wall panels, electric heat pump, electric boiler, natural gas-fired boiler, gas-forced air, or oil-fired furnace. An electric drive central air-conditioner is assumed. Industry accepted seasonal efficiencies for existing systems more than 5 years old, and new commercially available systems are used in the calculations. In the prototypical house, combustion air is taken from conditioned space, if required. Oil burners are not retention or wet base types. Natural gas pilot lights are assumed to be on for the heating season. All existing systems in the reference house are more than 5 years old.

(6) *Distribution Systems.* Distribution ducting and hydronic pipe are assumed to be in unconditioned areas and are uninsulated.

(7) *Heating and Cooling System Controls.* The prototypical house is assumed not to have a clock thermostat. It is also assumed that there is no manual nighttime temperature setback.

(8) *Heat Reflecting and Heat Absorbing Window and Door Material.* The prototypical house has 127 sq. ft. of unshaded windows which face east and west. For purposes of calculation, the house was oriented so that the ends of the house which contained no glazing face north and south.

(9) *Solar Domestic Hot Water Systems.* It is assumed that 80 gallons of hot water are used per day by a family of four (ASHRAE Systems Handbooks, 1980). The hip roof is not shaded and has an adequate south-facing area for collectors.

(10) *Replacement Solar Pool Heaters.* The 450 sq. ft. swimming pool is assumed to have a cover that is put in place in nonuse hours.

(11) *Wind Energy Systems.* There is no major obstruction to wind. The size of the wind generator is 2 kW, and all energy generated is used. The analysis was performed for residences that used electricity for heating and water heating.

(c) *Thermal Envelope.*

—Glazing
Single panel U-Value = 1.13
East area + sliding glass door = 72 ft²
West area = 55 ft²
Total area = 127 ft²

—Walls
No insulation
U wall = 0.24—excludes the stud cross section and represents 75 percent of the exposed area
U studs = 0.13—which is 25 percent of the exposed area
U overall = 0.21—which is the weighted value of the U of the wall and the U of the stud cross section
South wall area = 224 ft²
North wall area = 224 ft²
East wall area = 264 ft²
West wall area = 260 ft²

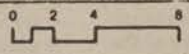
—Ceiling
R-7 insulation
U ceiling = 0.115—excludes the truss cord and represents 90 percent of the exposed area
U truss = 0.17—which is 10 percent of the exposed area
U overall = 0.12
Area = 1,176 ft²

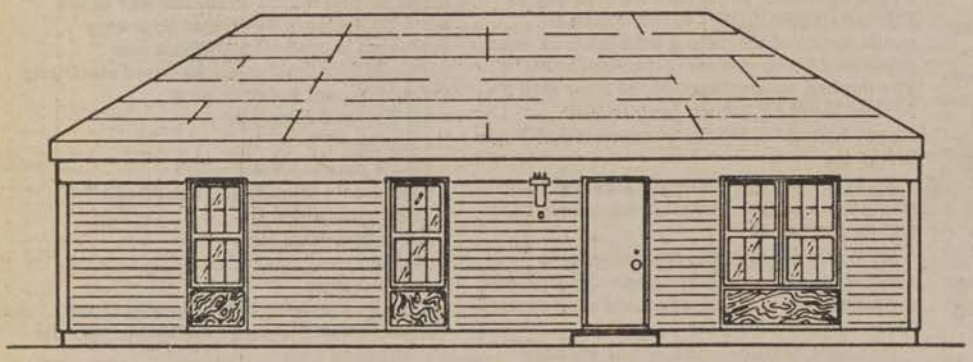
—Front Entry Door
U = 0.47 (hardwood door)
Area = 21 ft²

—Floor Above Crawl Space
No insulation
U floor = 0.2—excludes the joist and represents 90 percent of the exposed area
U joist = 0.09—which is 10 percent of the exposed area
U overall = 0.19
Area = 1,176 ft²

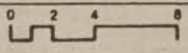
BILLING CODE 6450-01-M

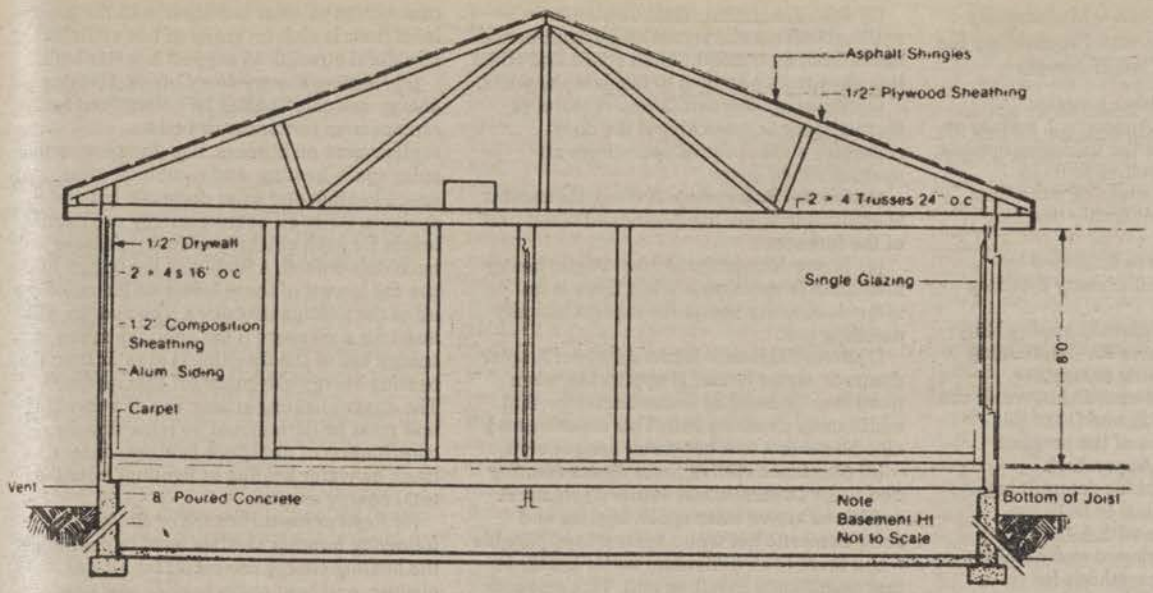
Rear Elevation of a Typical Ranch House



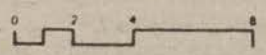


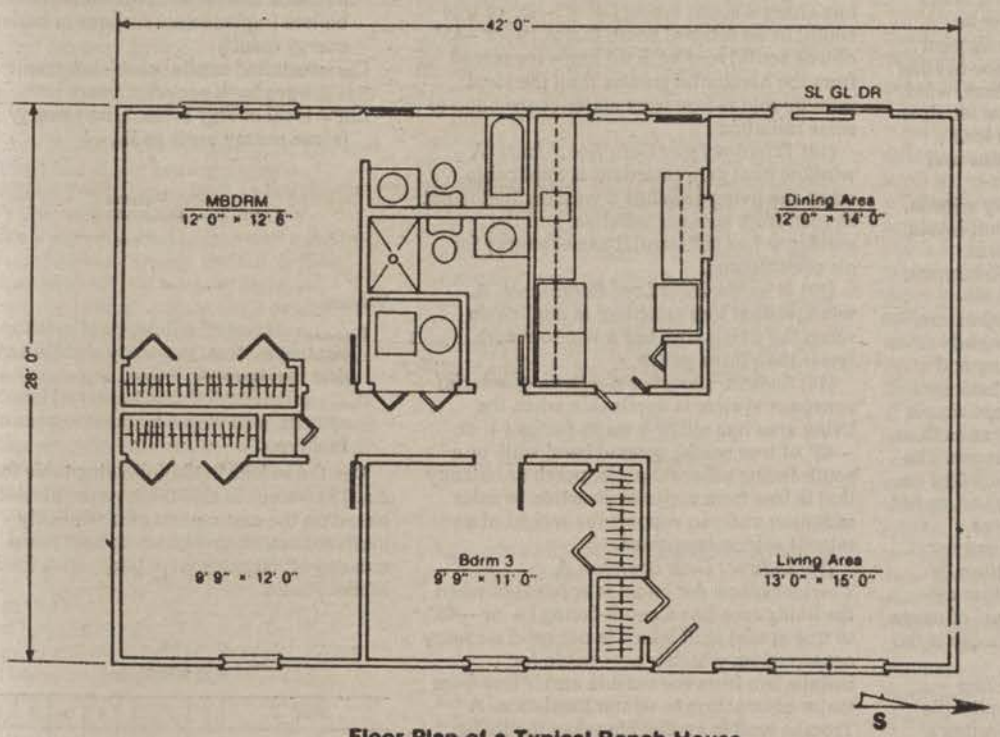
Front Elevation of a Typical Ranch House



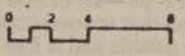


Section Thru Typical Ranch





Floor Plan of a Typical Ranch House



Appendix III to Part 456—Multifamily Applicability Criteria and Procedures for Determining Usage Cutoff Levels

(a) *General.* (1) For those program measures identified in Appendix I, a State or nonregulated utility has the following options regarding audits for dwelling units in residential buildings containing more than four dwelling units (multifamily dwelling units):

(i) Accept the measures indicated by Appendix I for use in multifamily dwelling units.

(ii) Use the DOE multifamily applicability criteria and/or procedures for determining specific cutoffs for heating energy use, cooling energy use, or domestic hot water use in paragraphs (b), (c), (d), and (e) of this appendix for all or some of the program measures identified in Appendix I.

(iii) Develop a method for determining applicability and submit it to DOE for approval in accordance with § 456.306(b).

(2) DOE has not developed multifamily applicability criteria or methods for determining usage cutoff levels for caulking, weatherstripping, duct and pipe insulation, storm or thermal windows, heat reflective and heat absorbing window materials, and IID's. DOE has determined that these measures have the same applicability in multifamily dwelling units as in the prototypical house.

(3) DOE has developed specific applicability criteria for ceiling insulation, floor insulation, wall insulation, clock thermostats, storm or thermal doors, water heater insulation, solar domestic water heaters, replacement solar swimming pool heaters, combined active solar space heating and solar domestic hot water systems, wind energy devices, direct gain systems, window heat gain retardants, window heat loss retardants, solaria/sunspace systems and indirect gain systems.

(4) In addition to the applicability criteria, methods for determining usage cutoff levels have been developed for replacement furnaces or boilers, replacement oil burners, flue dampers, replacement central air-conditioners, solar domestic water heaters, active solar space heating systems and combined active solar space heating and solar domestic hot water systems because they may have significantly different simple paybacks for multifamily dwelling units than for the single family prototypical house. The payback for these measures is dependent on heating energy use, cooling energy use, or hot water use. An audit for each of these measures is required if the annual energy usage or hot water usage in a multifamily dwelling unit is high enough such that a 7-year payback is probable. That level of usage for which a 7-year payback is probable is the cutoff level for that measure.

(b) *Applicability criteria.* (1) *Ceiling Insulation.* Ceiling insulation is applicable when the audit is for ceilings separating a conditioned space from an unconditioned space and when it is physically practical to insulate the ceiling.

(2) *Floor Insulation.* Floor insulation is applicable for floors separating a conditioned space from an unconditioned space and when it is physically practical to insulate the floor.

(3) *Wall Insulation.* Wall insulation is applicable for walls separating a conditioned space from an unconditioned space and when it is physically practical to insulate the walls.

(4) *Storm or Thermal Doors.* A storm or thermal door is applicable if the door separates a conditioned space from an unconditioned space.

(5) *Clock Thermostats.* A clock thermostat is applicable when the thermostat is not part of the furnace.

(6) *Water Heater Insulation.* Water heater insulation is applicable when there is an individual water heater for that multifamily dwelling unit.

(7) *Solar Domestic Water Heaters.* A solar domestic water heater is applicable when there is an individual water heater for that multifamily dwelling unit. This measure may also be subject to a hot water usage cutoff.

(8) *Combined Active Solar Space Heating and Solar Domestic Hot Water Systems.* A combined active solar space heating and solar domestic hot water system is applicable when there is an individual water heater for that multifamily dwelling unit. This measure may also be subject to a hot water usage cutoff.

(9) *Wind Energy Devices.* A wind energy device is not applicable for multifamily dwelling units.

(10) *Replacement Solar Swimming Pool Heaters.* A replacement solar swimming pool heater is not applicable for multifamily dwelling units.

(11) *Direct Gain Systems.* A direct gain systems is applicable when the living area has either a south-facing (+ or −45° of true south) or an integral south-facing (+ or−45° of true south) roof with tilt angle measured from the horizontal greater than the local latitude that is free from major obstruction to solar radiation.

(12) *Window Heat Gain Retardants.* A window heat gain retardant is applicable when the living area has a window that is not shaded from summer sunshine and the residence has substantial use of energy for air conditioning.

(13) *Window Heat Loss Retardants.* A window heat loss retardant is applicable when the living area has a window with fewer than three panes.

(14) *Solaria/sunspace Systems.* A solaria/sunspace system is applicable when the living area has either a south-facing (+ or −45° of true south), ground level wall, or a south-facing adjacent patio, porch or balcony that is free from major obstruction to solar radiation and can support the weight of a retrofit solaria/sunspace.

(15) *Indirect Gain Systems.* A Thermosyphon Air Panel is applicable when the living area has a south-facing (+ or −45° of true south) wall which is not solid masonry construction, which is accessible for installation from the outside and is free from major obstruction to winter insulation. A Trombe wall is applicable when the living area has a south-facing (+ or −45° of true south) solid masonry wall that is accessible for installation from the outside and is free from major obstruction to solar radiation. A water wall is applicable when the living area has a south-facing (+ or −45° of true south) ground level wall that is free from major obstruction to solar radiation, and the ground level floor is slab on grade or has sufficient structural strength to support a water wall.

(c) *Heating Energy Use Cutoffs.* Heating energy use cutoffs shall be determined for replacement furnances or boilers, replacement oil burners, flue dampers, active solar space heating, and combined solar space heating and solar domestic hot water systems. After all heating energy use cutoff levels for each category of fuel type have been determined, a State has the option to use the lowest of these levels as the cutoff for all of the heating measures. The auditor will audit for a measure if the annual heating energy use of the dwelling is greater than the heating energy use cutoff for that measure. The annual heating energy use of a dwelling unit must be determined by removing the contribution of nonspace heating sources (such as water heating or lighting) from the total energy usage.

(1) *Replacement Furnace or Boiler.* The following formula shall be used to determine the heating energy use cutoff for oil, gas, electric, and heat pump heating systems:

$$E_{RFCO} = \frac{C_{RF}}{7\ (LEP)\ (\Delta n)}$$

Where

E_{RFCO} = annual heating energy consumption (based on assumed worst existing system) necessary to give a 7-year simple payback on replacement furnaces or boilers (replacement furnace or boiler energy cutoff)

C_{RF} = installed capital cost − tax credit

7 is the payback period in years

LEP = local energy price, $/unit energy (same energy units as E_{RFCO})

$$\Delta = 1 - \frac{n_{existing}}{n_{new}}$$

Where

$n_{existing}$ = assumed efficiency of existing heating system, varies by climate zone and fuel type,

n_{new} = efficiency of new improved heating system, also varies by climate zone and fuel type.

Use the values in the following table for Δn. The values in this table were calculated based on the assumption of a relatively inefficient existing furnace or heat pump. All existing efficiencies were taken from the RCS Model Audit.

Δn

HUD MPS Zone

Fuel	1	2	3	4	5	6	7	8
Electric	.55	.51	.44	.41	.35	.31	.26	.09
Gas	.36	.36	.36	.36	.36	.36	.36	.36
Oil	.20	.20	.20	.20	.20	.20	.20	.20
H.P.	.20	.20	.20	.20	.20	.20	.20	.20

(2) *Replacement Oil Burner.* The following formula shall be used to determine the

heating energy use cutoff for replacement oil burners.

$$E_{RBCO} = \frac{C_{RB}}{(LEP)\ (7)\ (0.18)}$$

Where

E_{RBCO}=annual heating energy consumption necessary to give a 7-year payback on a replacement oil burner (replacement oil burner energy cutoff)
C_{RB}=cost of installed replacement oil burner − tax credit
LEP=local energy price, $/unit energy (same energy units as E_{RBCO})
7 is the payback period in years
0.18 is a high estimate of the proportion of heating energy that may be saved due to a replacement oil burner.

(3) *Flue Damper.* The following formula shall be used to determine the heating energy use cutoff for flue dampers for gas heating systems.

$$E_{FDCO} = \frac{C_{FD}}{(LEP)\ (7)\ (0.1)}$$

Where

E_{FDCO} =annual energy consumption necessary to give a 7-year payback on a flue damper (flue damper energy cutoff)
C_{FD}=installed flue damper cost − tax credit
LEP=local energy price, $/unit energy (same energy units as E_{FDCO})
7 is the payback period in years
0.1 is a high estimate of the proportion of heating energy that may be saved due to a flue damper.

(4) *Active Solar Space Heating.* (i) The cost of active solar space heating systems depends on insulation as well as heating energy use, which makes it difficult to produce a generic formula that will indicate the annual heating energy use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the heating energy use cutoff level by calculating the simple payback associated with a range of annual heating energy uses and then, by successive approximation, determine the heating energy use cutoff level that corresponds to a 7-year simple payback.

(ii) Use the following procedure to determine the heating energy use cutoff for solar space heating:

(A) Determine savings (using each heating fuel type) and costs for active solar space heating using an approved audit procedure, such as the Model Audit, for a range of annual heating energy uses. For each fuel, choose an annual heating energy use cutoff level, based on these calculations, which corresponds to a 7-year simple payback.

(B) Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (solar savings fraction is the percent of the heating load provided by the Solar system); enough roof area to provide the solar savings fraction indicated above; and the tilt of the collector should be optimal for the specified latitude.

(5) *Combined Solar Space Heating and Solar Domestic Hot Water Systems.* (i) The cost of combined active solar space heating and solar domestic hot water systems depends on insulation as well as heating energy use which makes it difficult to produce a generic formula that will indicate the annual heating energy use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the heating energy use cutoff level by calculating the simple payback associated with a range of annual heating energy uses and then by successive approximations determine the heating energy use cutoff level that corresponds to a 7-year simple payback.

(ii) Use the following procedures to determine the cutoff for combined solar space heating and domestic hot water systems.

(A) Determine savings (using each heating fuel type) and costs for active solar space heating using an approved audit procedure, such as the Model Audit, for a range of annual heating energy uses. For each fuel, choose an annual heating energy use cutoff level, based on these calculations, which corresponds to a 7-year simple payback.

(B) Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (solar savings fraction is the percent of the heating load provided by the solar system); enough roof area to provide the solar savings fraction indicated above; the tilt of the collector should be optimal for the specified latitude; and the hot water usage is 80 gallons per day with the water temperature set at 120° F.

(d) *Cooling Energy Use Cutoffs.* (1) Cooling energy use cutoffs shall be determined for replacement central air-conditioners.

(2) *Replacement Central Air-Conditioners.* (i) The following formula shall be used to determine the cooling energy use cutoff for replacement central air-conditioners:

$$E_{ACCO} = \frac{C_{RAC}}{7\ (LEP)\ (\Delta COP)}$$

Where

C_{RAC}=installed cost of replacement central air-conditioner

$$\Delta COP = 1 \frac{COP_{existing}}{COP_{new}}$$

7 is the payback period in years
LEP=local energy price $/unit energy
$COP_{existing}$=assumed coefficient of performance of existing system
COP_{new}=improved coefficient of performance of new system.

(ii) The value of 0.46 may be used for ΔCOP. This value is based on an assumed existing SEER of 6.6 (COP of 1.9) and a new SEER of 12.0 (COP of 3.5).

(iii) An audit should be conducted for replacement central air-conditioners if the annual cooling energy use of the dwelling unit is greater than the cooling energy cutoff. The annual cooling energy use of the dwelling unit shall be determined by removing the contribution of noncooling sources, (such as lighting, appliances, and water heating) from the total energy consumption.

(e) *Domestic Hot Water Use Cutoff.* (1) A domestic hot water use cutoff level shall be determined for solar domestic hot water systems. The cost of solar domestic water heater systems depends on insulation as well as hot water use which makes it difficult to produce a generic formula which will indicate the hot water use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the simple payback associated with a range of daily hot water uses and then by successive approximation determine the hot water use cutoff level that corresponds to a 7-year simple payback.

(2) *Solar Domestic Hot Water System.* Use the following procedures to determine the domestic hot water use cutoff for solar domestic hot water systems.

(i) Determine savings (for each water heating fuel type) and costs for solar domestic hot water, using an approved audit procedure, such as the DOE Model Audit, for a range of gallons per day of hot water usage.

(ii) Based on the sample calculations, determine what is the gallons-per-day cutoff level for each fuel type which corresponds to a 7-year simple payback. Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (the solar savings fraction is the percent of the water heating load provided by the solar system); enough roof area to provide the solar savings fraction indicated above; and the tilt of the collector should be optimal for the specified latitude.

(iii) This gallons-per-day number shall be used as a cutoff level for determining whether to audit for a solar domestic hot water system in a multifamily dwelling unit. A method must be developed for auditors to determine gallons-per-day usage at the dwelling unit. (For example, the DOE Model Audit determines gallons-per-day usage using the number of people in residence and the presence of a dishwasher and/or a washing machine.)

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Parts 456 and 458

[Docket No. CAS-RM-81-130-B]

Residential Energy Conservation Program and Commercial and Apartment Conservation Service Program

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) hereby gives notice of proposed amendments to the regulations of the Residential Conservation Service (RCS) Program (10 CFR Part 456) which apply to alternative State plans under section 226 of the National Energy Conservation Policy Act, (NECPA), as amended by Title I of the Conservation Service Reform Act (CSRA) (Pub. L. 99-412). Proposed Subpart K recognizes the new flexibility States have to design residential energy conservation plans suitable to their needs and sets forth proposed procedures under which eligible customers may apply to the Secretary to review the adequacy of State implementation of alternative State plans in operation for at least one year.

DOE also hereby proposes rules to implement Title II of CSRA which repeals Title VII of NECPA—the statutory basis for the Commercial and Apartment Conservation Service (CACS)—except for CACS State plans approved prior to August 1, 1984, which may continue in effect until January 1, 1990. The proposed rules would comply with the repeal of Title VII of NECPA by removing 10 CFR Part 458, and would take account of the CACS State plans falling under the exception from repeal by retitling 10 CFR Part 456 as the Energy Conservation Service Program and adding a new Subpart M which, among other things, provides for reporting on any CACS State plan which continues in effect.

This notice of proposed rulemaking complements the notice of interim final rulemaking by which DOE has published other rules to implement nondiscretionary changes in the Residential Conservation Program required by Title I of CSRA.

DATES: A public hearing will be held on this proposed rule in Washington, DC, beginning at 9:30 a.m., e.s.t., on April 21, 1987, at the location specified below. Requests to speak must be received no later than 4:00 p.m. on April 20, 1987. Please bring at least seven (7) copies of the oral statement to the hearing.

Written comments (seven copies) on this proposed rule must be received by May 4, 1987, 4:30 p.m., e.s.t. in order to insure their consideration.

ADDRESSES: The public hearing will be held in Washington, DC, at: U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW.

All written comments (seven copies) and requests to speak at the public hearing should be addressed to: Office of Conservation and Renewable Energy, Office of Hearings and Dockets, RCS Rule, Docket No. CAS-RM-81-130-B, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202-586-9320).

FOR FURTHER INFORMATION CONTACT:

Harry L. Lane, CE-222, U.S. Department of Energy, Residential and Commercial Conservation Program, Office of Conservation and Renewable Energy, 1000 Independence Avenue, SW., Room 6B-113, Washington, DC 20585, (202) 586-1893

Neal J. Strauss or Peter A. Greenlee, GC-12, U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW., Room 6B-144, Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Residential Conservation Service

The Department of Energy (DOE) today proposes to revise the Residential Conservation Service (RCS) program rules in 10 CFR Part 456 in order to implement section 226 of the National Energy Conservation Policy Act, (NECPA), as amended by the Conservation Service Reform Act of 1986 (CSRA) (Pub. L. 99-412). The RCS program principally requires large electric and natural gas utilities to inform their residential customers of the benefits of certain energy conservation and renewable energy measures, and to offer their customers energy audits of their homes. NECPA provides for substantial and detailed State involvement under State plans approved by DOE. If a State is unwilling or unable to carry out a State plan, NECPA requires DOE to implement a Federal Standby plan.

Title I of CSRA makes significant alterations to the NECPA provisions applicable to the RCS. With respect to standard RCS plans, CSRA provides for issuance of one more program announcement before Federal program termination on June 30, 1989, and eliminates the requirements to arrange for installation and financing of conservation measures and to provide a list of suppliers, contractors, and financial institutions. CSRA also permits exemption from standard RCS requirements for utilities granted waivers and for States which certify alternative State plans. DOE is publishing a companion notice of interim final rulemaking which implements all of the alterations to the RCS except for alternative State plans. This notice contains proposed rules which define DOE's role under CSRA with respect to alternative State plans.

B. Commercial and Apartment Conservation Service

In 1980, the Energy Security Act (Pub. L. 96-294) amended NECPA by adding a new Title VII which created the Commercial and Apartment Conservation Service (CACS). The CACS was designed to provide RCS-type services for all multi-family and small commercial buildings. DOE implemented the CACS by rules now codified at 10 CFR Part 458.

Title II of CSRA repealed Title VII of NECPA effective immediately with one significant exception. States with plans approved under 10 CFR Part 458 prior to August 1, 1984, were authorized to continue those plans in effect until January 1, 1990. To conform to the repeal of Title VII of NECPA, DOE today is proposing to remove 10 CFR Part 458. To provide for those plans which CSRA permits to remain in effect, DOE today is proposing to amend 10 CFR Part 456 by adding a new Subpart M containing the rules which may be needed for those plans actually continued in effect.

II. Description of Proposed Rules

A. Subpart K—Alternative State Plans

Section 103 of CSRA added section 226 to NECPA. This added section allows any State Official, authorized under State law, to formulate and certify an alternative plan to its RCS plan. This subpart identifies the responsibilities of States and covered utilities under an alternative State plan including the plan content, certification procedure, reporting requirements, enforcement procedures, and amendment process. In

general, DOE intends to facilitate States' adoption and implementation of alternatives to the RCS plan. DOE recommends that States observe and adopt alternative State plans after public notice and public hearings which should prove useful in developing provisions of such plans. It has been our experience that such efforts are well worth while both in terms of ventilating issues and in surfacing ideas and considerations that would not otherwise have been sufficiently considered. For example, should a State consider the adoption of a program which mandates utilities to provide some level of installation or supply of energy conservation measures, such public review would provide those in the small business community an opportunity to evaluate the effects of such a program on their business and propose mitigating amendments or alternatives for consideration.

1. Definitions—§ 456.1102.

An alternative State plan covers all regulated utilities operating in the State and identified in accordance with 456.105 as a "covered utility." In addition, an alternative State plan may include any nonregulated covered utility which participates voluntarily or as required by State law. Utilities with retail service areas in more than one State are considered to be a separate utility in each State in which its retail service area is located. In other words, utility coverage in this subpart is equivalent to that of a State's RCS plan.

2. Content of plans—§ 456.1103.

The requirements under this section are taken directly from section 226(c) of NECPA. Alternative State plans must be designed to result in annual residential energy savings of 2 percent or more and must contain the goals established for the plan, together with other information and procedures to assure the goals are likely to be met and competitive concerns are addressed. CSRA provides that States certifying an alternative State plan under this subpart explain in detail how the contents of the plan will be implemented.

Although CSRA and the proposed rule permit States to determine the 2 percent residential energy savings goal, DOE suggests the 2 percent energy savings requirement be interpreted, at a minimum, as 2 percent of the energy used in a State's eligible customer's residences, reduced by the energy used in residences already served under the RCS plan. The exclusion of those already served appears justified because it may reasonably be presumed that such savings as may be achievable have in fact already been gained in these homes.

Under the concept of the alternative State plan, States may target their program to specific market segments, drop audits, drop announcements, and add activities as seems beneficial. The critical requirement is that the savings objective and other goals are likely to be achieved. Of course, it must also be recognized that goals are sometimes not met for reasons that were not obvious at the time the program activities were designed and implemented.

Alternative State plans which include utility supply and installation of energy conservation measures are required by section 226(c)(3) of NECPA, as added by CSRA, to assure such actions comply with section 216 of NECPA. Section 216(a) of NECPA contains a general prohibition of utility supply and installation with specific exemptions and conditions covered in sections 216 (b), (c), and (d). Provision is made for a waiver to be granted by the Secretary in section 216(e). Alternative State plans may incorporate utility supply and installation options not covered by the exemptions, but must make such provisions conditional upon DOE approval of utility waiver requests under section 216(e) of NECPA, as implemented by § 456.507 of the program regulations.

3. Incentives—§ 456.1104.

Section 226 of NECPA provides for the use of incentives by the State lead agency or State regulatory authority for utilities to meet the goals of a State's alternative plan. These incentives may include providing utilities which meet or exceed the plan's goals with a rate of return on expenditures made for the purposes of accomplishing those goals. DOE is interested in receiving comments on the use of incentives in developing and implementing an alternative plan.

4. Certification process—§ 456.1105.

The requirements under this section are also taken directly from section 226 of NECPA. Beginning with the certification date of an alternative State plan and ending when the plan is no longer in effect, the procedures for a State residential energy conservation plan do not apply to regulated utilities in States with an alternative State plan or to nonregulated utilities which are included in the alternative State plan. The NECPA requirements for the home heating supplier program and temporary programs also do not apply to regulated utilities in States with an alternative State plan or to nonregulated utilities which are included in an alternative State plan. The certification form has been provided to all State lead agencies as required by section 226(d). DOE is requiring that States which certify an alternative State plan submit a copy of that plan with the certification. There is no intent to review or approve such submissions, but rather to insure that DOE can more fully understand the activities being carried out under alternative State plans.

5. Reporting requirements—§ 456.1106.

The reporting requirements included under this section are mandated by section 226(e) of NECPA as added by CSRA.

Further, there are significant additional reporting requirements placed on DOE by section 225 of NECPA as added by CSRA for comparisons of estimated actual energy savings with predictions, identifications of the most effective plans or parts of plans, analyses of the energy savings potential of installing additional residential energy conservation measures, and other relevant analyses. In order to carry out these responsibilities, consideration is being given to seeking information when providing guidance to States under the provisions of subsection (d). Such information might include the number of residential buildings and occupants receiving benefits, details about the number of eligible customers, numbers of announcements, audit requests received, low and moderate income households served, estimated actual and predicted energy savings resulting from activities under the State plan, the sources of such savings, the energy savings potential of additional residential measures, information concerning related program activities intended to conserve energy in State residences (including a brief description of who provides the service, how it is carried out, and the results achieved), information concerning State or utility studies covering technical or behavioral issues about delivery or energy conservation services to the residential sector (including major findings and how to obtain copies.) DOE would like comment on the availability of information of this type at the State level and the level of interest in other State's program results embodied in such information.

6. Procedures for administrative and judicial enforcement—§ 456.1107.

After an alternative State plan has been certified for a year, any customer of a utility subject to such plan may petition the Secretary to determine if the plan has been adequately implemented. While the procedures in this section

generally track the provisions of CSRA, the Department is proposing content requirements for petitions which will make it possible to determine whether a petitioner has standing, has complied with the statutory requirement to serve a copy on the entity in charge of the plan, has a sufficiently stated complaint regarding adequacy of implementation, as well as whether and with what procedures a hearing should be held. The standing requirement for injury in fact is based on the statutory requirement for such injury to exist in order to have standing to appeal a final determination of the Secretary to a federal court of appeals.

7. Amendments—§ 456.1108.

Under NECPA section 226(k), an alternative State plan may not be amended during the first year after its certification nor more than once a year thereafter through June 30, 1989. Plan amendments must be consistent with the contents of the plan described in § 456.1103 and be certified to the Secretary as required in § 456.1105.

B. Subpart M—Commercial Buildings and Multifamily Dwellings

The subpart contains proposed rules which recognize the broad discretion States have under CSRA to continue plans adopted under Title VII of NECPA prior to August 1, 1984. The subpart generally tracks the provisions of section 201 of CSRA and provides for annual reports by States that elect to take advantage of the continuing authority to carry out their programs.

III. Regulatory Impact Analysis

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule", as defined by section 1(b) of E.O. 12291, and prepare a preliminary regulatory impact analysis for rules which fall within that definition.

The proposed rule would establish procedures applicable to applications under CSRA by eligible customers complaining about allegedly inadequate implementation of alternative State plans. The proposed rule would also provide for reporting on program progress by a State which can and does decide to continue in effect a CACS State plan, approved before August 1, 1984. Neither of these procedures is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or exports markets. DOE has concluded therefore the proposed rule is not a "major rule".

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register.** The procedures for complaints against the adequacy of implementation of alternative State plans and for reporting annually on progress under a CACS State plan which continues in effect under Title II of CSRA will be of interest largely to States and utilities. The impact on small businesses is likely to be confined to relatively few entities. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that the interim final rule will not have a significant impact on a substantial number of small entities.

V. Environmental Impacts

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), DOE prepared an Environmental Impact Statement for the entire Residential Conservation Service Program (DOE/EIS–0050). The notice of availability was published in the **Federal Register** on November 7, 1979. The subject matter of this proposed rulemaking is within the scope of this programmatic Environmental Impact Statement and the impacts of the proposed rule were adequately addressed in the EIS. Copies may be obtained by writing: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

VI. Paperwork Reduction Act

The additional reporting and recordkeeping requirements contained in §§ 456.1103 and 456.1105 through 456.1108 have been submitted to the Office of Management and Budget (OMB) for review and clearance under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The removal of 10 CFR Part 458 is expected to result in reductions in reporting and recordkeeping requirements, which will be reported to OMB, as provided in 5 CFR Part 1320, "Controlling Paperwork Burden on the Public."

VII. Comment and Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments, with respect to the proposed rulemaking procedures, requirements and criteria. Comments should be submitted to the Office of Hearings and Dockets/CE address indicated in the addresses section of this notice and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Conservation Service Program, Docket No. CAS–RM–81–130–B." Seven copies should be submitted. All written comments must be postmarked by May 4, 1987 to ensure consideration. All written comments received on the proposed rule amendments will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

B. Hearing Procedures

The time and place of the public hearing are indicated in the date and addresses sections of this notice. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representing a group or class of persons that has an interest in the proposed rulemaking, to make a request for an opportunity to make an oral presentation. Such a request should be directed to the Office of Hearings and Dockets/CE address indicated in the addresses section of this notice, and must be received by the date indicated in the dates section of this notice. A request should be labeled both on the document and on the envelope "Residential Conservation Service Program, Docket No. CAS–RM–81–130–B." The person making the request should briefly describe the interest concerned and provide a telephone number where he or she may be contacted during the day.

C. Conduct of Hearings

DOE reserves the right to arrange the schedule of presentations to be heard

and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes or based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer to chair the hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question, in writing, at the registration desk. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made, and the entire record of the hearing, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

List of Subjects

10 CFR Part 456

Energy audits, Energy conservation, Housing, Insulation, Reporting and recordkeeping requirements, Utilities.

10 CFR Part 458

Energy audits, Energy conservation, Housing, Insulation, Intergovernmental relations, Renewable energy resources, Reporting and recordkeeping requirements, Utilities.

Issued in Washington, DC, February 25, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Part 456 is proposed to be amended as follows:

PART 456—ENERGY CONSERVATION SERVICE PROGRAM

1. The authority citation for Part 456 is revised to read as follows:

Authority: Part 1 of Title II and Title VII of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 et seq. (42 U.S.C. 8211 et seq.), as amended by the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 et seq. and the Conservation Service Reform Act, Pub. L. 99-412; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 et seq. (42 U.S.C. 7101 et seq.).

2. 10 CFR Part 456 is proposed to be amended by retitling the part as set forth above and by adding Subpart K as follows:

Subpart K—Alternative State Plans

Sec.

Subpart K—Alternative State Plans

§ 456.1101 Scope.

This subpart identifies the responsibilities of States and covered utilities under an Alternative State Plan authorized under section 103(a) of CSRA including the plan content, certification procedure, reporting requirements, enforcement procedures, and the amendment process.

§ 456.1102 Definitions.

(a) For purposes of this subpart, an "entity" means the Governor of any State or the designated State regulatory authority, or agency or instrumentality of the State authorized under State law to formulate and certify an alternative State plan for residential buildings under this subpart.

(b) "Covered utilities" are those regulated utilities which meet the definition of "covered utility" in § 456.105, and in addition, to the extent authorized by State law or agreed to by the organizations, includes non-regulated utilities and home heating suppliers. For purposes of this subpart, any utility with a retail service territory in more than one State shall be considered to be a separate utility with respect to each State in which its retail service territory is located.

§ 456.1103 Content of plan.

An alternative State plan certified pursuant to this subpart shall—

(a) Be designed to result in annual residential energy conservation savings of 2 percent or more.

(b) Contain the goals established for the plan and an analysis of the data and rationale used by the certifying entity to determine that the plan is likely to achieve such goals.

(c) Contain adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions shall be consistent with section 216 of NECPA and prices and rates of interest charged shall be fair and reasonable.

(d) Contain adequate procedures for preventing unfair, deceptive, and anticompetitive acts or practices affecting commerce which relate to the implementation of such plan.

§ 456.1104 Incentives.

The entity in charge of a plan under this subpart, or a State regulatory authority, may, to the extent permitted under State law, provide incentives for utilities to meet the goals contained in the State's alternative State plan, including providing such utilities that meet or exceed such goals with a rate of return on expenditures made for the purpose of accomplishing such goals.

§ 456.1105 Certification process.

(a) *Certification.* (1) The entity which elects to certify a plan under this section shall certify, pursuant to a form prescribed by the Secretary (except as provided by paragraph (a)(2) of this section), to the Secretary that—

(i) The plan meets the requirements of § 456.1103;

(ii) The plan is likely to achieve the goals established for the plan if it is adequately implemented; and

(iii) The plan will be adequately implemented.

(2) If a form is not made available by the Secretary within 90 days after the date of the enactment of the CSRA and until such form is made available, the certifying entity may make such certification on a form prescribed by such entity.

(3) Any certification under this section shall include a copy of the plan and a detailed explanation of the manner in which the contents of the plan will be implemented.

(b) *Consequences.* (1) Beginning with the certification date of a plan under this section and ending with the date on which a plan is no longer in effect—

(i) Subsections (a) through (c)(3) of section 212, sections 213 through 215 and sections 217 and 218 of NECPA shall not apply with respect to regulated utilities in such State and nonregulated utilities which are included in the plan; and

(ii) Section 219 of NECPA shall apply to utilities described in subparagraph (a) only to the extent provided for under § 456.1107.

(2) Except as provided under § 456.1108, any State for which a plan is certified under this section shall continue to have such plan in effect until June 30, 1989.

§ 456.1106 Reporting requirements.

(a) The certifying entity shall submit an annual report to the Secretary, within 60 days after the end of the 1-year

period to which the report relates, describing the implementation of the plan and the results thereof.

(b) Such report shall include—

(1) A statement of the number of residential buildings receiving benefits under the plan;

(2) An estimate of the actual energy savings resulting from the plan and a description of sources of such savings;

(3) A statement of the percentage of individuals with low and moderate incomes who receive benefits under the plan;

(4) A detailed description of the benefits provided under the plan and of how the plan is implemented;

(5) Estimated State costs and utility costs of implementing the plan; and

(6) The names of the entities carrying out the plan.

(c) The first such report shall be made by the certifying entity within the 14-month period that begins with the plan certification date.

(d) Subject to approval of the Office of Management and Budget under the provisions of the Paperwork Reduction Act (Pub. L. 96–511), the Secretary may, to meet the requirements under section 104(b) of the CSRA, require additional information from entities.

§ 456.1107 Procedures for administrative and judicial enforcement.

(a) *Rights to petition.* At any time more than 1 year after an Alternative State plan has been certified under § 456.1105, any customer of a utility subject to such Alternative State plan may petition the Secretary of Energy to conduct a public hearing to determine if the Alternative State plan has been adequately implemented.

(b) *Content of petition.* Any petition mailed by the Secretary shall be received for filing only if such petition—

(1) Sets forth the petitioner's name and address;

(2) States that the petitioner is a customer of a named utility subject to an alternative State plan that was certified under § 456.1105 more than one year prior to the date of the petition;

(3) Explains how the alternative State plan has not been adequately implemented with sufficient specificity to give reasonable notice of any failure constituting grounds for complaint and any supporting allegations of relevant facts;

(4) States how the petitioner has been injured by any failure to adequately implement the alternative State plan stated as a ground for complaint;

(5) States whether and to what extent a hearing is desired;

(6) Contains a certificate verifying that a copy of the petition was transmitted, on the same date of transmittal to the Secretary to the entity which certified the alternative State plan, by certified mail, return-receipt requested; and

(7) Is signed by the petitioner before a Notary Public.

(c) *Answer.* The entity in charge of the alternative State plan shall have 20 days from the date of receipt to file an answer to the petition.

(d) *Denial of hearing.* Within 60 days of the date the petition is received for filing, the Secretary may deny a hearing, in whole or in part, in a written statement including supporting reasons if such a hearing is not justified in the public interest.

(e) *Prehearing dismissal.* Within 60 days after a petition is received for filing, the Secretary may dismiss such petition for failure to state adequate injury in fact or sufficient grounds for complaint which, if supported by the record, would warrant the conclusion that the alternative State plan has not been adequately implemented.

(f) *Notice of hearing.* Within 60 days of the date the petition is received for filing, the Secretary shall give advance notice to the public of any hearing to be carried out on a petition under this section including but not limited to—

(1) A description of the grounds for complaint in the petition;

(2) A date certain by which the public may submit written comments;

(3) Procedures for submission of evidence; and

(4) Such additional procedures as may be appropriate for the conduct of the hearing.

(g) *Making the determination.* Any determination by the Secretary concerning the adequacy of the implementation of any alternative State plan shall be on the record and shall be published in the **Federal Register** within 60 days after such determination is made.

(h) *Appeal.* Any person alleging that he is likely to be injured as a result of a determination by the Secretary under this section may, within 60 days after publication or notification of such determination, institute an action appealing the determination in the United States Court of Appeals for the appropriate judicial circuit. The court shall review the determination of the Secretary in accordance with Administrative Procedures Act, and shall have jurisdiction to affirm, modify, set aside, in whole or in part, or to remand such determination to the Secretary for such other action as the court may direct.

(i) *Enforcement.* Except as provided in paragraph (f) of this section, if any determination by the Secretary that the alternative State plan has not been adequately implemented becomes final and may not be appealed, the Secretary shall, within 30 days of the date on which the determination may no longer be appealed, initiate standby authority under Subpart J with respect to such State.

(j) *Exception.* If a State which had an approved plan in effect under subpart B on the day before the date on which certification was made under § 456.1105 informs the Secretary in writing, within 30 days after receiving a copy of the petition described in paragraph (a) of this section, that it will no longer implement a plan certified under this subpart and that it will implement the approved plan which was in effect in the State on the day before certification of the alternative State plan under this subpart, then—

(1) The determinations and actions described in paragraphs (b) through (d) of this section may not be carried out; and

(2) Sections 212 through 219 of NECPA shall apply in such State except to the extent that waivers are provided for utilities under Subpart L in such State.

§ 456.1108 Amendments.

(a) Except as provided by paragraph (b) of this section, a plan certified under this subpart may be amended by any amendment—

(1) Consistent with the requirements of § 456.1103; and

(2) Certified to the Secretary of Energy in a manner consistent with the requirements applicable to the certification of a plan under § 456.1104.

(b) A plan certified under this subpart may not be amended—

(1) During the first year after it is certified; or

(2) More than once a year thereafter.

3. 10 CFR Part 456 is proposed to be amended by adding Subpart M as follows:

Subpart M—Commercial Buildings and Multifamily Dwelling

Sec.

Subpart M—Commercial Buildings and Multifamily Dwellings

§ 456.1301 Scope.

This subpart applies to any State energy conservation plan for commercial buildings and multifamily dwellings approved under section 721 of tbe National Energy Conservation Policy Act before August 1, 1984.

§ 456.1302 Authority to continue plans.

Any State energy conservation plan to which this subpart applies may, with respect to regulated utilities, continue in effect until January 1, 1990.

§ 456.1303 Reporting.

The administering agency for any State energy conservation plan to which this subpart applies may report annually at such time as may be appropriate with respect to activities carried out under the authority of section 201 of CSRA.

4. 10 CFR Part 456 is proposed to be amended by revising § 456.101 to read:

§ 456.101 Purpose and scope.

This part contains the regulations applicable to the Residential Conservation Service (RCS) Program and State energy conservation plans for commercial buildings and multifamily dwellings under the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, as amended by the Energy Security Act (ESA), Pub. L. 96–294, and by the Conservation Service Reform Act of 1986, Pub. L. 99–412.

PART 458—[REMOVED]

5. 10 CFR Part 458 is proposed to be removed.

[FR Doc. 87–4499 Filed 3–3–87; 8:45 am]
BILLING CODE 6450-01-M

federal register

Wednesday
March 4, 1987

Part VIII

Environmental Protection Agency

Strychnine; Intent To Cancel; Partial Withdrawal of Prior Cancellation Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/7F; FRL 3164-5]

Strychnine; Intent To Cancel; Partial Withdrawal of Prior Cancellation Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On October 19, 1983, EPA concluded its special review of pesticide products containing strychnine and issued a notice of intent to cancel registrations of and deny applications for strychnine-containing pesticides used for control of certain rodents on rangeland, pasture, cropland, and non-agricultural sites and required modification of the terms and conditions of registrations for strychnine-containing products for control of certain rodents and birds on those sites. 48 FR 48522. A hearing was requested to determine whether registrations for strychnine-containing pesticides should be canceled for control of prairie dogs and meadow mice and whether the modification of terms and conditions of registration for strychnine-containing pesticides for control of ground squirrels should be required. Prior to the evidentiary phase of the hearing, the active parties engaged in extensive settlement negotiations. As a result of information presented and commitments made by the parties to the resulting settlement agreement, EPA has determined that unconditional cancellation of strychnine registrations for prairie dog and meadow mouse control is no longer necessary to prevent unreasonable adverse effects on the environment. This notice withdraws the original notice of intent to cancel as it pertains to product registrations for control of prairie dogs, meadow mice, and ground squirrels and issues a notice of intent to cancel registrations and deny applications for strychnine-containing pesticides for prairie dog, ground squirrel, and meadow mouse control unless modification of the terms and conditions of registration are made in accordance with this Notice.

DATES: A request for a hearing by a registrant or an applicant must be received on or before April 3, 1987 or within 30 days from receipt by mail of this Notice, whichever date is later. A request for a hearing submitted by any other adversely affected person must be received on or before April 3, 1987.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-100), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Walter Waldrop, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1016, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-5493.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA issued a Notice of Rebuttable Presumption Against Registration for certain pesticides containing strychnine, published in the **Federal Register** of January 13, 1977 (42 FR 2713). This notice identified possible risks associated with the outdoor, above-ground uses of strychnine-containing pesticides and solicited public comment relevant to the risks and benefits of these uses. On November 5, 1980, after evaluation of comments, EPA published a Position Document (PD 2/3) which proposed to cancel registrations of and deny applications for certain uses of strychnine-containing pesticides and conditionally cancel other uses unless terms and conditions of registration were modified. This proposed decision was submitted for review and comment to the Scientific Advisory Panel (SAP) and the Secretary of Agriculture. In addition, EPA solicited further comments from the public on its proposed decision. After evaluation of the comments received, EPA published a Notice of Intent to Cancel registrations of and deny applications for strychnine-containing pesticides for certain uses and require modification of terms and conditions of registrations for strychnine-containing pesticides for other uses, in the **Federal Register** of October 19, 1983 (48 FR 48522). The Agency received requests to hold a hearing to determine whether strychnine registrations for the control of prairie dogs and meadow mice should be canceled and whether strychnine registrations for control of ground squirrels should be canceled unless certain terms and conditions of registration were modified. Except for those uses for which a hearing was requested, all strychnine registrations for outdoor, above-ground uses have now been canceled by operation of law or have had the terms and conditions of registration modified as proposed in the October 19, 1983 Notice of Intent to Cancel.

A pre-hearing conference was held in which it was determined that the following would be the only active parties during the strychnine cancellation hearing: (1) The U.S. Environmental Protection Agency, (2) the State of Wyoming, (3) the State of South Dakota, (4) the American Farm Bureau Federation, (5) the Sierra Club, (6) the Defenders of Wildlife, (7) the U.S. Department of the Interior, and (8) the U.S. Department of Agriculture. Subsequent to the pre-hearing conference and prior to the taking of testimony, the active parties obtained stays of the proceedings in order to attempt to reach a negotiated settlement. It was during the course of these negotiation meetings that EPA was persuaded that safeguards could be employed in strychnine application that would reduce the environmental risk to the extent that it would be outweighed by the benefits of use. With the exception of Sierra Club and Defenders of Wildlife, all the active parties have agreed to a settlement.

The Administrator has determined that the use of strychnine-containing pesticides for the control of prairie dogs, ground squirrels, and meadow mice will not pose unreasonable adverse environmental effects, if the terms and conditions of registration are modified as set forth by the Settlement Agreement, as amended. This Notice announces EPA's decision to withdraw that portion of the original notice of intent to cancel which pertained to registrations of strychnine products for prairie dog, meadow mouse, and ground squirrel control, and to issue a new notice of intent to cancel registrations for those uses unless the terms and conditions of the pertinent strychnine registration are modified to include the necessary safeguards agreed to in the settlement. The portion of the original cancellation notice pertaining to strychnine registrations for control of other pests is unaffected by this Notice.

If the terms and conditions of registration are not modified as required by this Notice, the Administrator has determined that the use of strychnine-containing pesticides for the control of prairie dogs, ground squirrels, and meadow mice will cause unreasonable adverse environmental effects. Failure to modify the terms and conditions of registration as required by this Notice is grounds for cancellation.

This Notice is organized into nine units. Unit I is this introduction. Unit II, entitled, "Legal Background," provides a general discussion of the regulatory framework within which this action is taken. Unit III summarizes the risks and benefits associated with the relevant uses of strychnine. Unit IV discusses the

regulatory options. Unit V presents the regulatory decision. The strychnine Settlement Agreement, as amended, appears in Unit VI. Unit VII describes the label modifications required by this Notice. Unit VIII contains comments of the Scientific Advisory Panel and the U.S. Department of Agriculture along with the Agency's responses to these comments. Unit IX, entitled "Procedural Matters," provides a brief discussion of the procedures which will be followed in implementing the regulatory action which the Agency is announcing in this Notice.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA), as amended, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. The standard for registration under FIFRA section 3(c)(5) requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

In determining whether the use of a pesticide poses risks which are greater than the benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registrations. Alternatively, the Agency may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If the Agency makes such a determination, it may seek cancellation, and, if necessary, suspension. In either case, the Agency may issue a Notice of Intent to Cancel the registrations. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified corrections set forth in the Notice. Adversely affected persons may also request a hearing on the cancellation of a specified registration and use if they do so in a legally effective manner. That registration and use will be maintained pending a decision at the close of an administrative hearing.

III. Summary of Risks and Benefits Determination

A. Risk Determination

In the Strychnine cancellation notice, EPA referred to Position Documents 2/3 and 4 (PD #2/3, PD #4), in which the Agency set forth in detail its assessment of the risks and benefits associated with the outdoor, above-ground use of strychnine. Generally, the Agency determined that, in light of modest benefits, certain of these uses of strychnine caused unreasonable adverse effects on the environment because of the risks they pose to nontarget species. Specifically, the Agency determined that strychnine used to control prairie dogs and ground squirrels would jeopardize the continued existence of the black-footed ferret, an endangered species.

The Agency identified strychnine as highly toxic to all carnivores upon which it had been tested and determined that it was prudent to assume that strychnine would be highly toxic to black-footed ferrets as well. The Agency also determined that black-footed ferrets were likely to feed on prairie dog and ground squirrel carcasses that had been poisoned with strychnine and that under certain field conditions they would die from secondary poisoning. Furthermore, the Agency was informed by the U.S. Office of Endangered Species (OES) in a "jeopardy opinion" that conducting a pre-control black-footed ferret survey to determine the presence of black-footed ferrets was not a sufficient safeguard to permit strychnine treatment in its habitat. During the course of the settlement negotiations, however, OES reconsidered its original "jeopardy opinion." Based upon further experience with black-footed ferret survey techniques and their reliability in locating ferrets in the Meeteetsee Wyoming black-footed ferret population, OES determined that, if no ferrets were found in a pre-control black-footed ferret survey conducted according to OES survey guidelines and the requirements of this Notice, strychnine could be used to control prairie dogs and ground squirrels without jeopardizing the continued existence of the black-footed ferret. Furthermore, the States of Wyoming and South Dakota agreed to establish programs whereby those states would control strychnine distribution for prairie dog control and help monitor the conduct of the pre-control black-footed ferret surveys. EPA has, therefore, been persuaded that if the terms and conditions of strychnine registrations are modified in accordance with this Notice that the risk to the black-footed ferret from secondary poisoning will be greatly reduced.

B. Benefits Determination

As discussed in detail in PD's #2/3 and #4, EPA has determined that the impact of cancellation of strychnine registrations for pesticides used for prairie dogs would be minor. Under the worst case assumption, for example, EPA estimated that there would be slightly more than a $1 million dollar annual increase nationwide in application cost if strychnine registrations for prairie dog control were to be cancelled. The economic impact of cancellation of registrations for meadow mouse control and for restricted ground squirrel control was determined to be so slight as to be negligible. EPA has not been persuaded that its original evaluation of economic impact of cancellation of and restrictions on registrations for prairie dog, meadow mouse, and ground squirrel was in error.

IV. Regulatory Options

EPA has determined that unrestricted use of strychnine-containing pesticides for control of prairie dogs and ground squirrels poses a risk of secondary poisoning to the black-footed ferret. However, this risk may be greatly reduced if the terms and conditions of registration for strychnine-containing pesticides are modified in accordance with this Notice.

In reaching the decision to allow continued registration for strychnine-containing pesticides for control of prairie dogs, ground squirrels, and meadow mice, the Agency considered the following regulatory options:

1. Continuation of the registrations for prairie dogs, ground squirrels, and meadow mice without additional restrictions.

2. Continuation of the registrations for prairie dogs, ground squirrels, and meadow mice with modifications of the terms and conditions of registration.

3. Cancellation of registrations of and denial of applications for all strychnine-containing pesticides for control of prairie dogs, ground squirrels, and meadow mice.

In considering option 1, EPA concluded that strychnine-containing pesticides used according to current labels for control of prairie dogs and ground squirrels would present

unreasonable adverse environmental effects. As discussed in PD's #2/3 and #4, the minor benefits of use do not outweigh the risk to the black-footed ferret, an endangered specie, from secondary poisoning.

In considering option 3, EPA has now determined that cancellation of strychnine registration for control of prairie dogs, ground squirrels and meadow mice is no longer necessary. Based upon the representations made by the U.S. Office of Endangered Species (OES) and the States of Wyoming and South Dakota during the settlement negotiations, EPA has determined that a pre-control black-footed ferret survey in accordance with OES survey guidelines and the requirements of this Notice and a state program under which the state would be the only distributor of strychnine-containing pesticides for prairie dog control would sufficiently safeguard the continued existence of the black-footed ferret. Furthermore, EPA has determined, as it had under the previous notice, that the risk to the black-footed ferret from use of strychnine-containing pesticide for control of ground squirrels is sufficiently low if application is restricted in accordance with this Notice. The most important ground squirrel application restriction creates a buffer zone around a prairie dog colony within which strychnine-containing pesticides could not be used for ground squirrel control.

EPA has, therefore, decided to adopt option 2. Despite relatively low benefits associated with the use of strychnine-containing pesticides for prairie dog, ground squirrel, and meadow mouse control, they outweigh the even lower risk to the black-footed ferret from secondary poisoning if the terms and conditions of registration are modified in accordance with this Notice.

V. Regulatory Decision

The Administrator has decided to partially withdraw the Notice of Intent to Cancel Certain Strychnine Registrations of October 19, 1983 (48 FR 48522) and to issue a new notice.

The Administrator has further determined that the use of strychnine-containing pesticides for prairie dog, ground squirrel, and meadow mouse control will cause unreasonable adverse effects to the environment unless the terms and conditions of registrations are modified as described below and in accordance with the Settlement Agreement (Unit VI).

VI. Settlement Agreement, as Amended

The text of the settlement agreement, as amended, is set forth below:

I. Introduction

The undersigned parties (hereinafter "parties") have negotiated the following settlement agreement. The purpose of this settlement agreement is to allow the continued registration and use of strychnine to control prairie dogs, ground squirrels, and meadow mice under conditions which will avoid jeopardizing the black-footed ferret, an endangered species, and which will reduce the risk of adverse effects on other nontarget species. To achieve this goal, the parties agree that the terms and conditions of strychnine registration for control of prairie dogs will include (1) the establishment of a state program for exclusive distribution and monitoring of strychnine for use on prairie dogs, (2) compliance with Black-Footed Ferret Survey Guidelines developed by the U.S. Fish & Wildlife Service, and (3) certain label statements. Certain label statements will also be added to the labels of products intended for ground squirrel and meadow mouse control.

II. State Program

The parties agree that states desiring to use strychnine to control prairie dogs must establish an exclusive program of strychnine distribution, monitoring, and record maintenance. Each state may designate an appropriate agency to conduct its strychnine program. For example, the State of Wyoming will utilize the Weed and Pest Control Districts at the county level to administer the program. The State of South Dakota will establish a state-level program administered through its Department of Agriculture. In order to procure strychnine for prairie dog control, the land on which strychnine is to be applied must be cleared for application in accordance with procedures set forth in the FWS Black-Footed Ferret Survey Guidelines, including a report of a survey where required under the Guidelines.

If any survey required by the Guidelines has discovered one or more black-footed ferrets, the agency responsible for conducting the survey will refer the survey report and any physical evidence of the presence of black-footed ferrets to the appropriate regional office of the U.S. Fish and Wildlife Service (FWS) for further review and examination by the FWS Regional Office Endangered Species Staff Specialist. Based upon the survey report and analysis of any physical evidence, and further investigation where deemed appropriate, FWS will make a finding concerning the presence or absence of black-footed ferrets in the proposed treatment area. Based on its findings it will recommend whether: (1) The requested use of strychnine should be permitted according to the terms and conditions of registration and, if necessary, any other conditions relating to black-footed ferrets, deemed necessary under the Endangered Species Act indicated by FWS, (2) the requested use should be prohibited for the treatment area and/or any other area where ferret presence is verified by FWS, (3) another black-footed ferret survey should be completed before a final decision regarding use is made. The recommendations of the FWS will be binding on the states and users pursuant to the terms of this settlement and the applicable provisions of FIFRA.

If the survey has not discovered any black-footed ferret or evidence indicating the presence of a black-footed ferret, or if FWS fails to respond to a referral which does not include submission of any physical evidence within two weeks, the agency responsible for administering the program may determine whether or not to permit the requested use of strychnine, and may impose additional restrictions not inconsistent with the label. If the referral to FWS includes physical evidence which will require laboratory analysis, FWS will contact the responsible agency within the two week period set forth herein and indicate a time certain in which it will respond to the referral.

If strychnine treatment for control of prairie dogs is proposed for a treatment area which includes more than one State, the requirements for and of each State program will apply, except that only one black-footed ferret survey need be conducted, and, where required, one referral need be submitted to FWS.

The State program will monitor the use of strychnine for control of prairie dogs to verify that such use is in accordance with the terms and conditions of registration and this negotiated settlement. In addition, the State program must maintain records of the prairie dog strychnine treatment requests, the black-footed ferret surveys, and the eventual disposition of the prairie dog strychnine treatment requests.

III. The Black-Footed Ferret Survey

The parties agree that any black-footed ferret survey required hereunder will be conducted in accordance with the guidelines applicable to "prairie dog control projects" in the "Draft Black-Footed Ferret Survey Guidelines for Compliance with the Endangered Species Act" of January 30, 1985 as published by the U.S. Fish and Wildlife Service [Survey Guidelines], and its subsequent editions, if any, and the specific terms and conditions of this negotiated settlement. To the extent that the present or future Survey Guidelines differ from or are incompatible with the terms and conditions of this settlement document, the terms and conditions of the survey guidelines will control.

The Survey Guidelines, as drafted, were developed solely to apply to Federal agency actions which might affect the black-footed ferret. For the purposes of this negotiated settlement, the Survey Guidelines will apply to all strychnine treatment to control prairie dogs, regardless of the identity of those proposing treatment, and all recommendations or suggestions pertaining to surveys in the FWS Survey Guidelines are made mandatory with respect to the use of strychnine for prairie dog control.

The parties agree that strychnine cannot be used to control prairie dogs unless FWS or the appropriate state agency has determined, in accordance with section II above, that no black-footed ferrets are likely to be present.

The parties responsible for conducting surveys will make every effort to perform surveys as expeditiously as possible so as

not to unduly delay proposed strychnine treatment.

The parties agree that all black-footed ferret surveys must be supervised on site by either a U.S. Department of Agriculture (USDA) animal damage control employee, an FWS employee, or an employee of a state wildlife or animal damage control agency who has satisfactorily completed the black-footed ferret survey training program approved by the FWS.[1]

IV. Label Statements

All current strychnine registrations for prairie dog control must also include the following label statements:

(1) Do not expose baits in a manner which presents a likely hazard to pets, poultry or livestock.

(2) Do not place bait in piles.

(3) Where feasible, pick up and burn or bury all visible carcasses of animals in or near treated areas.

(4) Do not use for prairie dog control in areas occupied by the Utah prairie dog in Garfield, Iron, Kane, Piute, Sevier and Wayne Counties, Utah or in Wyoming on that area identified by the Wyoming Game and Fish Department as the Meeteetsee black-footed ferret colony.

(5) The killing of an endangered species during strychnine baiting operations may result in a fine and/or imprisonment under the Endangered Species Act. Strychnine baits should not be used in the geographic ranges of the following species except under programs and procedures approved by the USEPA: Gray Wolf and Grizzly Bear.

(6) All strychnine baits for control of prairie dogs must be dyed yellow.

(7) Sale, distribution and use of this product must be in accordance with the provisions of the Administrator's final order.

Current strychnine registrations for ground squirrel control must include the following label statements: [2]

(1) Do not expose baits in a manner which presents a likely hazard to pets, poultry or livestock.

(2) Do not place bait in piles.

(3) Where feasible, pick up and burn or bury all visible carcasses of animals in or near treated areas.

(4) Do not use for ground squirrel control in areas occupied by the Utah prairie dog in Garfield, Iron, Kane, Piute, Sevier and Wayne Counties, Utah.

(5) Do not use for ground squirrel control within 200 yards of the boundaries of prairie dog colonies.

(6) Do not use within one mile of the boundary of a prairie dog colony where the presence of a black-footed ferret is confirmed by the U.S. Fish and Wildlife Service Office of Endangered Species or a comparable State agency.

(7) The killing of an endangered species during strychnine baiting operations may result in a fine and/or imprisonment under the Endangered Species Act. Before baiting, the user is advised to contact the regional U.S. Fish and Wildlife Service (Endangered Species Specialist) or the local Fish and Game Office for specific information on endangered species. Strychnine baits should not be used in the geographic ranges of the following species except under programs and procedures approved by the USEPA: California Condor, San Joaquin Kit Fox, Aleutian Canada Goose, Morro Bay Kangaroo Rat, Gray Wolf, and Grizzly Bear.

(8) All strychnine baits for control of ground squirrels must be dyed yellow.

(9) Sale, distribution and use of this product must be in accordance with the provisions of the Administrator's final order.

Current strychnine registrations for meadow mouse control must include the following label statements: [3]

(1) Do not expose baits in a manner which presents a likely hazard to pets, poultry, or livestock.

(2) Do not place bait in piles.

(3) Where feasible, pick up and burn or bury all visible carcasses of animals found in or near treated areas.

(4) Do not use for meadow mouse control in areas occupied by the Mississippi sandhill crane in Jackson County, Mississippi.

(5) Do not use for meadow mouse control in areas occupied by the Cape Sable sparrow in Collier, Dade and Monroe Counties, Florida.

(6) Do not use for meadow mouse control in areas occupied by the masked bobwhite quail in Pima and Santa Cruz Counties, Arizona.

(7) Do not use for meadow mouse control in areas occupied by the Utah prairie dog in Garfield, Iron, Kane, Piute, Sevier, and Wayne Counties, Utah.

(8) Do not use for meadow mouse control in areas occupied by Attwater's greater prairie chicken in the following Texas counties: Aransas, Austin, Brazoria, Colorado, Fort Bend, Galveston, Goliad, Refugio, and Victoria.

(9) The killing of an endangered species during strychnine baiting operations may result in a fine and/or imprisonment under the Endangered Species Act. Before baiting, the user is advised to contact the Regional U.S. Fish and Wildlife Service (Endangered Species Specialist) or the local state agency responsible for wildlife for specific information on endangered species. Strychnine baits should not be used in the geographic ranges of the following species except under programs and procedures approved by the USEPA: California Condor, San Joaquin Kit Fox, Aleutian Canadian Goose, Morro Bay Kangaroo Rat, Gray Wolf, and Grizzly Bear.

(10) All strychnine baits for control of meadow mice will be dyed yellow.

(11) Sale, distribution and use of this product must be in accordance with the provisions of the Administrator's final order.

V. Implementation and Modification of the Terms and Conditions of the Negotiated Settlement

The parties to the Settlement understand that this Settlement will be implemented through the following procedures. Based on this agreement, which will be filed in the record of FIFRA Docket No. 518, *et al.*, EPA will withdraw the relevant portions of the Notice of Intent to Cancel which initiated that proceeding. EPA will then expeditiously issue a new Notice of Intent to Cancel the registration of certain strychnine products; this new notice will be consistent with the terms and conditions of this Settlement Agreement. The undersigned parties agree not to request a hearing to contest this new notice, insofar as it conforms to terms of this Settlement.

The parties further agree that upon agreement of all the undersigned parties the terms and conditions of this negotiated Settlement can be modified. In addition, the terms and conditions of any strychnine registration can be modified by Agency action pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and its accompanying regulations.

Settlement Agreement and Amendment to Settlement Agreement signed by:

Kevin Lee,

Counsel for U.S. Environmental Protection Agency.

David Fisher,

Counsel for U.S. Fish and Wildlife Service.

Margaret M. Breinholt,

Counsel for the U.S. Department of Agriculture.

Richard L. Krause,

Counsel for American Farm Bureau Federation, South Dakota Farm Bureau Federation, Wyoming Farm Bureau Federation.

Weldon S. Caldbeck,

Senior Assistant Attorney General, State of Wyoming.

Roxanne Giedd,

Assistant Attorney General, Counsel for State of South Dakota Department of Agriculture.

Ida Sebesta,

Sebesta Bait Mixing Plant.

VII. Label Modification

This Notice requires that the strychnine Settlement, as amended (Unit VI), become part of the terms and conditions of strychnine registrations for prairie dog, ground squirrel, and meadow mouse control and that labels be modified as follows:

A. All Labels

Attention Strychnine Applicators

(1) Use of strychnine to control any pest is prohibited within 200 yards of any prairie dog colony not exempted from precontrol black-footed ferret survey requirements by the U.S.

[1] For the purposes of this settlement only, an "employee" of the USDA animal damage control program, FWS or a state may include any person employed on a permanent, temporary, or contract basis. Such persons cannot have a financial interest with respect to the property or the control of prairie dogs on the property to be surveyed.

[2] The American Farm Bureau Federation states that its participation in this proceeding is limited to issues involving the use of strychnine for prairie dog control. Consequently, it takes no position on the portions of this settlement pertaining to products for ground squirrel and meadow mouse control.

[3] The State of South Dakota states that its participation in this proceeding is limited to issues involving the use of strychnine for prairie dog and ground squirrel control. Consequently, it takes no position on the portions of this settlement pertaining to products for meadow mouse control.

Fish and Wildlife Service Guidelines unless strychnine is used in accordance with all label requirements pertaining to prairie dog control. Consult with state distribution agent regarding qualifications for exemptions.

(2) Use of strychnine by any method of application not specified by the label is prohibited.

B. Labels for Prairie Dog Control

All current strychnine registrations for prairie dog control must include the following label statements:

Attention Strychnine Applicators

(1) Use of strychnine for control of prairie dogs is prohibited unless distribution and treatment is done in accordance with the 1986 strychnine Settlement, as amended. The terms of the Strychnine Settlement include (i) the establishment of a state program for exclusive state distribution and monitoring of strychnine for use on prairie dogs, (ii) compliance with the Black-Footed Ferret Guidelines developed by the U.S. Fish & Wildlife Service (FWS), and (iii) certain label statements found on this label. Consult with state distribution agent regarding the detailed requirements of the 1986 Strychnine Settlement.

(2) Do not expose baits in a manner which presents a likely hazard to pets, poultry or livestock.

(3) Do not place bait in piles.

(4) Where feasible, pick up and burn or bury all visible carcasses of animals in or near treated areas.

(5) Do not use for prairie dog control in areas occupied by the Utah prairie dog in Garfield, Iron, Kane, Piute, Sevier and Wayne Counties, Utah or in Wyoming on that area identified by the Wyoming Game and Fish Department as the Meeteetsee black-footed ferret colony.

(6) The killing of an endangered species during strychnine baiting operations may result in a fine and/or imprisonment under the Endangered Species Act. Strychnine baits should not be used in the geographic ranges of the following species except under programs and procedures approved by the USEPA: Gray Wolf and Grizzly Bear.

(7) All strychnine baits for control of prairie dogs must be dyed yellow.

(8) Sale, distribution and use of this product must be in accordance with the provisions of the Administrator's final order.

State Requirements

(1) The use of strychnine to control prairie dogs is permitted only in States which establish an exclusive program of strychnine distribution, monitoring, and record maintenance. Each State may designate an appropriate agency to conduct its strychnine program. In order to procure strychnine for prairie dog control, the land on which strychnine is to be applied must be cleared for application in accordance with procedures set forth in the FWS Black-Footed Ferret Survey Guidelines, including a report of a survey where required under the Guidelines.

If any survey required by the Guidelines has discovered evidence of one or more black-footed ferrets, the agency responsible for conducting the survey will refer the survey report and any physical evidence of the presence of black-footed ferrets to the appropriate regional office of FWS for further review and examination by the FWS Regional Office Endangered Species Staff Specialist. Based upon the survey report and analysis of any physical evidence, and further investigation where deemed appropriate, FWS will make a finding concerning the presence or absence of black-footed ferrets in the proposed treatment area. Based on its findings it will recommend whether: (i) The requested use of strychnine should be permitted according to the terms and conditions of registration and, if necessary, any other conditions relating to black-footed ferrets, deemed necessary under the Endangered Species Act indicated by FWS, (ii) The requested use should be prohibited for the treatment area and/or any other area where ferret presence is verified by FWS, (iii) Another black-footed ferret survey should be completed before a final decision regarding use is made. The recomendations of the FWS will be binding on the states and users.

If the survey has not discovered any black-footed ferret or evidence indicating the presence of a black-footed ferret, or if FWS fails to respond to a referral which does not include submission of any physical evidence within two weeks, the agency responsible for administering the program may determine whether or not to permit the requested use of strychnine, and may impose additional restrictions not inconsistent with the label. If the referral to FWS includes physical evidence which will require laboratory analysis, FWS will contact the responsible agency within the two week period set forth herein and indicate a time certain in which it will respond to the referral.

If strychnine treatment for control of prairie dogs is proposed for a treatment area which includes more than one State, the requirements for and of each State program will apply, except that only one black-footed ferret survey need be conducted and, where required, one referral need be submitted to FWS.

The state program must monitor the use of strychnine for control of prairie dogs to verify that such use is in accordance with the terms and conditions of registration and the strychnine settlement.

In addition, the State program must maintain records of the prairie dog strychnine treatment requests, the black-footed ferret surveys, and the eventual disposition of the prairie dog strychnine treatment requests. (2) The Black-Footed Ferret Survey: Any black-footed ferret survey required hereunder must be conducted in accordance with the guidelines applicable to "prairie dog control projects" in the "Draft Black-Footed Ferret Survey Guidelines for Compliance With the Endangered Species Act" of January 30, 1985 as published by the U.S. Fish and Wildlife Service [Survey Guidelines], and its subsequent editions, if any, and the specific terms and conditions of the strychnine settlement. To the extent that the present or future Survey Guidelines differ from or are incompatible with the terms and conditions of the strychnine settlement, the terms and conditions of the survey guidelines will control.

Although the Survey Guidelines, as drafted, were developed solely to apply to Federal agency actions which might affect the black-footed ferret, the Survey Guidelines also apply to all strychnine treatments to control prairie dogs, regardless of the identity of those proposing treatment, and all recommendations or suggestions pertaining to surveys in the FWS Survey Guidelines are made mandatory with respect to the use of strychnine for prairie dog control.

Strychnine cannot be used to control prairie dogs unless FWS or the appropriate state agency has determined that no black-footed ferrets are likely to be present.

The parties responsible for conducting surveys will make every effort to perform surveys as expeditiously as possible so as not to unduly delay proposed strychnine treatment.

All black-footed ferret surveys must be supervised on site by either a U.S. Department of Agriculture (USDA) animal damage control employee, an FWS employee, or an employee of a state wildlife or animal damage control agency who has satisfactorily completed the black-footed ferret survey training program approved by FWS. An "employee" of the USDA animal damage control program, FWS, or a state may include any person employed on a permanent, temporary, or contract basis. Such persons cannot have a financial interest with respect to the property or the control of prairie dogs on the property to be surveyed.

C. Labels for Ground Squirrel Control

Current strychnine registrations for ground squirrel control must include the following label statements:

Attention Strychnine Applicators

(1) Do not expose baits in a manner which presents a likely hazard to pets, poultry or livestock.

(2) Do not place bait in piles.

(3) Where feasible, pick up and burn or bury all visible carcasses of animals in or near treated areas.

(4) Do not use for ground squirrel control in areas occupied by the Utah prairie dog in Garfield, Iron, Kane, Piute, Sevier and Wayne Counties, Utah.

(5) Do not use for ground squirrel control within 200 yards of the boundaries of prairie dog colonies.

(6) Do not use within one mile of the boundary of a prairie dog colony where the presence of a black-footed ferret is confirmed by the U.S. Fish and Wildlife Service Office of Endangered Species or a comparable State agency.

(7) The killing of an endangered species during strychnine baiting operations may result in a fine and/or imprisonment under the Endangered Species Act. Before baiting, the user is advised to contact the regional U.S. Fish and Wildlife Service (Endangered Species Specialist) or the local Fish and Game Office for specific information on endangered species. Strychnine baits should not be used in the geographic ranges of the following species except under programs and

procedures approved by the USEPA: San Joaquin Kit Fox, Aleutian Canada Goose, Morro Bay Kangaroo Rat, Gray Wolf, and Grizzly Bear.

(8) All strychnine baits for control of ground squirrels must be dyed yellow.

(9) Sale, distribution and use of this product must be in accordance with the provisions of the Administrator's final order.

D. Labels for Meadow Mouse Control

Current strychnine registrations for meadow mouse control must include the following label statement:

Attention Strychnine Applicators

(1) Do not expose baits in a manner which presents a likely hazard to pets, poultry, or livestock.

(2) Do not place bait in piles.

(3) Where feasible, pick up and burn or bury all visible carcasses of animals found in or near treated areas.

(4) Do not use for meadow mouse control in areas occupied by the Mississippi sandhill crane in Jackson County, Mississippi.

(5) Do not use for meadow mouse control in areas occupied by the Cape Sable sparrow in Collier, Dade and Monroe Counties, Florida.

(6) Do not use for meadow mouse control in areas occupied by the masked bobwhite quail in Pima and Santa Cruz Counties, Arizona.

(7) Do not use for meadow mouse control in areas occupied by the Utah prairie dog in Garfield, Iron, Kane, Piute, Sevier, and Wayne Counties, Utah.

(8) Do not use for meadow mouse control in areas occupied by Attwater's greater prairie chicken in the following Texas counties: Aransas, Austin, Brazoria, Colorado, Fort Bend, Galveston, Goliad, Refugio, and Victoria.

(9) The killing of an endangered species during strychnine baiting operations may result in a fine and/or imprisonment under the Endangered Species Act. Before baiting, the user is advised to contact the Regional U.S. Fish and Wildlife Service (Endangered Species Specialist) or the local state agency responsible for wildlife for specific information on endangered species. Strychnine baits should not be used in the geographic ranges of the following species except under programs and procedures approved by the USEPA: San Joaquin Kit Fox, Aleutian Canada Goose, Morro Bay Kangaroo Rat, Gray Wolf, and Grizzly Bear.

(10) All strychnine baits for control of meadow mice will be dyed yellow.

(11) Sale, distribution and use of this product must be in accordance with the provisions of the Administrator's final order.

VIII. Comments of the Scientific Advisory Panel and EPA's Response

Copies of a draft of this Notice of Intent to Cancel were sent to the Secretary of Agriculture and the Scientific Advisory Panel (Panel) as provided under FIFRA sections 6(b) and 25(d). On October 29, 1986 the Chairman of the Panel indicated that the Panel had no comments on the Notice and waived review. Therefore, no Agency response is required. On December 3, 1986, the United States Department of Agriculture responded with comments on the draft Notice. The Agriculture Department's comments are printed in full below.

December 3, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460

Dear Mr. Campt: This is in response, pursuant to Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act, to your letter forwarding a draft document concerning notices of intent regarding strychnine, which we received on November 17. It appears that we are nearing fruition of the activities surrounding the settlement agreement. We do, however, have some comments on the document you transmitted. The draft appendix includes two variations from the settlement agreement which we signed, as well as some minor typograhical errors that must be brought to your attention. The settlement agreement that we signed (1) does not specify that the original cancellation notice remains in effect for uses other than the three specifically at issue during the discussions, but the appendix at page 9, in V, does note this effect, also the settlement agreement we signed (2) specifies that a determination will be made that no black-footed ferrets are likely to be present, but the phrase "likely to be" is omitted in the draft appendix on page 4, paragraph 3, line 4. As regards point one, we do not object to the variation made in the draft appendix settlement document. With respect to the second point, it is obvious that it was due to a typographical error and should be corrected prior to publication, as evidenced by the introductory material on page 17, last line, which does include the words, "likely to be."

In addition to the foregoing, other typographical errors are as follows:

Page 1

Line 14 in I.—labels of
Line 7 in II.—program.

Page 4

Line 6 in 2nd paragraph—recommendations.

Page 5

Line 1 in footnote—add quotation mark after employee;
Line 4 in footnote—insert a before financial;
Last line on page—Meeteetsee.

Page 7

Last line on page—statements.

We appreciate the opportunity to have participated in the negotiations, which apparently are leading to an amicable resolution of the matter before your agency, and look forward to working with you again.

Sincerely,

Charles L. Smith,

Coordinator, Pesticides and Pesticide Assessment.

EPA's response to the Agriculture Department's comments is as follows. The Agriculture Department is correct that the Appendix accompanying the draft Notice of Intent to Cancel contained a version of a Settlement Agreement which differed in minor ways from the Settlement Agreement approved by the parties. These differences were the result of either inadvertent typographical errors or the mistaken use of an outdated draft in preparation of the Appendix. EPA has revised the document (now in Unit VI) to conform to the version approved by the parties.

IX. Procedural Matters

This Notice announces the Agency's final decision to cancel all registrations and to deny all applications for strychnine-containing pesticides for outdoor, above-ground control of prairie dogs, ground squirrels, and meadow mice unless registrations are modified in accordance with this Notice. Under sections 6(b)(1) and 3(c)(6) of FIFRA, applicants, registrants, and other adversely affected parties may request a hearing on the cancellation and denial actions that this Notice initiates. Unless a hearing is properly requested with regard to a particular registration or application, or the terms and conditions of registration are modified in accordance with this Notice, the affected registrations will be cancelled or applications denied. This section of the Notice explains how persons may amend their registrations or request a hearing and the consequences of requesting or failing to request a hearing in accordance with the procedures specified in this Notice.

A. Procedure for Amending the Terms and Conditions of Registration

Registrants who do not intend to request a hearing under this notice may avoid cancellation by submitting an application for amended registration which is in conformance with the terms and conditions set forth in unit VI of this Notice. Applications for amended registration must be submitted within 30 days of publication of this Notice or receipt of this Notice, whichever occurs later. Applications must be submitted to:

By mail:

Mr. William H. Miller, Product Manager 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and phone number:

Room 211, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2600.

B. Procedure for Requesting a Hearing

To contest the regulatory actions set forth by this Notice, registrants, and any applicant whose application for registration has been denied, may request a hearing within 30 days of receipt of this Notice, or within 30 days from the publication of this Notice in the **Federal Register**, whichever occurs later. Any other persons adversely affected by the cancellation action described in this Notice, or any interested person with the concurrence of an applicant whose application for registration has been denied, may request a hearing within 30 days of publication of this Notice in the **Federal Register.**

All registrants, applicants, and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require that all requests must identify the specific registration(s) by Registration Number(s) and the specific use(s) for which a hearing is requested, and must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–100), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. Consequences of Filing a Timely and Effective Hearing Request

If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for Hearings under FIFRA section 6 (40 CFR Part 164). The registrations of products held by persons who request and are granted a hearing remain in effect during the hearing except pursuant to an order of the Administrator. Similarly, the denial of registration will not become effective except by order of the Administrator if the applicant requests and is granted a hearing on the denial.

The hearing will be limited to the specific registrations or applications for which the hearing is requested.

2. Consequences of Failure to File in a Timely and Effective Manner

If a hearing concerning the cancellation or denial of registration of a specific strychnine-containing pesticide subject to this Notice is not requested by the end of the applicable 30-day period, and the registrant has not amended his registration in accordance with this notice, registration of that pesticide will be cancelled, or the denial will be effective.

B. Separation of Functions

The Agency's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following Agency offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of the Agency in any administrative hearing on this Notice of Intent to Cancel: The Office of the Administrative Law Judge, The Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA, on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

Dated: February 19, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–4473 Filed 3–3–87; 8:45 am]

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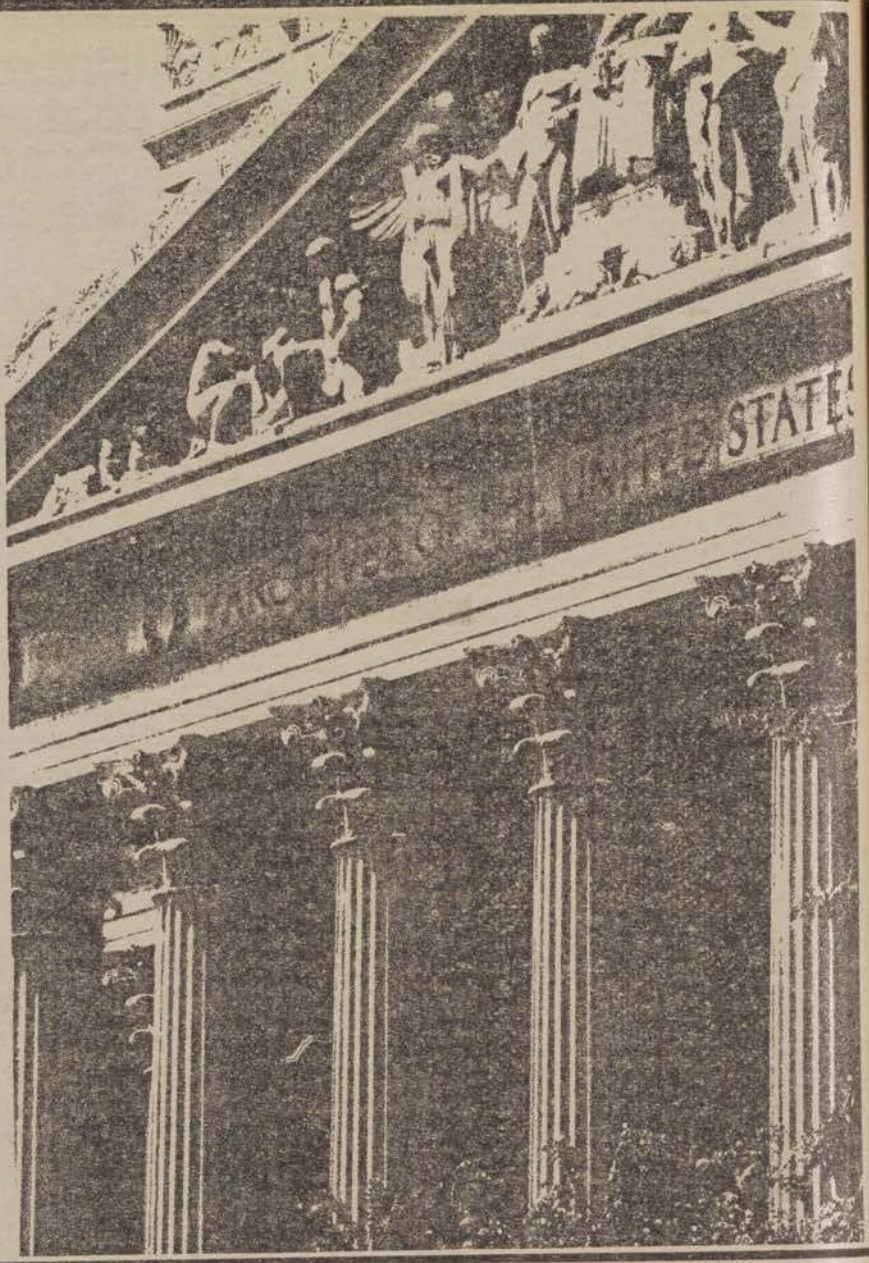

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